

**MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF TENINO AND
THE PARC FOUNDATION OF THURSTON COUNTY**

THIS MEMORANDUM OF AGREEMENT is made by and between the City of Tenino, (THE CITY) and the PARC Foundation of Thurston County, a Washington State nonprofit, tax exempt corporation located at 723 Eastside Street NE, Olympia, Washington 98506 (the PARC Foundation).

WHEREAS, THE CITY owns or operates and maintains real estate, buildings, works of art, and other recreational and entertainment facilities, and operates a wide variety of parks, recreation, arts and cultural heritage programs, services, and facilities; and

WHEREAS, the PARC Foundation of Thurston County wishes to support THE CITY's vision and mission and, as an independent tax-exempt corporation, has the opportunity to accomplish more than public funding allows; and

WHEREAS, the private independent nature of the PARC Foundation also provides the added advantage of dedicated donor and volunteer services; and

WHEREAS, THE CITY wishes to support the fundraising activities of, and appropriately recognize, the PARC Foundation and promote a positive relationship with its staff and volunteer members; and

WHEREAS, the PARC Foundation wishes to assure THE CITY that it will operate effectively and responsibly consistent with the reasonable expectations of both public and private interests on behalf of THE CITY.

THEREFORE, based on the foregoing, the parties enter into the following Agreement:

Section 1. PARC Foundation. The PARC Foundation represents and acknowledges the following with regard to its operation and purposes:

- A. The mission of the PARC Foundation of Thurston County is to promote donations for both facilities and programs to serve Thurston County residents in the areas of parks, recreation, arts, and cultural heritage. The PARC Foundation's work will be compatible with THE CITY's vision, mission, and goals, and it will support the Parks, Arts & Recreation Plan of THE CITY when the PARC Foundation's work involves THE CITY's Parks, Recreation, Arts, and Cultural Heritage programs or facilities.
- B. The PARC Foundation will support and diligently supplement THE CITY's efforts to increase the awareness of the value of parks, recreation, arts, and cultural heritage in the community.
- C. The PARC Foundation will participate in and enhance THE CITY's promotion of park facilities and recreational, arts, and cultural heritage programs.
- D. The PARC Foundation will strive to provide future funding to help support and expand CITY's parklands, facilities, and programs.

- E. A major purpose of the PARC Foundation is to secure, purchase, manage, and invest privately raised funds for the benefit of parks and facilities, as well as arts, recreation, and cultural heritage programs throughout Thurston County.
- F. The PARC Foundation shall support and promote state and national parks, recreation, arts, and cultural heritage initiatives as they arise.
- G. The PARC Foundation shall seek and receive donations for scholarships for THE CITY's low-income families.
- H. The PARC Foundation shall seek and receive funding to provide matching funds for grants such as through the State Recreation and Conservation Office.
- I. In coordination with THE CITY, the PARC Foundation shall continually champion and fundraise for a landmark project yet to be determined by the Parties jointly and in writing.
- J. The PARC Foundation shall continue to operate as a private independent legal entity separate from THE CITY.
- K. The PARC Foundation shall use sound fiscal procedures and adopted audit policies.
- L. The PARC Foundation shall maintain its status as a 501(c)(3) charitable organization to which contributions are deductible under §§170, 2055, and 2522 of the Internal Revenue Code.

Section 2. Insurance.

- A. **Insurance Term.** The PARC Foundation shall procure and maintain for the duration of the Memorandum insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work under this Memorandum by The PARC Foundation, its agents, representatives, or employees.
- B. **No Limitation.** Consultant's maintenance of insurance as required by this Memorandum does not limit the liability of The PARC Foundation to the coverage provided by such insurance, or otherwise limit THE CITY's recourse to any remedy available at law or in equity.
- C. **Minimum Scope of Insurance.** Consultant shall obtain insurance of the types described below:
 - 1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage must be at least as broad as ISO occurrence form (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
 - 2. Commercial General Liability insurance must be at least as broad as ISO occurrence form CG 00 01 and must cover liability arising from premises,

