

**AGREEMENT BETWEEN THE CITY OF YAKIMA AND  
YAKIMA SCHOOL DISTRICT NO. 7 FOR  
MAINTENANCE AND USE OF UPPER KIWANIS PARK  
FOR SLOW PITCH SOFTBALL**

**THIS AGREEMENT** is entered into by and between the City of Yakima and Yakima School District No. 7 for the maintenance and use of the Upper Kiwanis Park for slow pitch softball as set forth below.

**I. RECITALS**

A. City of Yakima (hereinafter referred to as "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. Yakima School District No. 7 (hereinafter referred to as "YSD") is a public school district duly formed and existing under the laws of the State of Washington, with administrative offices located at 104 North 4<sup>th</sup> Avenue, Yakima, Washington, 98902.

C. City is the owner of Kiwanis Park, which includes Upper Kiwanis Park, where fast-pitch softball diamonds are located, and the rest of Kiwanis Park, where Field 5 is located (hereinafter collectively referred to as "Park"), a public park generally located at 405 North Fair Avenue, within the City of Yakima.

D. The City and YSD entered into an agreement on or about June 9, 2011, regarding the development, maintenance and use of Upper Kiwanis Park for WIAA high school women's fast-pitch softball games.

E. That June 9, 2011, agreement required that each party contribute \$500,000.00 towards costs of design, construction, and improvements to Upper Kiwanis Park to facilitate three softball fields for fast-pitch softball.

F. The improvements were designed and constructed and the parties currently are operating under that June 9, 2011, agreement with regards to Davis High School's WIAA women's fast-pitch softball games.

G. The June 9, 2011, agreement did not contemplate, and does not include any use allowances to YSD for WIAA women's slow-pitch softball games or practices. Since Davis High School now competes in WIAA women's slow-pitch softball, it needs to find a field or fields for practices and games for its women's slow-pitch softball team.

H. The parties desire to enter into an agreement to define their respective responsibilities for the use and maintenance of portions of Kiwanis Park and Upper Kiwanis Park, and to provide for effective cooperation in the implementation of the provisions set forth herein. This Agreement is entered into pursuant to RCW 39.34, the Interlocal Cooperation Act.

I. The City agrees to allow priority use of a portion of Kiwanis Park for WIAA women's slow-pitch team practice for Davis High School, and a portion of Upper Kiwanis Park for WIAA

women's slow-pitch league games for Davis High School, under the terms and conditions set forth herein.

## II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein, and for the mutual benefit to the parties hereto, the parties agree as follows:

**1. Purpose.** The purpose of this Agreement is to provide Davis High School's women's WIAA slow-pitch softball team practice and game fields during the Fall 2022 slow-pitch softball season.

**2. Scope.** This Agreement is intended to provide practice facilities to the Davis High School women's slow-pitch softball team consisting of softball Field 5 on a priority basis during the WIAA season, as well as provide Field(s) at Upper Kiwanis Park for Davis High School women's slow-pitch softball WIAA league scheduled games during the term of this Agreement.

Both parties agree that the Upper Kiwanis Park fields shall only be used for WIAA league scheduled games during the term of this Agreement. All other games, scrimmages, and/or practices shall occur on Field 5.

**3. Term.** This Agreement shall expire on November 4, 2022, or the day after the last WIAA league or play off game played by the Davis High School women's slow-pitch softball team, whichever occurs first.

