

**AGREEMENT  
BETWEEN THE CITY OF YAKIMA AND  
YAKIMA PICKLEBALL CLUB**

**THIS AGREEMENT** (hereinafter "Agreement") is made and entered into by and between the City of Yakima (hereinafter the "City") a Washington municipal corporation, and Yakima Pickleball Club, a Washington not for profit corporation (hereinafter "Club").

**I. Recitals**

A. City is a municipal corporation of the State of Washington with City Hall located at 129 North 2<sup>nd</sup> Street, Yakima, Washington 98901.

B. Club is a Washington nonprofit organization with its registered agents address at 2300 River Road, #10, Yakima, WA 98902.

C. Club promotes the sport of pickleball and is able to provide pickleball lessons and clinics to adults and children during use of the City pickleball courts; they also agree to plan and hold pickleball tournaments for residents of the City in conjunction with the City's Parks & Recreation Division.

D. City and Club desire to enter into an agreement for the provision of such services.

**II. Agreement**

WHEREFORE, in consideration of the mutual covenants, conditions and benefits herein the parties agree as follows:

1. **Services.** City and Club shall cooperatively provide the following services:

A. **City Services.** City will provide the following services:

- City will provide Club free access to no more than six (6) of the eight (8) total pickleball courts at Franklin Park in accordance with an agreed schedule of use, attached hereto and incorporated herein as Exhibit A. City will provide priority to Club when scheduling such facilities for use in accordance with these terms and the agreed schedule of use.
- Co-promote pickleball program offerings through City platforms including free advertisement on website and online catalogues.

B. **Club Services.** Club will provide the following services:

- Schedule and provide play opportunities for Club members during and in accordance with the schedule of use.

- Market and promote City pickleball programs and invite City residents to become members of the Club.
- Address all general pickleball participation inquiries.
- Plan and present at least one pickleball tournament for Club members and the general public registering through the City Parks and Recreation Division. All proceeds from the tournaments, less the amount necessary to cover the direct costs of the Club for the presentation of the tournament, shall be provided to the City to be used for improvements to the pickleball courts. An itemized list of tournament expenses must be presented to the City within 2 weeks of the conclusion of the tournament. The Club may rent the courts at the established rental rate for tournaments that are not co-sponsored by the City and utilize those funds as they deem necessary.
- In partnership with the Yakima Parks and Recreation Division, provide at least 8 hours pickleball introduction for the public per year and provide 2 pickleball clinics per year for people that are interested in engaging in the sport and that have registered for such instruction through the City Parks and Recreation Division.
- Provide pickleball court maintenance assistance such as sweeping the courts prior to play and generally keeping the court areas free of debris.

3. **Consideration.** The Club's contribution of approximately \$10,000 (50% of total cost) and over 600 volunteer hours toward the development of the 8 pickleball courts at Franklin Park and the mutual promises, conditions and benefits set forth in this Agreement is deemed by the City to constitute good and sufficient consideration for this Agreement authorizing the Club to have specific times for the Club to utilize no more than six (6) of the eight (8) pickleball courts for its members during the times as set forth in Exhibit A.

4. **Term.** This Agreement shall commence on \_\_\_\_\_, 2020, and shall terminate at midnight on December 31, 2022, unless sooner terminated in accordance with Section 18 of this Agreement.

5. **Status of Club.** Club and the City understand and expressly agree that no Club officer, employee, volunteer, and/or agent shall act on behalf of or represent him or herself as an agent or representative of the City. Club assumes the entire responsibility for carrying out and accomplishing the services and obligations stated in this Agreement. Club and its officers, employees, volunteers, agents and/or subcontractors shall make no claim of City employment nor shall it claim against the City any related employment benefits, social security, and/or retirement benefits. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between Club and the City.

6. **Nondiscrimination Provision.** During the performance of this Agreement, Club shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, color, sex, religion, national origin, creed, age, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, political affiliation, or the presence of any

sensory, mental or physical handicap, and any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement.

**9. The Americans with Disabilities Act.** Club agrees to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA), and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, state and local government services, and telecommunications.

**10. Compliance With Law.** Club agrees to perform all services under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

**11. No Conflict of Interest.** Club covenants that neither it nor its employees have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Club further covenants that it will not employ anyone or any entity having such a conflict of interest during the performance of this Agreement.

**12. No Insurance.** It is understood the City does not maintain liability insurance for Club and/or its officers, agents, employees and volunteers.

**13. Indemnification and Hold Harmless.** Club agrees to protect, defend, indemnify, exonerate, and hold harmless the City, its elected and appointed officials, agents, officers, and employees (hereinafter "parties protected") from (1) any and all claims, demands, liens, lawsuits, administrative and other proceedings, and (2) any and all judgments, awards, losses, liabilities, damages (including punitive or exemplary damages), penalties, fines, costs and expenses (including legal fees, costs, and disbursements) for, arising out of, or related to any actual or alleged death, injury, damage or destruction to any person or any property (including but not limited to any actual or alleged violations of civil rights) to the extent solely or concurrently caused by, arising out of, or related to any actual or alleged act, action, default or omission (whether intentional, willful, reckless, negligent, inadvertent, or otherwise) resulting from, arising out of, or related to Club's use of the Franklin Park pickleball courts or its provision of services, work or materials pursuant to this Agreement.

If the actual or alleged act, action, default or omission (whether intentional, willful, reckless, negligent, inadvertent, or otherwise) of both Club and the City is a cause of such third party claim, the loss, cost, or expense shall be shared between Club and the City in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity will apply for such proportion.

Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.

If and to the extent applicable Club further agrees that it specifically and expressly waives its immunity under industrial insurance, Title 51 RCW, or immunity under any other provision of law to the extent of the obligations assumed to the parties protected hereunder.

**14. Insurance.** On or before the effective date of this Agreement, Club shall provide the City with a certificate of insurance as proof of liability insurance in the amount of Two Million Dollars (\$2,000,000.00) that clearly states who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the City, its elected and appointed officials, officers, agents, employees and volunteers as additional insureds, and shall contain a clause that the insured will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide. The insurance company shall be either admitted in the State of Washington or a licensed surplus lines insurance company in the State of Washington. If the City is damaged by the failure of Club to maintain the above insurance or to so notify the City, then Club shall bear all costs attributable thereto. If requested, Club shall provide the City with a complete copy of the policy.

**15. Assignment.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Club to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Club stated herein.

**16. Non-Waiver.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

**17. Severability.** If any portion of this Agreement is changed per mutual agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

**18. Termination.** Either party may terminate this Agreement, with or without cause, by giving the other party thirty (30) days prior written notice of termination. The provisions of Section 13 pertaining to obligations of indemnity and hold harmless shall survive termination of this Agreement.

**19. Survival.** Any provision of this Agreement that imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

**20. Notices.** Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties to their addresses as follows:

TO CITY:

Ken Wilkinson  
Parks & Recreation Manager  
City of Yakima Parks & Recreation Division  
2301 Fruitvale Boulevard  
Yakima, WA 98902  
(509) 575-6020

TO CLUB:

Yakima Pickleball Club  
2300 River Road, #10  
Yakima, WA 98902

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses specified above.

**21. Third Parties.** The City and Club are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

**22. Integration and Supersession.** This Agreement sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto, except as herein provided and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

**25. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**26. Venue.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Yakima County, Washington.

**CITY OF YAKIMA**

**YAKIMA PICKLEBALL CLUB**

By: \_\_\_\_\_  
Alex Meyerhoff, Interim City Manager

By: \_\_\_\_\_  
Bob Guchee, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sonya Claar Tee, City Clerk