operations, independent contractors, stop gap liability, personal injury, and advertising injury. The City must be named as an additional insured under The PARC Foundation's Commercial General Liability insurance policy with respect to the work performed for THE CITY using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- D. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:
1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance must be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
 3. Professional Liability insurance must be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- E. Other Insurance Provisions. The PARC Foundation's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed, to contain that they are primary insurance as respect THE CITY. Any Insurance, self-insurance, or insurance pool coverage maintained by THE CITY is excess of The PARC Foundation's insurance and does not contribute with it.
- F. Acceptability of Insurers. Insurance must be placed with insurers with a current A.M. Best rating of not less than A:VII.
- G. Verification of Coverage. The PARC FOUNDATION shall furnish THE CITY with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of The PARC Foundation before commencement of the work.

Section 3. Accountability and Stewardship. As THE CITY and the PARC Foundation want to maintain the highest levels of accountability and stewardship, subject to the Confidentiality Policies of the PARC Foundation and section 7, below, the PARC Foundation shall share information with THE CITY as reasonably requested, including an annual report to THE CITY. The PARC Foundation shall develop reporting processes and institute compliance procedures and audit policies that ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes, and reports are made to donors on the use of such funds.

The PARC Foundation shall not undertake to raise funds for THE CITY's project without prior written approval by THE CITY. The PARC Foundation shall provide to THE CITY, for review and approval, notice of the nature of and plans for any fundraising efforts it plans to undertake to raise funds for the benefit of THE CITY that involves the use of THE CITY's property, or which is for the benefit of THE CITY. In addition, the PARC Foundation shall give THE CITY written notice of the status of all ongoing fundraising efforts on at least a quarterly basis.

Section 4. Donor Solicitation.

4.1 Donor Communication. The PARC Foundation shall advise prospective donors of the following:

- A. The PARC Foundation is a separate legal and tax entity organized for the purpose of encouraging philanthropic support for the benefit of THE CITY's parks, recreation, arts, and cultural heritage programs and facilities throughout Thurston County.
- B. Responsibility for governance of the PARC Foundation, including investment of gifts and endowments, resides with the PARC Foundation Board.
- C. The PARC Foundation shall follow donor intent with all donations, ensuring that donations are used in the manner agreed upon between the donor, the PARC Foundation and, to the extent THE CITY's parks, arts, recreation, arts, and cultural heritage program or facility that is the subject of such donation.
- D. The PARC Foundation shall keep donors informed on a timely basis regarding accomplishment of gift purpose. THE CITY will assist with such communications by providing information regarding funded projects as reasonably requested by the PARC Foundation.

4.2 Conditions of Gift Acceptance. The PARC Foundation shall, in accepting gifts of all kinds:

- A. Advise donors that any restrictive terms and conditions a donor attaches to gifts for THE CITY are subject to THE CITY's approval.
- B. Ensure that gifts designated for specific purposes related to THE CITY's programs or facilities are in compliance with THE CITY's municipal code, master plans, vision, and mission.
- C. Ensure that gifts related to THE CITY's programs and facilities are promptly reported to, and to the extent such gifts seek to impose terms, conditions, or obligations on THE CITY, are approved by THE CITY in writing.
- D. Coordinate relevant funding goals, programs, and campaigns with THE CITY when the Foundation's work involves THE CITY's programs or facilities.
- E. Allocate a maximum of 5% of all donations toward organizational expenses, with donor opt out consideration.

Section 5. Financial Procedures.

5.1 Standards. The PARC Foundation shall hold and invest endowments and funds functioning as endowments on a long-term basis. For this purpose, it shall ensure that the following standards are applied:

- A. Prudent Practices.

The PARC Foundation shall follow investment procedures that accord with applicable state and federal law. The investments must be consistent with the terms of the gift instrument.

B. Administration of Income.

The PARC Foundation shall administer income from investments, net of administrative fees, in accordance with pertinent PARC Foundation policies.