**4. Obligations of YSD.** YSD shall provide the following services and perform the following duties:

- a. YSD has provided the WIAA league schedule and a calendar of dates on which Davis High School women's slow-pitch softball will practice. A copy of that schedule is attached hereto and fully incorporated herein.
- b. YSD shall contribute and pay to the City the sum of One Hundred Dollars (\$100.00) per field, per day of use of either Field 5 or Upper Kiwanis Park Field(s) from funds authorized by its board to use the fields for Davis High School women's slow-pitch softball during the term of this Agreement. Payment includes use of field lighting. Payment for the league games and practices as outlined in the attached schedule shall be paid in full within thirty (30) days of entry into this Agreement.
- c. In the event the Davis High School women's slow-pitch softball team makes the play-offs and needs additional practice days and/or play-off games are scheduled to be held at the Upper Kiwanis Park Fields, the parties will meet at the time the play-off schedule is determined to provide an amendment to the attached schedule. YSD shall pay One Hundred Dollars (\$100.00) per field, per day of use of each field for practice or games during the play-offs. Payment shall be made for the play-off games and practices on or before November 4, 2022.
- d. YSD shall contact Bill Wells in writing at [bill.wells@yakimawa.gov](mailto:bill.wells@yakimawa.gov) in the event a practice or a game is cancelled. If YSD notifies the City at a minimum of 72 business hours in advance of the cancellation, YSD will be refunded \$100.00 per field not used. Refunds will be determined at the end of the Agreement and paid within thirty (30) days after the termination of this Agreement. Failure to provide a minimum of 72 business hours

notice in advance of cancellation will result in a forfeit of the \$100.00 daily fee to the City.

- e. YSD will advise the City of any condition of the fields requiring maintenance and/or repair, and will cooperate to facilitate City's maintenance and repair by picking up all trash after practices and games. YSD may propose that it take specific action to maintain the fields. Any proposed maintenance to the fields to be done by YSD must be approved in advance by the City and is at the sole discretion of the City. YSD will not leave any equipment or items on fields after practices or games.
- f. YSD will be responsible for the costs of any repairs to Field 5 or Upper Kiwanis Park caused by YSD's use for any damage other than normal wear and tear.
- g. YSD will not schedule, unless necessary and cleared with City in advance, use of any field on Fridays, Saturday or Sunday. Per Section 7 below, no games shall be scheduled on Fridays, Saturdays or Sundays on the Upper Kiwanis Fields.

**5. Obligations of City.** City shall provide the following services and perform the following duties:

- a. City shall maintain Field 5 and the Upper Kiwanis in accordance with standards and procedures of the City's Parks and Recreation Division. The City shall determine whether repairs or additional maintenance is necessary or appropriate, and to schedule and accomplish any repair and/or additional maintenance deemed necessary or appropriate.
- b. City will provide a key (as of this Agreement said key has already been provided) to the restroom facilities at Kiwanis Park, which may be used during use of Field 5.
- c. City will comply with the priority provisions found in Section 6 of this Agreement.
- d. City may provide concessions at Upper Kiwanis Park fields as staffing allows.

**6. Priority Use.** YSD shall have priority field usage of Field 5 or Upper Kiwanis Park, depending on the type of use per the schedule (league games at Upper Kiwanis Park; practices, etc. at Field 5) as outlined in the attached schedule. The parties may amend the schedule upon mutual agreement. Priority use will be granted for play-off games and practices if YSD provides the play-offs schedule and dates for which practices are needed a minimum of one calendar week in advance of the first play-off game or practice date requested.

**7. Game Scheduling.** Games shall only be scheduled on Upper Kiwanis Fields Monday through Thursday. No games shall be scheduled on Upper Kiwanis Fields on Fridays, Saturdays or Sundays.

**8. Administration.** This Agreement shall be administered by the City's Parks and Recreation Department.

**9. Independent Contractor.** Both parties agree that they are independent contractors. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the YSD, and/or any officers, employees or agents of the YSD, and the City, and/or any officers, employees or agents of the City.

**10. 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 YSD may rely upon or enforce any provision of this Agreement.

**11. Indemnification and Hold Harmless**

- a. YSD 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 YSD or any of YSD's agents, in performance of this Agreement, 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.
- b. The City agrees to release, indemnify, defend and hold YSD, its 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 the City or any of City's agents, in performance of this Agreement, to the extent solely caused by the negligent acts, errors, or omissions of the City.
- c. The provisions of this Section shall survive termination or expiration of this Agreement.
- d. Nothing contained in this Section or Agreement shall create a liability or a right of indemnification in any third party.

