

**2022 AGREEMENT
BETWEEN THE CITY OF YAKIMA AND
YAKIMA VALLEY UMPIRES ASSOCIATION**

THIS AGREEMENT (hereinafter "Agreement") is made and entered into by and between the City of Yakima (hereinafter the "City") a Washington municipal corporation, and the Yakima Valley Umpires Association (hereinafter "YVUA").

WHEREAS, the City finds it necessary to contract with YVUA to provide certified ASA softball officials to facilitate league games and tournament officials for its scheduled Parks and Recreation Softball Program.

WHEREAS, YVUA has the experience and expertise necessary to provide said certified ASA softball officials and agrees to perform such services for the City under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, it is agreed by and between the City and YVUA as follows:

1. **Services.** YVUA shall provide softball officiating services for the City's Softball Program. YVUA shall officiate approximately two thousand two hundred (2,200) games. Special areas of responsibilities for both the City and YVUA are contained in Attachment "A", attached hereto and incorporated herein by this reference.
2. **Consideration.** As consideration for the services specified in this Agreement, the City agrees to compensate YVUA according to the payment schedule contained in Attachment "B", attached hereto and incorporated herein by this reference.
3. **Term.** This Agreement shall commence on May 1, 2022, and shall terminate at midnight on January 31, 2023, unless sooner terminated in accordance with Section 17 or Section 18 of this Agreement.
4. **Status of YVUA.** YVUA and the City understand and expressly agree that YVUA is an independent contractor in the performance of each and every part of this Agreement. No officer, employee, volunteer, and/or agent of YVUA shall act on behalf of or represent him or herself as an agent or representative of the City. YVUA, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. YVUA expressly represents, warrants and agrees that its status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. YVUA and its officers, employees, volunteers, agents and/or subcontractors shall make no claim of City employment nor shall 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 YVUA and the City.
5. **Inspection and Audit.** YVUA shall maintain books, accounts, records, documents and other evidence pertaining to the costs and expenses allowable and consideration paid under this

Agreement in accordance with generally accepted accounting practices. All such books of account and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or of the Washington State Auditor at all reasonable times, and YVUA shall afford the proper facilities for such inspection and audit. Such books of account and records may be copied by representatives of the City and/or of the Washington State Auditor where necessary to conduct or document an audit. Provider shall preserve and make available all such books of account and records for a period of six (6) years after final payment under this Agreement.

6. Taxes and Assessments. YVUA shall be solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, YVUA shall pay the same before it becomes due.

7. Nondiscrimination Provision. During the performance of this Agreement, YVUA 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, or 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.

8. The Americans with Disabilities Act. YVUA 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.

9. Compliance with Law. YVUA 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.

10. No Conflict of Interest. YVUA 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. YVUA further covenants that it will not hire anyone or any entity having such a conflict of interest during the performance of this Agreement.

11. No Insurance. It is understood the City does not maintain liability insurance for YVUA and/or its employees.

12. Indemnification and Hold Harmless. YVUA 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, except for claims caused by the City's sole negligence. YVUA 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. The City's right to indemnification includes attorney's fees and costs associated with establishing the right to indemnification hereunder in favor of the City.

13. Insurance.

- a. On or before the effective date of this Agreement, YVUA shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. If YVUA carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. 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, attorneys, and volunteers as additional insureds, and shall contain a clause that the insurer 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 YVUA to maintain the above insurance or to so notify the City, then YVUA shall bear all costs attributable thereto. If requested, YVUA shall provide the City with a complete copy of the policy. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by YVUA is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by YVUA under this Agreement.
- b. YVUA and all subcontractors shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable, and shall maintain Employer's Liability insurance with a limit of no less than \$1,000,000.00. The City shall not be held responsible in any way for claims filed by YVUA or its employees for services performed under the terms of this Agreement. YVUA agrees to assume full liability for all claims arising from this Agreement, including claims resulting from negligent acts of all subcontractors. YVUA is responsible to ensure subcontractors have insurance as needed. Failure of subcontractors to comply with insurance requirements does not limit YVUA's liability or responsibility.

14. Assignment. This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by YVUA 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 YVUA stated herein.