C. Annual Report.

The PARC Foundation shall include in their annual report to THE CITY a summary of all funds transferred to the THE CITY, current program account balances, and any financial activity thereon and will provide at least one formal in-person meeting which regional parties are invited to attend. THE CITY and the PARC Foundation shall provide each other with other reports as may be reasonably requested.

D. Preexisting Assets.

After the effective date of this Memorandum, all new funds raised are bound to the parameters of this Memorandum; however, preexisting assets may be distributed according to previously established donor requirements and commitments.

Section 6. Financial Statement. The PARC Foundation shall maintain financial records in accordance with generally accepted accounting principles. The PARC Foundation shall make available copies of the financial statements and a current list of PARC Foundation officers and directors to THE CITY upon request.

Section 7. Inspection and Provision of PARC Foundation Records. Because private funds are raised to support public projects, the PARC Foundation shall permit, on reasonable notice, authorized officials of THE CITY to inspect all the PARC Foundation books and records, except to the extent the inspection violates rights to privacy or confidential donor information. As necessary for THE CITY to comply with its obligations under the Public Records Act, RCW chapter 42.56, the PARC Foundation shall, upon request, provide THE CITY with copies of any PARC Foundation record that may be considered a "public record" of the THE CITY, so that THE CITY may produce such record in response to a public records request to which such record is or may be responsive. Whether a record is a public record of THE CITY for purposes of this paragraph is at the sole discretion of THE CITY.

Should the PARC Foundation fail to provide records related to this Agreement to the City within ten (10) calendar days of the City's request for such records, the PARC Foundation shall indemnify, defend, and hold the City harmless for any public records judgment against the City for failure to disclose and/or release such records, including costs and attorney's fees. This section survives expiration of the Memorandum.

Section 8. Compliance. To ensure donated funds are used in compliance with any PARC Foundation policies or donor purposes and restrictions, funds will be paid to THE CITY upon submission and review of THE CITY's invoice outlining use of such funds. If another method of fund payment is required, it will be mutually agreed upon in advance by THE CITY and the PARC Foundation.

Section 9. THE AGENCIES Assistance to the PARC Foundation. As long as the

PARC Foundation complies with all provisions of this Memorandum, THE CITY shall assist the PARC Foundation in the following manner:

- A. An Executive Committee, separate from the PARC Foundation Board, will be formed with a representative from each agency that is financially supporting the PARC Foundation, as outlined in Exhibit A, attached to and hereby made a part of this Memorandum. The Executive Committee will meet at least twice per year to establish and update annual work plan priorities and deliverables for the PARC Foundation. Accountability for this Memorandum will be based on those deliverables and performance metrics established by the committee. This Executive Committee will make a recommendation to the PARC Foundation Board regarding the selection and oversight of the Executive Management of the PARC Foundation.
- B. Allow the PARC Foundation to use the name and images of THE CITY consistent with THE CITY's policies related to its name and images or, if there are no such policies, upon written approval of the City.
- C. Provide the PARC Foundation with assistance in PARC Foundation activities at the discretion of the Parks & Recreation Department Director of THE CITY, and consistent with what is permitted under state and federal law, and THE CITY's municipal code.
- D. Recognize PARC Foundation gifts in THE CITY's Parks, Arts, and Recreation Annual Performance Report.
- E. THE CITY shall provide, at no cost, up to 10 hours of meeting room or park shelter space to the PARC Foundation for the purpose of hosting PARC Foundation Board meetings, facilitating regional meetings, or meetings focused on specific projects related to supporting THE CITY.
- F. As allowed by THE CITY's Communication Policy, or in the absence of such a policy upon written approval of the CITY, THE CITY shall provide a limited amount of website, social media, and print materials presence to the PARC Foundation for the purpose of furthering the PARC Foundation's activities under this Memorandum. Furthermore, THE CITY shall make every effort to include PARC Foundation donation/investment brochures at THE CITY's customer service counter.