## **12. Maintenance and Retention of Records.**

- a. YSD shall maintain (in accordance with generally accepted accounting practices) books, accounts, records, documents and other materials related directly or indirectly to the costs, expenses and revenues relevant under this Agreement. All such books, accounts, records, documents and other materials shall be subject to inspection and audit at reasonable times by representatives of the CITY. YSD shall make such books, accounts, records, documents and other materials available and afford the proper facilities for such inspection and/or audit within forty-eight (48) hours of inspection/audit notification from the CITY. Such books, accounts, records, documents and other materials may be copied by representatives of the CITY as part of such inspection/audit. However, the making of (or failure or delay in making) such inspection or approval shall not relieve YSD of responsibility for performance of this Agreement, notwithstanding the CITY'S knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. YSD shall preserve and make available all such books, accounts, records, documents and other materials for a period of at least six (6) years after termination of this Agreement.
- b. YSD shall promptly furnish the CITY with such information related to this Agreement as may be requested. Until the expiration of six (6) years after termination of this Agreement, or for a longer period if required by law or by the Washington State Secretary of State's record retention schedule, YSD shall provide the CITY access to (and the CITY shall have the right to examine, audit and copy) all of YSD's books, documents, papers and records which are related to this Agreement.
- c. The CITY is required by law to comply with the Washington State Public Records Act (PRA), Chapter 42.56 RCW. All records relating to YSD's actions or obligations, or records relevant to, this Agreement 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 YSD are needed for the CITY to respond to a request under the PRA, as determined by the CITY. If YSD 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, YSD 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 YSD of the request and the date such information will be released to the requestor unless YSD obtains a court order to enjoin the release, pursuant to RCW 42.56.450. If YSD 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 YSD to claim any exemption for disclosure under the PRA. The CITY shall not be liable to YSD for releasing records not clearly identified by YSD as confidential or proprietary. The CITY shall not be liable to YSD 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.

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

**14. Compliance with Law.** The Parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

**15. Insurance.** At all times during the term of this Agreement, YSD shall secure and maintain in effect insurance to protect the CITY and YSD against all claims, damages, losses, and expenses arising out of or resulting from any use of the CITY's facilities at Kiwanis Park, including Field 5 and the Upper Kiwanis Park fields. YSD shall provide and maintain in force insurance in limits no less than those stated below as applicable. CITY reserves the right to require higher limits should it deem it necessary in the best interest of the public. If YSD carries higher coverage limits than the limits stated below, such higher limits shall be shown on the Certificate of Insurance and Endorsements and CITY shall be named as an additional insured for such higher limits. Failure by the CITY to demand such verification of coverage with these insurance requirements or failure of the CITY to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of YSD's obligation to maintain such insurance. YSD's insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Agreement. Any insurance, self-insurance or insurance pool coverage maintained by the CITY shall be in excess of the YSD's insurance and neither the CITY nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by YSD's insurance.

a. Commercial General Liability Insurance. Before this Agreement is fully executed by the parties, YSD shall provide the CITY with a certificate of insurance as proof of the commercial liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits 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. The certificate shall clearly state who the provider is, the coverage amount, 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. The insured shall 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.

b. Commercial Automobile Liability Insurance. Before this Agreement is fully executed by the parties, YSD shall provide the CITY with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage. Automobile liability shall apply to "Any Auto" and be shown on the certificate. The required certificate of insurance shall clearly state who the provider is, the coverage amount, 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. The insured shall 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.

c. Statutory workers' compensation and employer's liability insurance shall be required as required by state law.

d. Professional Liability Coverage. Before this Agreement is fully executed by the parties, YSD shall provide the CITY with a certificate of insurance as proof of professional liability coverage with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per claim, and Two Million Dollars (\$2,000,000.00) aggregate. The certificate shall clearly state who the provider is, the coverage amount, 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 insured shall 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. If the policy is written on a claims made basis the coverage will continue in force for an additional two years after the completion of this Agreement.