15. Damages. If for any reason prior to termination of this Agreement as provided herein, YVUA fails to provide the services specified in this Agreement and the City is forced to secure other such

services from another person or entity, YVUA shall be held liable for any and all additional expenses to fulfill its obligation to the City and the Softball Program under this Agreement. This provision shall not serve as a limitation upon other damages that may be available to the City pursuant to this Agreement or otherwise.

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 ten (10) days prior written notice of termination. In the event of such termination, YVUA shall be compensated for services provided to the City through the date of termination.

19. Termination/Reduction of Services Due to Withdrawal, Reduction or Limitation of Funding. In the event that funding from any source is withdrawn, reduced and/or limited in any way, or the number of games is reduced or limited due to any circumstance, after the effective date of and prior to completion of this Agreement, the City may unilaterally reduce the scope of services, work and compensation of this Agreement, or summarily terminate this Agreement notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon hand delivery or delivery by facsimile of a written notice of termination to YVUA, or three (3) calendar days after mailing (by first class mail) of a written notice of termination to YVUA, whichever is sooner.

20. 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.

21. 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 YVUA: Will Gaethle, Assigning Secretary
Yakima Valley Umpires Association
420 S. 72nd Avenue, Suite 180/149
Yakima, WA 98908

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.

22. Third Parties. The City and YVUA 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.

23. 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.

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

25. 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 VALLEY UMPIRES
ASSOCIATION**

By: _____
Bob Harrison, City Manager

By: _____
Will Gaethle, Assigning Secretary

Date: _____

Date: _____

ATTEST:

Sonya Claar Tee, City Clerk

City Contract No. _____
Resolution No. _____

ATTACHMENT "A"

AREAS OF RESPONSIBILITIES:

1. The City of Yakima Parks and Recreation Division shall:
 - A. Provide league schedules to the YVUA's Assigning Secretary no later than five (5) days prior to the beginning of the season.
 - B. Give a minimum of forty-eight (48) hours notice of schedule changes.
 1. Failure to provide forty-eight (48) hours notice of schedule changes shall result in a rescheduling game fee being charged against the City.
 2. All game reschedules resulting from acts of God shall be rescheduled with no game fee being assessed against the City.
 - C. Provide a final tournament schedule in writing to the YVUA's Assigning Secretary no later than five (5) days prior to the scheduled tournament.
 - D. Pay the YVUA for services provided within thirty (30) days after receiving a statement/billing invoice.
2. The Yakima Valley Umpires Association shall:
 - A. Provide certified and properly trained USA softball officials for all league and tournament games, as needed, to meet the City's softball program schedule.
 - B. Schedule their certified officials to meet the City's softball program schedule.
 - C. Pay all certified officials for games worked in order to meet the City's softball program schedule.

ATTACHMENT "B"

PAYMENT SCHEDULE

1. The City of Yakima Parks and Recreation Division shall:
 - A. Compensate the YVUA at the rate of
 1. League Play
 - Adult Slowpitch one (1) man mechanics \$30.00 per game
 2. Tournament Play
 - Adult one (1) man mechanics \$30.00 per game
 - Adult two (2) man mechanics \$60.00 per game
 - B. Pay an Organizational Fee of
 1. Administration Fee 13% of game fee
 - D. The total amount of this Agreement shall not exceed \$30,000.00.
2. The Yakima Valley Umpires Association shall:
 - A. Provide an itemized monthly invoice/billing to the City's Recreation Supervisor with backup information no later than two weeks after the completion of each season for services provided. To be included in this monthly statement/billing are any service adjustments, additional fees and charges, for the previous season, and their reconciliation. The City has the right to set-off as to any accrued fees in the nature of a penalty or reimbursement for failure to perform.
 - B. Pay a No-Show Fee of:
 1. League Play \$15.00 per game
 2. Tournament Play \$15.00 per game
 - C. Provide to the City, a schedule of certified officials assigned to officiate league/tournament games via Arbiter Sports. This schedule shall be provided to the City's Recreation Supervisor no later than one (1) day prior to the scheduled league/tournament games.
 - D. Pay a "No-Show" fee for all scheduled games when an official does not meet the City's softball program schedule and causes the game to be rescheduled.

1. Failure of an official to officiate a complete scheduled game, unless called because of acts of God, shall constitute a "No-Show."
2. The City has the right to set-off as to any accrued "No-Show" fees for failure to perform.