Section 10. Notice of Non-Compliance – Opportunity to Cure. In the event of the PARC Foundation's non-compliance with any provision of this Memorandum, THE CITY shall notify the Executive Committee and the PARC Foundation in writing of the event or practice THE CITY believes does not comply with this Memorandum. The PARC Foundation shall, within fifteen (15) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to THE CITY that it is in compliance. In the event the PARC Foundation fails to comply within this time period, THE CITY, may terminate this Memorandum and the relationship described in this Memorandum.

Section 11. Termination and Withdrawal. In addition to the method of termination provided for in Section 10, THE CITY may terminate and withdraw from this Memorandum by delivering written notice of termination to the PARC Foundation and the Executive Committee

at least thirty (30) days prior to the effective date of any termination. The PARC Foundation may terminate this Memorandum by delivering written notice of termination to THE CITY at least thirty (30) days prior to the effective date of any termination. In the event of termination, the PARC Foundation shall provide THE CITY with an accounting of all funds restricted for THE CITY. Those funds shall be transferred over to THE CITY at the time of termination. THE CITY will be obligated to adhere to donor conditions that may have been established as a component of the donation. In the event of THE CITY's termination and withdrawal, the PARC Foundation shall provide THE CITY with an accounting of all funds restricted for THE CITY. Those funds shall be transferred over to THE CITY at the time of termination. THE CITY will be obligated to adhere to donor conditions that may have been established as a component of the donation.

Section 12. Compensation. THE CITY shall provide compensation to the Executive Management of PARC Foundation per the schedule in Exhibit A. The Executive Management will be required to match THE CITY's contributions with \$10,000 per year, as listed in Exhibit A. In the instance that THE CITY terminates this memorandum under the terms described in Section 10, the compensation will be refunded on a pro-rated basis for the remainder of the year from the date of termination. In the instance that THE CITY terminates this memorandum under the terms described in Section 11, THE CITY is not entitled to a refund for the remainder of that year.

Section 13. Provision for eligibility and conditions of additional agencies to add. In order for an agency to be supported by the PARC Foundation, the agency must be a city, county, park district, or tribe located in Thurston County and must pay the annual fees as outlined in the schedule. Any prospective future agency to be supported by the PARC Foundation must be approved by the Executive Committee and the PARC Foundation Board prior to joining the consortium of agencies supported by the PARC Foundation. One-time exceptions to this policy may be allowed, but must be approved in advance by the Executive Committee and the PARC Foundation Board, and must be incorporated into the annual work plan.

Section 14. Relationship of the Parties. In performing under this Memorandum, the PARC Foundation is an independent contractor and neither the PARC Foundation nor any of its officers, employees, or agents is an agent or employee of THE CITY. THE CITY is interested in only the results to be achieved, and that right to control the particular manner, method, and means in which services are performed under this Memorandum is solely within the discretion of the PARC Foundation. Any and all employees who provide services THE CITY under this MEMORANDUM are employees solely of the PARC Foundation. The PARC FOUNDATION is solely responsible for the conduct and actions of all its employees in carrying out this Memorandum and any liability that may attach thereto.

Section 15. Access to Worksites. The PARC Foundation will coordinate with THE CITY to grant the PARC Foundation access to observe and take pictures of project worksites during construction of projects supported by the PARC Foundation.

Section 16. Ownership / Use after Project Completion. Any project of THE CITY funded in whole or in part by the PARC Foundation will be owned and maintained by THE CITY and used according to THE CITY's policies.

Section 17. Assignment. This Memorandum is binding upon the Parties, their successors, and assigns. No party may assign, transfer, or subcontract, in whole or in part, its interest in this Memorandum without the prior written consent of the other parties.

Section 18. Anti-Kickback. No officer or employee of THE CITY, having the power or duty to perform an official act or action related to this Memorandum shall have or acquire any interest in the contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Memorandum.

Section 19. Indemnification.