Failure of either or all of the additional insureds to report a claim under such insurance shall not prejudice the rights of the CITY, its elected and appointed officials, officers, employees, agents, and representatives thereunder. The CITY and the CITY's elected and appointed officials, officers, principals, employees, representatives and agents shall have no obligation for payment of premiums because of being named as additional insureds under such insurance. None of the policies issued pursuant to the requirements contained herein shall be canceled, allowed to

expire, or changed in any manner that affects the rights of the CITY until thirty (30) days after written notice to the CITY of such intended cancellation, expiration or change.

At any time during the life of this Agreement, or any extension, YSD fails to maintain the required insurance in full force and effect, this Agreement shall be terminated immediately.

**16. Waiver of Breach.** 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. Dispute Resolution.** The City and YSD agree to meet to discuss any outstanding issues related to the performance of this Agreement in order to resolve any disputes through cooperation and negotiation. In the event any dispute cannot be resolved through cooperation and negotiation, the parties agree to submit such dispute to a mediator, mutually acceptable to both parties. Each party shall bear and pay its own expenses and costs of mediation, as well as one-half of the mediator's fee. If such dispute is not resolved through mediation, the parties may seek redress through any court with jurisdiction.

**18. Integration.** This Agreement contains all of the terms and conditions agreed on by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, are deemed to exist or to bind either of the parties.

**19. Modifications.** The parties may modify this Agreement only if they are in writing and executed by both parties.

**20. Assignment.** This Agreement shall not be assigned or transferred in whole or in part by YSD to any other person or entity without the prior written consent of the City, which may be withheld for any reason or no reason at all. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of YSD stated herein.

**21. Severability.**

- a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held invalid.
- b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which conflicts shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

**22. Termination.** The parties may terminate this Agreement according to the following provisions:

- a. The City may terminate this Agreement, whether or not YSD is in breach or default, and with or without cause, by giving YSD thirty (30) calendar days written notice of termination.
- b. YSD may terminate this Agreement, whether or not the City is in breach or default, and with or without cause, by giving the City thirty (30) calendar days written notice of termination.
- c. This Agreement may be terminated in whole or in part upon mutual written agreement of the parties.

**23. Notices.** Unless otherwise stated herein, all notices and demands are required to be in writing and sent to the parties by certified mail, return receipt requested, or hand delivered, at their addresses as follows:

- a. CITY OF YAKIMA  
Robert Harrison, City Manager  
129 North 2<sup>nd</sup> Street  
Yakima, WA 98901

AND

Ken Wilkinson, Parks & Recreation Director  
2301 Fruitvale Blvd.  
Yakima, WA 98902

- b. YAKIMA SCHOOL DISTRICT  
Dr. Trevor Greene, Superintendent  
104 North 4<sup>th</sup> Avenue  
Yakima, WA 98902

**24. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall be Yakima County.

**25. 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.

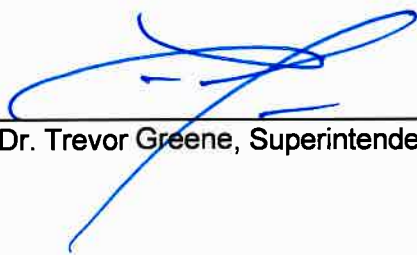
**26. Filing.** Copies of this Agreement shall be filed with the Yakima County Auditor or listed by subject on each public agency's website or electronically retrievable public source, pursuant to RCW 39.34.040.

DATED this 8 day of September, 2022.

CITY OF YAKIMA

YAKIMA SCHOOL DISTRICT NO. 7

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

  
\_\_\_\_\_  
Dr. Trevor Greene, Superintendent



ATTEST:

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

