

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF YAKIMA AND SINGLE TRACK ALLIANCE OF YAKIMA FOR DEVELOPMENT OF A BICYCLE PUMP TRACK AT RANDALL PARK**

**PARTIES:**                    STAY: Single Track Alliance of Yakima, a nonprofit corporation

City: City of Yakima, Washington, a municipal corporation

**SUBJECT PROPERTY:**

Randall Park – South is an area of Randall Park that is south of Wide Hollow Creek along S. 48<sup>th</sup> Avenue. This area also is the location of the Randall Park Dog Park. The area currently is gravel and some grass.

Parcel number is 181132733006.

Subject property is generally depicted in Exhibit A.

**RECITALS:**

City owns Randall Park, located at 1399 South 48<sup>th</sup> Avenue, Yakima, Washington.

STAY is a charitable organization duly formed as a nonprofit corporation under the laws of the State of Washington (501(c)(3)). The purpose of the organization is to promote, sponsor, develop and construct recreational and educational trails and facilities for use by non-motorized, human-powered vehicles and pedestrian hikers. STAY has proposed to design, develop and construct a bicycle pump track within and upon the described real property, which shall be open for use by the public.

The parties desire to enter into an Agreement to accomplish these purposes.

**AGREEMENT:**

The purpose of this Agreement is to develop and construct a bicycle pump track system upon and within the Subject Property, substantially conforming to the conceptual plans and drawing attached hereto as Exhibit "A" and incorporated herein by this reference. The Memorandum of Understanding is subject to the following terms and conditions:

1. Term. This Memorandum of Understanding is entered into for an initial term of five (5) years commencing January 4, 2022, and continuing through December 31, 2027, unless the Agreement is terminated earlier by either party under Section 19 of this Agreement. STAY shall proceed with their obligations in a timely and diligent manner but shall not have responsibility for delays caused by others beyond the control of STAY or that were not reasonably foreseeable.
2. No Payment Required. This Memorandum of Understanding is agreed as an accommodation with no monetary consideration, but in consideration of STAY's development and construction of the designated bicycle pump track. STAY's use of the property to support recreational use of the pump track project is deemed a public recreational use.
3. City Title. STAY acknowledges the City's legal ownership to the Subject Property described herein. STAY expressly agrees to never deny City's right in ownership of said real property or to claim title in STAY's name. STAY further agrees that it does not and shall not at any time claim any interest or estate of any kind or extent whatsoever in the real property upon which STAY

constructs the bicycle pump track that is the subject of this Agreement, by virtue of the rights granted under this agreement, STAY's occupancy or use under this agreement, or any other basis.

4. City's Obligations. City shall assist in planning for a new bicycle pump track. City shall maintain and repair the bicycle pump track as necessary. The City shall take other steps, as necessary, to ensure public safety in the use and enjoyment of the bicycle pump track.

City will attempt to secure funding from donations, grants or the Parks Capital fund for development of the parking lot and other amenities for the site, including, but not limited to, grass, benches, tables, and shelters.

City shall maintain and repair amenities for the site as needed, including, but not limited to, the parking lot, grass, benches, tables, and shelters.

City will ensure the bicycle pump track complies with the State Environmental Policy Act (SEPA) before construction.

5. STAY's obligations. STAY shall contribute the full cost of the design, development and construction of a new bicycle pump track, together with donated materials, supplies and volunteer labor and professional services. STAY reserves the right to voluntarily contribute additional sums, materials and services as it deems necessary and appropriate. STAY will raise funds for the project as it deems necessary.

STAY shall provide the labor and materials for the development and construction of a pump track in the Park and reserves the right to voluntarily contribute additional sums as it deems necessary and appropriate, subject to the City's approval which it will not unreasonably withhold.

STAY shall assist the City in the planning and site development of the pump track;

STAY shall select the contractor(s) to perform the design and construction of the pump track;

STAY shall assist the City in the selection of amenities for the site, including, but not limited to, benches and tables; and

STAY shall participate in the pump track development subject to the direction of the designated contractor.

