

City of Palmer
SERGEANT KURTIS D.K. ARCALA-BERBERICH MEMORIAL
SOCCER FIELDS

NON-EXCLUSIVE USE PERMIT

This use permit (hereinafter called "Agreement") is made and entered into on _____, 2020 by and between the City of Palmer (hereinafter called "City") and the [_____], hereinafter called "USER".

WHEREAS, by Ordinance 02-098 (AM) the Matanuska-Susitna Borough Delegated Parks and Recreation powers to the City of Palmer for certain real property (hereinafter called "soccer fields"), identified as Patterson Subd., Tract A-2 in Section 4, Township 17 North, Range 2 East, Seward Meridian, Palmer Recording District, Third Judicial District, and the _____ wishes to use the soccer fields pursuant to the terms and conditions of this Agreement, and subject to valid existing rights.

NOW THEREFORE, in consideration of the covenants and agreements contained herein, the City and USER agree as follows:

Section 1. Description of facility.

City does hereby agree to permit USER to use the facilities known as the "Sergeant Kurtis D.K. Arcala-Berberich Memorial Soccer Fields" which encompasses the above real property and all improvements including, but not limited to, two soccer fields. The soccer fields include the area within the fields and the area adjacent to the fields.

Section 2. Term.

This Agreement shall be effective for a period of one (1) year and renewable to subsequent one (1) year terms pending approval of both parties (hereafter called "Term of Use") agreed upon by both the CITY and the USER.

Section 3. Purpose.

This Agreement describes USER's use of and responsibilities for the soccer fields for public recreation during the Term of Use.

- A. USER shall satisfy all requirements described as Scope of Work for Sergeant Kurtis D.K. Arcala-Berberich Memorial Soccer Fields (Attachment B).
- B. USER shall be responsible for all activities and details necessary to host safe, high quality recreation.
- C. USER is responsible for all vandalism during their Term of Use. Vandalism shall be immediately reported to the City. USER shall immediately undertake safety measures and repairs. USER shall be liable for all damage and repair costs.
- D. USER's use of the soccer fields shall not be for profit. Any revenue generated as a result of the use of the soccer fields shall be used toward the costs of maintenance, operation and approved improvements of the soccer fields.
- E. USER shall not name or memorialize fields or permanent fixtures without express written agreement with the City.

Section 4. Payment for Utilities and Other Services.

USER shall pay for rental fees and servicing for any portable toilets, including installation and removal; water and electrical connection and service fees, if any; and all maintenance and other costs for operating the soccer fields during the Term of Use.

Trash is to be bagged daily and placed in dumpsters. The City will remove the trash at no additional cost to USER. Trash pickup areas include the soccer fields (daily) and the parking lot (after scheduled events).

Section 5. Plan.

USER shall make no improvements or alterations to the soccer fields without first submitting a site plan and description to City of Palmer Community Development for approval. Routine care of the fields is not considered an improvement in the context of this paragraph.

Section 6. Annual Reporting.

USER shall submit to the City proof of Comprehensive (Commercial) General Liability Insurance as per Section 18 prior to start of season.

USER shall submit to the City a completed Season Activity Report (Attachment C) on or before October 15 of each year of the term of this Agreement.

Section 7. Use and Operation.

Use of the soccer fields for playing soccer shall provide for the maximum availability of the facilities to the public. USER is responsible for game and practice scheduling during the Term of Use and may set reasonable fees or dues, subject to City approval, to cover costs of such use. With the City's approval, USER may schedule field use for activities other than soccer.

Section 8. Waste.

USER, its employees, subcontractors, or anyone directly or indirectly employed by them, shall not commit waste on or injury to the soccer fields or improvements thereon or allow third parties to commit such waste or injury.

Section 9. Rights-of-way.

Authority to issue easements and rights-of-way will be retained by the City.

Section 10. Ownership of Improvements of Termination.

At the termination of this Agreement all improvements to the soccer fields shall, without compensation to USER, become the property of the City.

This includes the Soccer Goals.

Section 11. Assignment or Delegation of Duties.

USER may not assign any interest in this Agreement to any person, delegate any duties under this Agreement, nor enter into any contracts from commercial concessions or vending on the premises without the prior written approval of the City. Any attempt by USER to assign any part of its interests or delegate duties under this Agreement shall give the City the right to immediately terminate this Agreement without any liability for work performed subsequent to termination.

