

**LICENSE AGREEMENT BETWEEN
THE CITY OF YAKIMA AND
CENTRAL WASHINGTON MOUNTAIN RESCUE**

THIS LICENSE AGREEMENT (hereinafter "Agreement") is made and entered into by and between the City of Yakima, a Washington municipal corporation (hereafter the "City"), and the Central Washington Mountain Rescue, a non-profit corporation (hereafter "CWMR").

WHEREAS, CWMR provides mountaineering skills and techniques training to local citizens through a program offered in cooperation with the Yakima Valley Community College; and

WHEREAS, the CWMR mountaineering course provides instruction in correct use of technical climbing equipment and clothing, rock and glacier climbing skills, environmental awareness and health and safety training, all directed toward promoting opportunities for physical fitness, outdoor enjoyment and technical skill development in a safe environment; and

WHEREAS, CWMR requires a centrally located safe controlled location for training basic rappelling and technical equipment techniques to individuals taking the mountaineering course; and

WHEREAS, the trees located in the northeastern corner of Franklin Park provide the opportunity for the mountaineering students to practice basic rope climbing, belaying and rappelling skills in a safe and controlled environment that is under the constant direction of trained CWMR staff to insure the safety of both the trainees and the general public; and

WHEREAS, CWMR would benefit from a revocable license to use the trees in the northwest portion of Franklin Park for its annual two day rope training program conducted in the Spring each year the mountaineering program is taught; and

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

Section 1. License to Use Property and Conduct Mountaineering Rope Training – Exclusive Licensed Location – Limitation.

A. License and Location. In consideration of the opportunities for participants in the Basic Mountaineering Class, offered by the Central Washington Mountain Rescue organization, to gain basic fundamental knowledge of many aspects of rock climbing, mountain climbing and mountain safety, together with learning the attributes of the use of ropes, climbing tools and equipment required to carry out these skills safely, the City grants CWMR a revocable license to utilize certain trees located in the northwestern corner of Franklin Park for the purpose of once annually conducting a two (2) day instructional course of basic rope skills training from 6:00 p.m. until dusk each day. Such trees to be used will be specifically outlined in the permit required to be obtained pursuant to Section 3 below.

The revocable license described above is exclusive to CWMR for the use and maintenance of the licensed property for two days in the Spring of each year from 6:00 p.m. until dusk during the term of this Agreement. This exclusive revocable license is necessary and appropriate to facilitate CWMR's use of the trees located in the northeast

corner of the Franklin Park property for basic mountaineering rope training, and to protect and preserve the City's trees and park property and assure the safety of the CWMR trainees, instructors and the general public utilizing the park.

B. Limitation of License. Notwithstanding the revocable license issued herein, such license is subject to the right of the City to fully use and occupy the Licensed Property, in whole or in part, for its public purposes, including but not limited to its rights, powers and authority to use and occupy such property for special public events and general public use. All activities of CWMR authorized and licensed pursuant to this Agreement shall be permissible so long as they are in compliance with applicable safety regulations, property use standards, laws and the required Park Use Permit governing the private use of the City's Franklin Park property. In the event any conflict arises between the activities and uses authorized by this Revocable License Agreement and the duties imposed by regulations, standards, laws and permits governing the City's public park facilities, the latter shall control.

Section 2. Term. The term of this Agreement shall be five (5) years commencing upon full execution by the parties, and shall terminate at midnight December 31, 2027, unless sooner terminated by either party in accordance with Section 17 of this Agreement.

Section 3. Event Planning and Approval –Park Permit. Each CWMR training class conducted pursuant to this Revocable License shall be subject to an "Application for Park Permit" that shall be completed and filed with the Yakima Parks Department no less than thirty (30) days preceding the first of the two days of use identified in the Agreement. The permit issued by the Parks Department shall allow CWMR's use of the subject Franklin Park property for both of the days in the Spring of each year covered by this Revocable License Agreement.

Section 4. Park Use Permit Fees. Any use fees deemed reasonable and necessary to the use of the Park property subject to this Agreement shall be determined at the time of Permit Approval by the City Park Department. The City reserves the right to grant a Park Use Permit without requiring payment of a fee if it is the determination of the City Park Department that CWMR's use of the property does not result in a cost to the City, based upon the public value of the educational opportunity provided by CWMR to the trainees.

Section 5. Use of City Property for Training Purposes.

I. Obligations of CWMR. CWMR shall conduct all training with the highest attention to the safety of both the class participants and the general public making use of the Park property during the time classes are conducted. CWMR shall maintain a clear safety perimeter around the trees utilized for the climbing exercises to assure the safety of those on the ground below the climbers, shall keep the instruction area clear of non-participatory members of the public and shall follow all safety measures that are prudent and customary to basic use of climbing apparatus. No stakes or posts shall be drilled into any trees. CWMR shall consistently operate and manage the training lessons in a safe manner. CWMR shall assure the use of the Park trees and property is carried out responsibly and that no damage to the trees or Park surfaces occurs as a result of the use. CWMR shall take all steps necessary to protect the trees being used for the training. CWMR shall leave the Licensed use area in the same or better condition

following the class instruction each day as it was in before the class activities began, removing all litter, equipment and associated training materials when the training is completed. In the event damage is done to any of the trees used in CWMR's training, CWMR is responsible for replacement or repair in a way that is acceptable and agreed upon by the City in its sole discretion. No permanent structures or installations shall be permitted on or into the Park trees or upon the Park property.

