

JOINT USE AGREEMENT

This JOINT USE AGREEMENT ("Agreement") is executed by and between YAKIMA SCHOOL DISTRICT NO. 7 ("District") and the CITY OF YAKIMA, WASHINGTON ("City") pursuant to and in accordance with the Interlocal Cooperation Act, RCW 39.34.

WHEREAS, the City and the District each own land and buildings and over the years the City and District enjoyed a cooperative and collaborative relationship regarding the shared use of each party's recreational, athletic, and other facilities;

WHEREAS, the terms of the use of the parties' respective facilities was provided for under several interlocal agreements entered into in accordance with the Interlocal Cooperation Act, RCW 39.34., *et.seq.*;

WHEREAS, the District continues to need the use of city facilities to assist it in accomplishing its goal and obligation to provide athletic and recreational opportunities to its students on an equitable basis;

WHEREAS, the parties wish to address the changing needs of the parties;

WHEREAS, the parties want to continue their collaborative partnership to provide recreational and athletic opportunities to the residents of Yakima and students in the Yakima School District;

WHEREAS, the City has significantly reduced its need for the use of District facilities and has also identified a need to collect revenue for the use of its facilities by YSD to offset the costs to it for maintaining those facilities; and

WHEREAS, the parties now, therefore, wish to create a global agreement covering the subject matter;

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

I. Purpose. The purpose of this agreement is to describe the conditions for the joint use of City and District facilities. The facilities covered by this Agreement are listed in Exhibit "A" (City-owned facilities) and Exhibit "B" (District-owned facilities), attached hereto and incorporated herein by this reference. By signing this Agreement, the Parties agree that each prior agreement for use of any facility listed on Exhibits "A" and "B" hereto are hereby terminated by agreement, notice requirements for such termination waived, and shall no longer be valid as to any of their terms and/or conditions. This agreement will however, as provided in Section 22 below, have no effect on the Agreement between the City of Yakima and Yakima School District for Development, Maintenance and Use of the Upper Kiwanis Park, dated June 2011, or the Development Agreement for Lions Park, dated July 16, 2014, and those agreements shall remain in full force and effect.

2. Term. This Agreement shall be effective on October 1, 2023 and shall continue for a period of ten (10) years unless the Agreement is terminated by either party in accordance with Section 30 of this Agreement. This Agreement may be continued for an additional eight (8) year extension upon approval of the parties.

3. Use. Each party agrees to make its facilities listed in the attached Exhibits available for use by the other party for the duration of this Agreement. The use by one party of the other party's facility shall be in a manner and at a time that is mutually agreed upon by the parties in advance in accordance with Section 6 below. Full responsibility for supervision of the participants, spectators, activity, and use rests with the user, unless otherwise agreed upon in writing.

4. Maintenance. Except as may be otherwise provided in this Agreement, each party agrees to maintain its own facilities, including providing utilities and necessary custodial care.

5. Priority Use. For City-owned facilities, the City shall have first priority use and the District shall have second priority use over all other users. For School District-owned facilities, the School District's facility use policy and procedures will be followed. The School District's facility use policy and procedures will be provided to the City, as well as any updates or amendments made during the term of this Agreement. These priorities shall be reviewed at least once a year by the parties. In the event of a dispute concerning priority of use arises, the City's Manager and District's Superintendent will meet for the purpose of reaching a resolution of the dispute. This agreement is intended to cover scheduled events and regular practices that may preclude use of a facility by the public. It is not intended to cover occasional casual use consistent with the public's general non-scheduled use of the facilities.

6. Administration/Scheduling Use. This Agreement shall be administered by the City of Yakima Parks and Recreation Manager or his/her designee and the District Superintendent or his/her designee. Meetings shall be held at least once per year to plan for future joint use and to otherwise administer this Agreement. The parties will, during this meeting or at other meetings that may be agreed upon by the parties, agree to schedules providing for the use of each facility covered under this Agreement by each of the parties. Use of facilities will be subject to fees set forth in Exhibit C. In addition, each party must fill out the other party's applications and/or paperwork associated with use of said facility. Applications can be made for an entire season or multiple dates so as to not require a separate application for each use of the property, where appropriate.

7. Condition of Property. Each party agrees to return the facility it uses to the party owning that facility in the same condition it enjoyed before the use, normal wear and tear and general custodian requirements excepted. Responsibility for damage to the owner's facility rests with the user as does liability for payment therefore. The user may be permitted use of the owner's equipment (such as tennis and volleyball nets and/or ballfield equipment) under conditions to be agreed upon prior to their use. Damage to equipment caused by the user shall be the financial responsibility of the user.

8. Additional requirements of specific City-owned Property.

- a. Parks used for Cross-Country events. Those parks listed on Exhibit A which are authorized to be used for cross-country events, other than the Sunfair Cross Country meet, have the following additional costs and requirements:

- i. Courses should not be set up more than twenty-four hours prior to the event to allow for public use of the park.
- ii. An additional fee may be charged, and paid for, for each cross-country meet to address damages to the grass. Damages shall be addressed as outlined in Section 7 above. Damage to grass must be supported by sufficient evidence to determine the extent of the damage. Transitory impact to grass from use that is readily correctable will not constitute damage sufficient to require payment.
- iii. All items associated with the cross-country event (banners, signage, flagging, course markings, mats, etc.) shall be removed immediately following each event. If YSD fails to do so, the City is hereby authorized to remove any remaining items from the event and charge YSD for all costs associated with removal, including, but not limited to, staff time.

b. Sunfair Cross Country Meet

The Sunfair Cross Country meet is not included in this Agreement. The sponsoring organizations for Sunfair shall go through the established process to rent Franklin Park for the duration of the meet, including both set-up and take-down periods.

- c. Slow pitch softball will be limited to using Gateway Field 5 for practices, or Gardner Fields, and will not be allowed to use the Upper Kiwanis Fields for practices.

9. Parking lots. YSD and the City jointly use the following parking lots for both park patron use and school parking:

- a. Franklin Park Parking Lot—Tieton Drive (owned by City)
- b. Franklin Middle School East Parking Lot (owned by YSD)
- c. Washington Middle School Parking Lot—E. Beech Street (owned by YSD)
- d. Lions Park Parking Lot—5th Avenue (owned by City and also subject to the 2014 Development Agreement referenced in Section 1 above)

At no time shall any of the parking lots be closed to the owner's business without prior written consent of the owner. In the event a party wishes to have exclusive use of a parking lot, it shall make such request to the other party no later than 14 days prior to the proposed event and pay a reasonable sum for the exclusive use for an event or other short-term purpose.

10. Summer lunch program. YSD currently conducts a summer lunch program which provides free lunches to students at various locations within the City. Currently a number of City parks

are used for pick-up points for these lunches. YSD agrees to the following if it seeks to use City parks for the summer lunch program during the term of this Agreement:

- a. YSD shall provide minimum staffing of three (3) staff members per mobile food unit and two YSD-provided trash cans. The cans will be marked YSD. YSD is responsible for packing out all trash accumulated in those trash cans at each location.
- b. YSD shall provide the City a list of proposed locations for the summer lunch program on or before March 1st of each year. The City shall approve or deny each location on or before May 1st. If the City denies a specific location, it will strive to recommend an alternate location that could be used in the vicinity for the summer lunch program.
- c. For each approved location, YSD shall provide the City a site plan for use, which will include, but not necessarily be limited to, information regarding the location of the mobile food unit, location and number of trash cans provided by YSD, the number of staff members to be present at each location, and the dates and times the mobile food unit will be at the location.

11. Consideration. The parties agree that fees will be charged for the use of each other's facilities covered by this Agreement in accordance with Exhibit C ("Fee Schedule"). Each party shall pay the lowest rate on the respective fee schedules for use of the other's facility. Each party shall provide an updated Fee Schedule to the other following the yearly review of the agreement during the month of July if there are any changes in fees associated with use of the property. Once provided to the other party, those new fees shall become effective February 1st of each year.

12. Notice of Cancellation. If either party (the user or the owner) has to cancel the use of a facility at an agreed-upon scheduled time, that party must give the other party notice of cancellation. In the event of owner cancellation, at least 48 hours notice of the cancellation must be provided. In the event of user cancellation, at least 24 hours notice of cancellation must be provided. In addition, if the party canceling the use is the owner of the facility, that party shall reschedule the use at the earliest possible time acceptable to the party seeking to use the facility. If required prior notice is not provided then the party failing to provide notice shall pay 100% of the fee associated with use of the facility.

13. Performance Excused under Certain Conditions. Either party's failure to perform its obligations under this Agreement shall be excused if due to causes beyond the control and without the fault or negligence of the party, including but not limited to acts of God, acts of the public enemy, fires, floods, epidemics, strikes, and/or weather conditions.

14. Property Ownership. Unless otherwise provided herein or agreed to in writing by the parties, all property acquired by either party during the term of this Agreement related to its performance under this Agreement shall be paid for solely by that party and shall remain the property of that party in the event of termination of this Agreement. Any property acquired jointly by the City and the District during the term of this Agreement relating to the subject of this Agreement shall, upon termination of this Agreement, be disposed of in such manner as mutually agreed upon by the parties.

15. Nondiscrimination Provision. The parties shall not discriminate in the performance of this Agreement in violation of any federal, state, and/or local law or regulation on the basis of race, age, color, sex, religion, national origin, creed, marital status, the presence of any sensory, mental or physical handicap, or other status protected by law. This provision shall include but not be limited to use of each other's facilities pursuant to this Agreement.

16. The Americans with Disabilities Act. The parties agree 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.

17. Indemnification and Hold Harmless. Each party hereto agrees to be responsible and assume liability in the performance of this Agreement for its own wrongful and/or negligent acts or omissions and those of its officers, elected officials, agents, volunteers, and/or employees to the fullest extent allowed by law. In its role as user of the other party's facility, each party agrees to defend, indemnify and hold the owning party harmless from any and all claims, demands, losses, liens, and liabilities of any nature or description (including attorneys' fees and disbursements) arising out of the use unless otherwise expressly agreed to in writing. In the event that the officials, officers, agents, and/or employees of both the City and District are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees). Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party. The provisions of this Section shall survive the termination or expiration of this Agreement.

18. Insurance.

- a. At all times during the term of this Agreement, YSD shall 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 subject to this Agreement. YSD shall 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 Endorsement and the 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 when YSD is utilizing City facilities under this Agreement.

To comply with this section, YSD may add the City of Yakima as an additional insured to its current policies if they meet or exceed the limits outlined herein. The City should be listed as follows on the Certificate of Insurance and Endorsement: City of Yakima, its elected and appointed officials, officers, agents, employees, and volunteers.

i. General Liability Insurance. Before this Agreement is fully executed.

b. At all times during the term of this Agreement, the City 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 YSD's facilities subject to this Agreement. The City shall provide and maintain in force insurance in limits no less than those stated below as applicable. YSD reserves the right to require higher limits should it deem it necessary in the best interest of the public. If the City carries higher coverage limits than the limits stated below, such higher limits shall be shown on the Certificate of Insurance and Endorsement and YSD shall be named as an additional insured for such higher limits. Failure by YSD to demand such verification of coverage with these insurance requirements or failure of YSD to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of the City's obligation to maintain such insurance. The City'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 YSD shall be in excess of the City's insurance and neither YSD nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by the City's insurance when the City is utilizing YSD facilities under this Agreement.

i. General Liability Insurance. Before this Agreement is fully executed by the parties, the City shall provide YSD with a certificate of insurance as proof of the general liability insurance and 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 YSD, 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 YSD 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 Guild and admitted in the State of Washington.

- ii. Commercial Automobile Liability Insurance. Before this Agreement is fully executed by the parties, the City shall provide YSD with proof, if requested, that the City maintains a minimum of Two million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage for commercial automobile liability. YSD, its elected and appointed officials, officers, agents, employees and volunteers shall be named as an additional insured on Commercial Automobile Liability Insurance policies.
- c. Failure of either or all of the additional insureds to report a claim under such insurance shall not prejudice the rights of the City or YSD, their elected and appointed officials, officers, employees, agents, and representatives thereunder. Neither party shall be responsible for payment of the other party's premiums because of being named as additional insureds. 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 other party until thirty (30) days after written notice to the other party of such intended cancellation, expiration or change.
- d. At any time during the life of this Agreement or any extension, if a party fails to maintain the required insurance in full force and effect, this Agreement may be terminated immediately.

19. Assignment. This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by either party to any other person or entity.

20. No Third Party Rights. This Agreement is entered into for the sole benefit of the City and the District. It shall confer no benefits or rights, direct or indirect, on any third persons. No person or entity other than the parties themselves may rely upon or enforce any provision of this Agreement. The decision to assert or waive any provision of this Agreement is solely that of each party.

21. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provision of this Agreement which shall prove to be invalid, unenforceable, void, or illegal shall in no way affect, impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect. Any provision of this Agreement in direct conflict with any statutory provision of the State of Washington shall be deemed modified to conform to such statutory provision.

22. Integration, Supersession, and Modification. This Agreement sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes all other facility use agreement between the parties with the exception of the AGREEMENT BETWEEN THE CITY OF YAKIMA AND YAKIMA SCHOOL DISTRICT NO. 7 FOR DEVELOPMENT, MAINTENANCE AND USE OF THE UPPER KIWANIS PARK dated June 2011, and the Development Agreement for Lions Park, dated July 16,

2014, which shall remain in full force and effect. This Agreement also supersedes any and all prior negotiations, discussions, and understandings between the parties as to the subject matter 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.

23. Non-Waiver. The waiver by the City or the District 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.

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

TO CITY: _____
Parks and Recreation Manager
City of Yakima Public Works Administration
2310 Fruitvale Blvd.
Yakima, WA 98902

TO DISTRICT: _____
Superintendent
Yakima School District No. 7
104 N. 4th Avenue
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.

25. 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.

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

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

28. 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. Each party shall be responsible for complying with all relevant safety laws and regulations and for taking all necessary safety precautions while using the other party's facility pursuant to this Agreement.

29. Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of the parties hereto. No presumption or other rule of construction that would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any provision of this Agreement.

30. Termination. Either party may terminate this Agreement, with or without cause, by giving the other party one hundred eighty (180) days prior to August 1st of any year prior written notice of termination.

31. Financing. The parties intend to the greatest possible extent to coordinate budgeting for programs and facilities impacted by this Agreement. The parties understand that each has its own financial responsibilities and budgetary requirements. However, recognizing those limitations, the parties hope to avoid unnecessary duplication of recreational programs and avoid overlapping of facilities use. Should either party require a substantial change in budget, which would affect its performance under this Agreement, that party will provide the other party with reasonable advance notice of such change.

32. Filing. A copy of this Agreement shall be filed for record with the Yakima County Auditor or, alternatively, listed by subject on each party's website or other electronically retrievable public source pursuant to RCW 39.34.040.

AGREED to this ____ day of _____, 2023

CITY OF YAKIMA, WASHINGTON

By: _____
Robert Harrison, City Manager

YAKIMA SCHOOL DISTRICT NO. 7

By: _____
Dr. Trevor Greene, Superintendent

ATTEST:

Rosalinda Ibarra, City Clerk

Exhibit A - City-Owned Facilities

The following are City-Owned Facilities that are anticipated to be used by YSD and the anticipated use of each facility.

Cross Country

Franklin Park

Randall Park

Kiwanis Park

Chesterley Park

Tennis Courts

Kissel Park

Franklin Park

Lion's Park

Soccer Fields

Chesterley Park

Ball Fields

Gateway Sports Fields

Gardner Park

Upper Kiwanis Fields

Golf

Fisher Park

P.E. Classes

Franklin Park

Gardner Park

Fisher Park

MLK Park

Pool

Lion's Park Pool

Franklin Pool

Summer Meals Program

Larson Park

Kissel Park

Chesterly Park

Randall Park

Cherry Park

Franklin Park

Gardner Park

Kiwanis Park

Miller Park

MLK Jr. Park

General Recreational Use

Franklin Park

Chesterley Park

Larson Park

Kissel Park

Franklin Park

Lions Park

Randall Park

Gardner Park

SE Community Park

MLK Jr. Park

Gilbert Park

McGuinness Park

Miller Park

Kiwanis Park

Exhibit B - District-Owned Facilities

Gyms:

Lewis and Clark (2 gyms)	McKinley
Wilson (2 gyms)	Barge Lincoln
Whitney	Garfield
Ridgeview	Washington Middle School
Roosevelt	Franklin Middle School
McClure	Nob Hill Elementary
Gilbert	Hoover
Robertson	Adams
MLK	

High School:

Eisenhower High School Cafeteria and Classrooms
Davis KIVA

Playfields at District Schools

Track Facilities

School classrooms at all YSD school facilities

Exhibit C – Fee Schedule