Section 12. Permits, Laws and Taxes.

All activities authorized under this Agreement shall be conducted in compliance with all applicable federal and state constitutions, federal, state and local laws, regulations and orders of governmental authorities having jurisdiction over the property, now or hereafter, in effect during the term of this Agreement and USER agrees to obtain the necessary approvals from all third party interests and obtain all permits or written authorization required by the applicable laws, rules and regulations from governing authorities. USER agrees to provide proof of applicable licenses and permits as requested by the City. All taxes related to this Agreement, if any, shall be kept current.

Section 13. Non-Discrimination.

USER shall not discriminate against any applicant on the basis of race, sex, color, religion, creed, gender, national origin, age, disability or marital or veteran status.

Section 14. Inspection of Premises.

A designated City representative may at any time enter and inspect the soccer fields.

Section 15. Fuel Storage/Hazardous Materials.

The storage of petroleum or toxic chemicals is prohibited on the property. Spills or contamination of water or land will be controlled and recovered immediately and reported by USER to the State of Alaska, Department of Environmental Conservation and the City.

Section 16. Safety.

USER is responsible for the safety of all persons entering the property during USER'S specific times of use including, but not limited to, players, spectators, referees, employees, contractors, pedestrians, or any other person on the premises during the Term of Use. USER agrees to provide all participants information regarding rules, safety regulations and other information about the property and the Agreement.

Section 17. Defense and Indemnification.

USER shall agree to indemnify, defend, and hold and save the City, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees for or on account of any and all legal actions or claims of any character. USER shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, deprivation of constitutional rights, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from USER or USER'S officers, agents, employees, partners, attorneys, suppliers, visitors, whether invited or not, licensees, guests, and subcontractors performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts omissions by the City or its agents which are said to have contributed to the losses, failure, violations, or damage. If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause shall remain enforceable.

Section 18. Insurance.

Without limiting USER'S indemnification, USER shall purchase, at its own expense and maintain in force at all times during the Term of Use, Worker's Compensation Insurance and comprehensive general liability insurance as described below.

Where specific limits are shown, it is understood that they shall be the minimum acceptable limits unless risk allocation assessments performed by an insurance company proves otherwise. If USER policies contain higher limits, the City shall be entitled to the extent of such higher limits.

Worker's Compensation Insurance. USER shall provide and maintain Workers Compensation insurance for all employees engaged in work under this Agreement. Employers Liability Protection shall not be less than \$100,000 per accident, \$100,000 each employee for bodily injury by disease, \$500,000 policy limit for bodily injury by disease. Where applicable, coverage for all federal acts must be included as well.

Comprehensive (Commercial) General Liability Insurance. USER shall provide and maintain coverage of not less than \$1,000,000 combined single limit per occurrence bodily injury or property damage.

Certificates of insurance must be furnished to the City prior to the first day of the Term of Use and must provide for a thirty (30) day prior notice of cancellation, non-renewal or other material change. Failure to furnish certificates of insurance or notices of lapse on any policy constitutes a material breach and grounds for termination of this agreement. With the

exception of Worker's Compensation Insurance, the City shall be named as an additional insured party.

Section 19. Severability.

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of the Agreement shall remain in full force and effect.

Section 20. Jurisdiction: Choice of Law

Interpretation and Enforcement. This Agreement shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the state of Alaska. Any civil action arising from this Agreement shall be brought in the Alaska Superior Court, Third Judicial District at Palmer. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 21. Termination.