6. STAY's Improvements on the Subject Property — Ownership — Approval by City. STAY or its contractors, volunteers, and/or agents, at its sole cost and expense, will construct the recreational bicycle pump track in accordance with plans and specifications approved by the City. STAY agrees to pay for all improvements incidental or necessary to construct said system and related facilities. STAY acknowledges that legal title and ownership of any improvements and/or permanent structures erected upon City's real property shall vest and remain in the real property.

7. Use of Property — Signage — Rules and Regulations. The Subject Property and all improvements thereon shall be used for recreational purposes, open to the public without fee or charge. City will cooperate with STAY regarding design, wording and location of appropriate signage, information kiosks and other forms of communication providing rules and procedures and other information deemed appropriate. City shall have the right to approve, deny or modify any such signage, supporting structures and location. City will use reasonable efforts to assist

with costs associated with construction and placement of such signage, subject to available budgeted funds.

STAY shall develop, publish and implement appropriate rules and regulations regarding use of the bicycle pump track.

8. Use of City Logo. STAY may use the City of Yakima logo in any promotional material upon the prior written consent of a City of Yakima Public Works Department representative.

9. Administration. This Agreement shall be administered by the City's Parks and Recreation Division.

10. Independent Contractor. STAY and the City understand and expressly agree that STAY is an independent contractor in the performance of each and every part of this Agreement. STAY, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the work/services required for its performance under this Agreement. STAY, as an independent contractor, shall have the sole judgment of the means, mode or manner of the actual performance of work/services required for its performance under this Agreement. Additionally, and as an independent contractor, STAY and their employees shall make no claim of City employment nor shall claim against the City any related employment benefits, social security and/or retirement. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between STAY and/or any officer, employee or agent of STAY and the City.

11. No Third Party Rights. This Agreement is entered into for the sole benefit of the parties. It shall confer no benefits or rights, direct or indirect, on any third parties. No person or entity other than the City and STAY may rely upon or enforce any provision of this Agreement.

12. Indemnification and Hold Harmless.

A. STAY agrees to release, indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of STAY, or any STAY's agent or subcontractor, in performance of this Agreement, except for claims caused by the City's sole negligence. The City's right to indemnification includes attorney's fees costs associated with establishing the right to indemnification hereunder in favor of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of STAY and the City, STAY's liability, including the duty and cost to defend, shall be only to the extent of STAY's negligence.

C. It is specifically and expressly understood that STAY waives any immunity that may be granted to it under Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. STAY's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under worker's compensation acts, disability benefit acts or any other benefit acts or programs.

STAY shall require that its subcontractors, and anyone directly or indirectly employed or hired by STAY, and anyone for whose acts STAY may be liable in connection with its performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.

D. The City agrees to release, indemnify, defend and hold harmless STAY, its officers, directors, shareholders, partners, employees, agents, representatives and subcontractors harmless from any and all claims, demands, actions, suits, causes of action, arbitration, mediations, proceedings, costs, and/or litigation expenses to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors or omissions of the City.

E. Survival. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

### 13. Insurance Required.

A. Liability Insurance. Before this Agreement is fully executed by the parties, STAY shall provide the City with a Certificate of Insurance as proof of liability insurance providing coverage for bodily injury and property damage with limits not less than Two Million Dollars per occurrence, and Two Million Dollars in the aggregate. The above coverage limits may be satisfied by the procurement of an Umbrella or Excess policy if necessary. The certificate shall clearly state 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, employees, agents and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without giving the City thirty (30) days prior written notice. The Certificate of Insurance shall be provided to the City annually with each new insurance policy period. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

B. STAY shall require that all subcontractors it enters into Agreements with shall maintain and provide proof of insurance in accordance with this section, including but not limited to the same level of coverage and naming the City, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington, or an approved surplus lines company