The PARC Foundation shall, at its sole expense, defend, indemnify, and hold harmless THE CITY and its officers, agents, employees, and volunteers, from any and all claims, actions, suits, liability, loss, costs, attorneys' fees, costs of litigation, expenses, injuries, and damages of any nature whatsoever relating to or arising out of the wrongful or negligent acts, errors, or omissions in the services provided by the PARC Foundation and the PARC Foundation's agents, subcontractors, subconsultants, and employees to the fullest extent permitted by law, subject only to the limitations provided below.

The PARC Foundation's duty to defend, indemnify, and hold THE CITY harmless does not apply to liability for damages to the extent arising out of such services caused by or resulting from the sole negligence of THE CITY or THE CITY's agents or employees.

The PARC Foundation's duty to defend, indemnify, and hold THE CITY harmless against liability for damages arising out of such services caused by the concurrent negligence of (a) THE CITY or THE CITY's agents or employees, and (b) the PARC Foundation, the PARC Foundation's agents, subcontractors, subconsultants, and employees only applies to the extent of the negligence of the PARC Foundation, the PARC Foundation's agents, subcontractors, subconsultants, or employees.

The PARC Foundation's duty to defend, indemnify, and hold THE CITY harmless includes, as to all claims, demands, losses, and liability to which it applies, THE CITY's personnel-related costs, reasonable attorneys' fees, the reasonable value of any services rendered by the office of the the City Attorney, outside consultant costs, court costs, fees for collection, and all other claim-related expenses.

The PARC Foundation hereby specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. These indemnification obligations are not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefits acts. Provided, that the PARC Foundation's waiver of immunity under this provision extends only to claims against the PARC Foundation by THE CITY, and does not include, or extend to, any claims by the PARC Foundation's employees directly against the PARC Foundation.

The PARC Foundation hereby certifies that this indemnification provision was mutually negotiated.

Section 20. Nondiscrimination. THE CITY has made compliance with THE CITY's Non-Discrimination in Delivery of City Services or Resources ordinance a high priority, whether services are provided by THE CITY'S employees or through contract with other entities. It is important that all contract agencies and their employees understand and carry out THE CITY's non-discrimination policy. The PARC Foundation shall comply with THE CITY's nondiscrimination requirements as outlined in Exhibit B, which is attached to and hereby made a part of this Memorandum.

Section 21. Entire Agreement and Amendment. This Memorandum represents the parties' entire agreement with respect to the matters specified herein. This Memorandum may be amended upon agreement of all of the parties hereto.

Section 22. Governing Law and Venue. This Memorandum is governed by and must be construed under and in accordance with the laws of the State of Washington. Venue for any actions arising under this Memorandum is in the state Superior Court for Thurston County, Washington.

Section 23. Severability. Any provision of the Memorandum which is prohibited or unenforceable is ineffective only to the extent of the prohibition or unenforceability without invalidating the remaining provisions thereof.

Section 24. Attorney's Fees. In the event of litigation or arbitration over the terms or performance of this Memorandum, any prevailing party is entitled to reasonable attorney's fees and costs incurred in the course of such litigation or arbitration.

Section 25. Mediation. Should any dispute arise out of or related to this Memorandum or its performance by the parties, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The parties shall select a mediator within ten (10) days of the notice by a party to mediate a claim. If the Parties are unable to select a mutually acceptable mediator, the matter will be mediated, and a mediator chosen, by the Washington Arbitration and Mediation Service in Seattle. Mediation must be concluded within sixty (60) days of the notice to mediate extended by the parties by mutual agreement. Neither party may file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution of the claim(s). The costs of mediation must be paid equally by the parties, and each Party will pay for its own legal representation. If a mediated settlement is reached neither party may be deemed the prevailing party for purposes of obtaining attorney's fees and legal costs.

Section 26. Contact Information. Representatives and their contact information, for each party, are as follows:

A. For THE CITY:

Wayne Fournier, Mayor, City of Tenino, PO Box 4019, Tenino, WA, 98589

B. For the PARC Foundation contact: Joe Hyer Chair of the Board, PARC Foundation, 723 Eastside Street NE, Olympia, Washington, 98506.

Section 27. Term. The initial term of this Memorandum is from September 1, 2023 through December 31, 2028 unless earlier terminated as provided in Section 10 or Section 11. After the initial term, and subject to the termination provisions in Section 10 and Section 11, this Memorandum automatically renews for one (1) year on each successive January 1st, unless a notice of non-renewal is provided by either party at least 90 days before the expiration of the initial term and any subsequent renewal term.

THE CITY OF TENINO SIGNATURES:

Signature _____

Date

Name _____

Title _____

Approved as to form:

Richard Hughes, City Attorney

PARC FOUNDATION OF THURSTON COUNTY

By: _____

Date

Name _____

Title _____

Exhibit A
EXECUTIVE COMMITTEE & COMPENSATION SCHEDULE

In 2021, the long-established PARC Foundation of Thurston County transitioned its operating model towards one that includes paid executive management. In order to accomplish this, the agencies supported by the PARC Foundation began to provide population-based compensation amounts outlined below on an annual basis. The PARC Foundation Executive Management is also required to generate \$10,000 in operating funds to support the ongoing operations and Executive Management.

As a result of the ongoing investments of these agencies, an Executive Committee is hereby formed with a representative from each participating agency. The Cities of Olympia, and Tumwater are the initial agencies in this consortium. Any future agency supported by the PARC Foundation must enter into a formal agreement, which must be approved by the Executive Committee and PARC Foundation Board. Once an agreement is fully approved by both bodies, the new agency will have a representative appointed to the Executive Committee and will be required to pay annual contributions to the PARC Foundation as outlined below.

Agency Contributions

\$10,000 Service Population 30,000 +
\$7,500 Service Population 10,000 – 29,999
\$3,500 Service Population Under 10,000

Eligible Expenses

Contracted Executive Compensation
Operating Expenses
Office Supplies
Travel & Training

Compensation Match

The PARC FOUNDATION shall raise \$10,000 each year to fund organizational expenses as outlined in the Memorandum.

This match must be raised outside of agency projects and should be contributed toward the overall expenses outlined above.

Exhibit B
STATEMENT OF COMPLIANCE WITH
NON-DISCRIMINATION REQUIREMENT

The Tenino City Council has made compliance with the City's *Non-Discrimination in Delivery of City Services or Resources* ordinance a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies and their employees understand and carry out the City's non-discrimination policy. Accordingly, each City contract for services contains language that requires an agency to agree that it shall not discriminate against an employee or client on the basis of any status protected from discrimination by law, including but not limited to race, creed, color, national origin, age, sex, marital status, veteran status, sexual orientation, or the presence of any disability. Indicate below the methods you will employ to ensure that this policy is communicated to employees and clients.

_____ affirms compliance with the City of Tenino's
(Print Agency Name)

non-discrimination ordinance and contract provision by **two or more of the following actions:**

- Text of non-discrimination contract provision is posted on printed material with broad distribution (newsletters, brochures, etc.).
- What type, and how often? _____
- Text of non-discrimination contract provision is posted on each application for service.
- Text of non-discrimination contract provision is posted on the agency's web page.
- Text of non-discrimination contract provision is included in human resource materials provided to job applicants and new employees.
- Text of non-discrimination contract provision is shared during meetings.
- What type of meeting, and how often? _____
- If, in addition to two of the above methods, you use other methods of providing notice of non-discrimination, please list:

By signing, I acknowledge compliance with the City of Tenino's non-discrimination ordinance.

Failure to implement the measures specified above constitutes a breach of contract

(Signature)

(Date)

Alternative Section for Sole Proprietor: I am a sole proprietor and have reviewed the statement above. I agree not to discriminate based on any status protected from discrimination by law.

(Sole Proprietor Signature)

(Date)