II. Obligations of City. City shall perform the following:

A. Scheduling. City will cooperate with CWMR regarding:

1. Scheduling of any requested meetings with CWMR;
2. Scheduling of construction and maintenance activities on the License property so as not to impairment CWMR's use of the property during the times scheduled for use except in cases of unavoidable conflict; and
3. Scheduling of CWMR's annual use of the property.

B. Ownership of Licensed Property. City shall at all times during the performance of this Agreement and at all times thereafter be deemed the owner of the Licensed Property. Such ownership shall attach to all utility infrastructure such as irrigation system, water lines, sewer lines and power lines installed within the Licensed Property as well as all vegetation and trees growing on the property.

Section 6. Independent Contractor Status of CWMR. CWMR and the City understand and expressly agree that CWMR is an independent entity in the performance and conduct of each and every part of this Agreement. CWMR, as an independent entity, assumes the entire responsibility for carrying out and accomplishing the obligations, terms and conditions required under this Agreement. Additionally, as an independent entity CWMR and its directors, officials, agents, members, employees and volunteers shall make no claim of city employment nor any claim against the City for 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 CWMR or any director, official, officer, agent, member, employee or volunteer of CWMR and the City.

Section 7. Establishment and Maintenance of Records. CWMR shall maintain accounts and records, including personnel, property, financial, and program records, and such other records as the City may deem necessary, including a system of internal controls and accounting systems which conform to generally accepted accounting principles and auditing standards. All such records and documents shall be retained by CWMR and be available for inspection, audit and copying by the city during the term of this Agreement and for a period of three (3) years following the termination of this Agreement.

Section 8. Nondiscrimination Provision. During the performance of this Agreement, CWMR shall not discriminate in violation of any federal, state, and/or local law and/or regulation on the basis of race, age, color, sex, religion, national origin, creed, marital status, political affiliation, or the presence of any sensory, mental or physical handicap. 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 provisions of services under this Agreement.

Section 9. The Americans with Disabilities Act. CWMR 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.

Section 10. Compliance with Law. CWMR 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.

Section 11. No Insurance provided by the City. It is understood the City does not maintain liability insurance for CWMR and/or its members, directors, officials, officers, agents, member, employees and volunteers.

Section 12. Indemnification and Hold Harmless. CWMR 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 License or the acts, failures to act, errors or omissions of CWMR, or any of CWMR's agents, subcontractors, volunteers, or participants, in the performance of this License or the activities allowed under this License, except for any claims caused by the City's sole negligence. 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.

Section 13. Liability Insurance. CWMR shall provide whatever insurances may be required by the applicable Park Permit issued for the use described herein. Additionally, CWMR shall provide the City with a certificate of insurance as proof of liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage. 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 (any statement in the certificate to the effect of "this certificate is issued as a matter of information only and confers no right upon the certificate holder" shall be deleted). Said policy shall be in effect for the duration of this Agreement. The policy shall name the City, its elected officials, officers, agents, and employees as additional insured, 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 and admitted in the State of Washington.

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

Section 15. 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.

Section 16. Non-Waiver. The waiver by CWMR or the City of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party or prevent either party thereafter enforcing any such provision.

Section 17. Termination – Effect. Either party may terminate this Agreement, with or without cause, by giving the other party thirty (30) calendar days' prior written notice of termination.

Section 18. Survival. Any provision of this Agreement which 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.

Section 19. Notices. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties at their addresses as follows:

TO CITY Parks and Recreation Manager
City of Yakima
129 North Second Street
Yakima, WA 98901

TO CWMW Central Washington Mountain Rescue
c/o Craig Southwell
PO Box 2663
Yakima, WA 98907

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.

Section 20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

Section 21. Venue. The venue for any action to enforce or interpret this Agreement shall lie in a court of competent jurisdiction in Yakima County, Washington.

Section 22. Integration. This written document constitutes the entire agreement between the City and CWMR and supersedes any and all previous written and/or oral agreements between the parties. There are no other oral or written agreements between the parties as to the matters covered herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such changes or addition be in writing and executed by both parties.

Section 23. Effective Date. This Agreement shall be effective as and from the date signed by the last party to sign below.

CITY OF YAKIMA

CENTRAL WASHINGTON MOUNTAIN RESCUE

By: _____
Robert Harrison, City Manager

By: _____
Craig Southwell, President, CWMR

Date: _____

Date: _____

ATTEST:

City Clerk