C. Survival. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

### 14. Records Retention and Disclosure.

A. The City is required by law to comply with the Washington State Public Records Act (PRA), Chapter 42.56 RCW. All records relating to STAY's services under this Agreement and/or on behalf of or in partnership with the City must be made available to the City, and also produced to third parties, if required, pursuant to the PRA or by law. All determinations of records subject to release under the PRA, or otherwise required by law, shall be at the sole discretion of the City. This Agreement and all public documents associated with this Agreement shall be available to the City for inspection and copying by the public where required by the PRA

or other law, to the extent that public records in the custody of STAY are needed for the City to respond to a request under the PRA, as determined by the City. If STAY considers any portion of any records provided to the City under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, STAY shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the PRA to inspect or copy the information so identified, and determines that the release of the information is required or otherwise appropriate, the City's sole obligation shall be to notify STAY of the request and the date such information will be released to the requestor unless STAY obtains a court order to enjoin the release, pursuant to RCW 42.56.540. If STAY fails to timely obtain a court order enjoining disclosure, the City will release the requested information on the date specified. The City has, and by this section assumes, no obligation on behalf of STAY to claim any exemption for disclosure under the PRA. The City shall not be liable to STAY for releasing records not clearly identified by STAY as confidential or proprietary. The City shall not be liable to STAY for any records that the City releases in compliance with the PRA, this section, or in compliance with an order of a court of competent jurisdiction.

B. The records relating to the actions taken and work done pursuant to this Agreement shall, at all times, be subject to inspection by the City. STAY's records relating to this Agreement will be provided to the City upon the City's request.

C. STAY shall promptly furnish the City with such information and records which are related to this Agreement as may be requested by the City. Until the expiration of six (6) years after completion of the terms and conditions of this Agreement, or for a longer period if required by law or by the Washington State Secretary of State's record retention schedule, STAY shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of STAY's books, documents, papers and records which are related to this Agreement.

D. All City information which, under the laws of the State of Washington, is classified as public or private, will be treated as such by STAY. Where there is a question as to whether information is public or private, the City shall make the final determination. STAY shall not use any information, systems, or records made available to it for any purpose other than to fulfill the Agreement duties specified herein. STAY agrees to be bound by the same standards of confidentiality that apply to the employees of the City and the State of Washington. The terms of this section shall be included in any subcontracts executed by STAY for work associated with this Agreement.

15. Parties Bound. Subject to the right of revocation as herein set forth, this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors and assigns.

16. Integration. This writing constitutes the entire agreement of the parties and its execution is authorized by their respective governing bodies.

17. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be delivered three (3) days after having been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set forth below or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the City: City of Yakima Public Works Department  
2301 Fruitvale Boulevard  
Yakima, WA 98901  
Attention: Parks and Recreation Manager

If to STAY: Single Track Alliance of Yakima  
Attn: President  
16353 Ahtanum Rd  
Yakima, WA 98903-9760  
(Or Successor)

18. Entire Agreement. This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement. Any modification of this agreement or additional obligation assumed by any party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

19. No Third Party Rights. This Agreement is entered into for the sole benefit of the parties. It shall confer no benefits or rights, direct or indirect, on any third parties. No person or entity other than the City and STAY may rely upon or enforce any provision of this Agreement.

20. 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.

21. Termination. Either party may terminate this Agreement, with cause, by written notice of default from the non-defaulting party, if the default is not cured within thirty (30) days following the giving of such notice. City shall have the right to terminate and revoke this Agreement upon any reason deemed necessary or appropriate in the sole discretion of the City. If termination or revocation is deemed necessary or appropriate, City shall provide written notice of such termination or revocation to STAY at least (30) days in advance of the effective date of such termination or revocation.

22. Governing Law. This agreement shall be governed in all respects by the laws of the State of Washington.

23. Venue. In the event there should be any litigation arising out of this agreement, venue shall lie in Yakima County, Washington.

24. Capacity, Due Authorization. STAY affirms and warrants that the individual whose signature appears below on its behalf has the full power, capacity, and legal right to execute this Agreement and that this Agreement has been duly authorized and executed and that it shall constitute the legal, valid and binding obligation of STAY, enforceable in accordance with its terms.

DATED AND EFFECTIVE this \_\_\_\_ day of January, 2022.

**CITY OF YAKIMA**

**SINGLE TRACK ALLIANCE OF YAKIMA**

\_\_\_\_\_  
Robert Harrison, City Manager

\_\_\_\_\_  
Patrick Huwe, President

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

ATTEST:

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

City Contract No. \_\_\_\_\_  
City Resolution No. \_\_\_\_\_

**Exhibit A**