- A. The City or USER may terminate this Agreement for their convenience thirty (30) days after notice of termination to USER or the City.
- B. This Agreement may also be terminated by the City for any of the following:
 1. Failure to comply with the terms and conditions of this Agreement or, if the breach is curable, to remedy any default in performance within thirty (30) days of written notice.
 2. Failure to actively use the soccer fields for the described purposes for the Term of Use.
 3. Abandonment of the property, which shall include failure to carry out necessary maintenance or repairs to the soccer fields.
 4. USER articles and by-laws provide that it represents all residents of the area and USER represents that it has a policy and practice of open membership which encourages participation of person from all segments of the community. The City may terminate this Agreement if USER's articles, by-laws or policies are changed so that it no longer represents all residents of the area or it ceases to encourage open membership and participation from all segments of the community.
 5. Failure to obtain and provide certification of insurance as described in Section 18 may result in immediate termination.
- C. In the event USER is prevented by a cause or causes beyond their control from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render USER liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, USER shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control", as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of USER and which prevent the performance of USER: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent USER from performing the terms of the Agreement as set forth herein. Events which are peculiar to USER and would not prevent another group or entity from performing including, but not limited to financial difficulties, are not causes beyond the control of USER. The City will determine whether the event preventing USER from performing is cause beyond USER's control.

ATTACHMENT A
SERGEANT KURTIS D.K. ARCALA-BERBERICH MEMORIAL SOCCER FIELDS

202__ FIELD SCHEDULE
 ORGANIZATION NAME: Crossfire AK

Please indicate preferred dates and times below. Attach a 'second choice' schedule to improve our ability to coordinate with all groups.

MONTH & DATES	TIME OF DAY		DAY OF WEEK						
	FROM	TO	M	Tu	W	Th	F	Sa	Su
Indicate size & number of fields needed during above dates:									
Indicate size & number of fields needed during above dates:									
Indicate size & number of fields needed during above dates:									
Indicate size & number of fields needed during above dates:									

The above schedule is approved with changes, if any, as noted above.

City Representative: _____ Date: _____

ATTACHMENT B

SERGEANT KURTIS D.K. ARCALA-BERBERICH MEMORIAL SOCCER FIELDS

SCOPE OF WORK

1. User shall sign and submit to the City the Sergeant Kurtis D.K. Arcala-Berberich Memorial Soccer Fields Non-Exclusive Use Agreement.
2. User must provide a current certificate of insurance as noted below and as further specified in Section 18 of the Use Agreement.
 - a. Worker's Compensation Insurance for employees engaged in work under the Agreement. Employers Liability Protection shall not be less than \$100,000 per accident, \$100,000 each employee for bodily injury by disease, \$500,000 policy limit for bodily injury by disease.
 - b. Comprehensive (Commercial) General Liability Insurance. Shall not be less than \$1,000,000 combined single limit per occurrence bodily injury or property damage.
 - c. With the exception of Worker's Compensation Insurance, the City shall be named as an additional insured party.
3. User will complete a Season Activity Report and submit it to the City each season.
4. User will perform the following maintenance and use activities:
 - a. Daily cleaning of the soccer fields and daily trash pickup on the soccer fields and the parking lot. Trash is to be bagged and placed in a dumpster provided by the City.
 - b. Weekend trash removal and cleaning of grounds.
 - c. Weekly inspection of facilities and site for hazardous conditions and immediate remedy and reporting of hazardous conditions.
 - d. Provide portable toilet(s) as needed for the number of players.
 - e. Field layout shall be in accordance with the annual field rotation determined and approved by the city.
 - f. City will provide equipment for moving large goals, if requested no less than one business day in advance.

ATTACHMENT C
SERGEANT KURTIS D.K. ARCALA-BERBERICH MEMORIAL SOCCER FIELDS

202__ SEASON ACTIVITY REPORT

NAME OF GROUP		CONTACT PERSON	
MAILING ADDRESS		CONTACT NUMBERS	
		Phone:	Fax:
		Cell:	
SUMMARY OF SEASONAL ACTIVITY			
Approximately how many people participated in activities at the fields?	How many games were played?	How many practice sessions occurred?	
Did your group hold and/or participate in any special events at the fields? If so, please describe.			
FEES			
Did your organization collect any fees from participants this season:	How much did you collect?	What was the event(s)?	
Yes <input type="checkbox"/> No <input type="checkbox"/>	\$		
ADDITIONAL COMMENTS			
Suggestions for improvement of facilities, scheduling of fields, other:			
Does your organization desire to use the fields next year?			Yes <input type="checkbox"/> No <input type="checkbox"/>
PLEASE ATTACH THE FOLLOWING TO THIS REPORT: 1) Receipts for fees collected 2) Receipts for expenses 3) Preliminary 202_ Schedule			
Signature:			Date: