

**CITY OF ALBUQUERQUE
PARKS AND RECREATION DEPARTMENT
RECREATION FACILITIES USE AGREEMENT**

THIS FACILITIES USE AGREEMENT between the City of Albuquerque, as municipal corporation (“City”), and Albuquerque Soccer League, as a New Mexico non-profit corporation (the “Recreation Provider”), enter into this Agreement on the dates indicated by their signatures.

WHEREAS, the City owns various tracts of land which are presently used for general park and recreational opportunities for its citizens, including adults, children and youth; and

WHEREAS, the parties wish to set forth this Agreement regarding the recreational use of various City Premises and Facilities.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged and accepted, the City and Recreation Provider agree as follows:

1. **SUMMARY SHEET:** The Summary Sheet attached hereto as **Exhibit A** is incorporated herein and adopted by reference. The Recreation Provider warrants that all information provided in the Summary Sheet is true and accurate.
2. **CONDITIONS PRECEDENT TO ENTERING INTO AN AGREEMENT:** Prior to entering into an Agreement, the Recreation Provider shall submit to the City, Attention: Parks and Recreation Department, the information on the Summary Sheet including, without limitation to all attachments, if applicable the proof of incorporation, tax status, proof of insurance, concussion policy, proof of background checks for staff and volunteers, and any other requirements which the City may from time to time impose. Provided further, any Recreation Facility applicant that does not present proof of IRS tax exempt status at the time of submitting its application will be deemed a “for profit” entity until the next annual application period.
 - a. Upon approval of application, the Recreation Provider will have the status as an “Approved Recreation Provider”.
 - b. Thereafter, the Recreation Provider may be assigned recreational facilities for organized games, practices and related activities in accordance with the requests on the incorporated Summary Sheet.
3. **TERM:** The Term of this Agreement begins the on date of the City’s approval of this Agreement and continues to the end of the calendar year in which it was signed.
4. **SCOPE OF USE:** As provided herein, the City hereby grants to the Recreation Provider permission to enter and use certain parks and recreation facilities owned, controlled, or operated by the City (“Premises” or, as appropriate, “Facilities” within the Premises) for recreation activities of the nature described on the Summary Sheet and for no other purpose, as more fully detailed herein. Such use of City Premises and Facilities is non-exclusive.
5. **SCHEDULING PROCEDURE:**
 - a. Apportion Resources: On an annual basis, the City, through its Parks and Recreation Department, will review the available City resources, the community’s requests for specific forms of recreation, recreational opportunities, and apportion the resources to the various recreational providers in a fair and equitable manner.

- b. Application Deadline: All Recreation Provider requests must have written approval from the City on the City's forms, and are not guaranteed until the City provides the written approval. The application must satisfy all procedures and regulations from the Field Use and Scheduling Policy, incorporated by reference, and available upon request.
- c. Scheduling Meetings: The City shall hold one or more annual scheduling meetings for each recreation activity to address availability of Facilities and scheduling needs of the Recreation Providers approved by the City. The City's intent is to reasonably accommodate all Recreation Providers' needs for practice sessions, games, and tournaments.
- d. Attendance: Attendance at scheduled meetings is **mandatory**. A representative from each applicant or Recreation Provider shall attend the meetings.
- e. Coordination with Albuquerque Public Schools ("APS"): The City has a joint use agreement with APS for certain facilities. To the extent permitted by that agreement, the City will schedule the use of certain APS facilities for practices. In the event that the Recreation Provider requires the use of other APS facilities or wishes to reserve any APS facilities for games, the Recreation Provider must schedule through APS, more information is found at (<http://www.aps.edu/facility-rentals/user-groups>).

6. **SCOPE OF AGREEMENT:**

- a. The Recreation Provider shall have the right to bring personnel and equipment onto the Premises and Facilities thereon, and the responsibility to remove same after completion of the authorized use of the Premises and Facilities thereon.

7. **TIME & DATE OF ACCESS:** Notwithstanding the provisions herein and subject to the approval of the City, the approved use shall be during the date seasons begins and ends as set forth in Exhibit A.

8. **USE FEES:** Fees and charges are as specified on the Park Usage Fee Schedule *See* Park Usage Fee Schedule, attached hereto and incorporated by reference as **Exhibit B**. Fees will be on a per day per field basis. The number of fields allocated at any given park will be determined by Parks and Recreation staff. The Fee shall be assessed to all Recreation Providers. Any Fees shall be paid to the "City of Albuquerque," and mailed or delivered to the Manager or representative of the Sports Section, Parks & Recreation Department, City of Albuquerque, Jerry Cline Park, 7205 Constitution, NE, Albuquerque, 87110. Unless otherwise indicated, the Incidental Deposit is required at the time of request, and the full payment is due prior to the event.

9. **COMPLIANCE, CARE, AND CONTROL IN USE OF PREMISES:**

- a. Specified Uses Only: The Recreation Provider shall use the Premises and the Facilities therein as and only for the purposed recreation activities from the application.
- b. Non-exclusive Use: Permission to use City Facilities is not exclusive. At all times during which the Recreation Provider is not scheduled to use the Facilities, the Premises and Facilities thereon shall be open to other organizations and to the general public for park and recreation purposes as deemed appropriate by the City.
- c. Cooperation: The Recreation Provider shall work with the City and other organizations in the scheduling of practices to prevent conflicting scheduling of the Premises.

- d. Consideration for the Neighborhood: Based on information furnished by the Recreation Provider, the City has attempted to provide Facilities appropriate for the Recreation Provider's needs, this includes adequate parking. The Recreation Provider shall insure that its employees, volunteers, participants, audience, and guests do not impose on the businesses and residences in the neighborhood or otherwise create nuisances by parking in a manner that blocks driveways, trespasses, or creates hazardous conditions, or creates excessive noise or littering.
- e. Public Image: Any negative publicity about the Recreation Provider or its use of the Facilities may be deemed by the City as a material breach of the Agreement; and the City may immediately revoke the Agreement.
- f. Public Relations: The Recreation Provider will make a good faith effort to maintain a good relationship with the property owners and residents adjacent to the Premises.
- g. Concession Stand Operation: The Recreation Provider shall have the exclusive right to operate a concession stand during games at the Facility for the sale of soft drinks, candy, sandwiches and other like articles, or to contract with licensed vendors to provide such goods. The Recreation Provider or a licensed vendor with whom it contracts must possess appropriate insurance, business license and health permit. Upon request, the Recreation Provider shall provide City with a copy of all such documentation. The City may grant concession rights to other groups during the use of the Facilities by said other groups scheduled by City. Portable or temporary concession stands placed on the grass shall be rotated to avoid excessive turf wear.
- h. Glass containers: Pursuant to the City's Parks Ordinance, § 10-1-1-4 et seq. R.O.A. 1994, as amended, no glass containers shall be brought onto the Premises or the Facilities thereon by any Recreation Provider during the Recreation Provider's use of the Facility.
- i. Alcohol: At no time shall any alcoholic beverages be allowed on Premises, except as permitted at specific parks by City of Albuquerque Code of Resolution § 6-5-2, as amended by R-2014-023.
- j. Modification of Premises Prohibited: The Recreation Provider shall have no right to change, modify, or improve the Premises or the Facilities thereon in any manner without prior written permission by the Director of the City's Parks and Recreation Department ("Director"). Any improvements to the facilities shall become the property of the City.
- k. Use of Equipment and City Property within the Facility: The Recreation Provider agrees that it will not change, alter, or rearrange any furnishings, structures, and equipment on the Premises without the City's prior written permission. If the City grants permission, then the Recreation Provider shall return and restore said furnishings, structures, and equipment to the original place and condition, or provide repair, if necessary.
- l. Noise pollution: Noise pollution caused by whistles, horns, amplified sounds and crowds shall be minimized as much as possible and all noise levels shall comply with the City Noise Control Ordinance, § 9-9-1 et seq. ROA 1994, as amended.
- m. Lights: After-dark lighting is restricted at some Facilities. Lights must be turned off no later than 10:00 pm, unless otherwise allowed by the City.
Sanitary facilities and comfort stations: The OSHA requirements for portable toilet service based on the number of people attending an event is attached hereto and incorporated by reference as **Exhibit C**. If deemed necessary by the City, the Recreation Provider must provide portable toilets at the Recreation Provider's expense for any events deemed necessary, including, without limitation to tournaments,

practices, camps, clinics, or leagues. The Recreation Provider shall be responsible for service and maintenance of such portable toilets. The City may designate placement of portable toilets. In Parks that have City port-a-potties and vault toilets, these toilets may be used as part of the OSHA requirements, however, the Recreation Provider shall clean the toilets immediately after their event. If Recreation Provider fails to do this, it may result in the surrender of the Incidental Deposit.

- n. Control Access: During the use of the Premises and Facilities the Recreation Provider shall take reasonable steps to protect all City property and to prevent unauthorized persons from obtaining access to the Premises and Facilities thereon.
- o. Professional Security: The City, in its sole discretion, may require such professional security. The Recreation Provider shall be responsible for the hiring of and paying for this professional security service. Failure to provide required professional security may be grounds for termination, as provided herein.
- p. Point of Contact: The Recreation Provider must supply an onsite supervisor ("Provider Supervisor") at all times at each facility. If necessary, the Provider Supervisor will be paid by the Recreation Provider. The Provider Supervisor may not be a City of Albuquerque Site Supervisor or Field Supervisor, a city employee, or an individual paid by a third-party contractor unless that individual is paid to be the Provider Supervisor. The Provider Supervisor is prohibited from currently participating in another capacity, including but not limited to umpiring, officiating, or participating. The Provider Supervisor must be qualified to supervise the game or activity and must be someone whose sole purpose is to supervise and represent the organization. The Recreation Provider will provide to the City a name and working phone number for the Provider Supervisor at each facility being used.
- q. Emergency Access: All fields must at all times be accessible to emergency vehicles; gates, drives and access shall not be blocked.
- r. Trash and Debris: The Recreation Provider is responsible for removal of paper, garbage, trash, and debris at the Premises and Facility resulting from attendance at games and practices. If the City must clean up trash/debris after a Recreation Provider event, the Recreation Provider may lose the Incidental Deposit.
- s. Parking: The Recreation Provider shall implement a system of control to prevent illegal parking adjacent to the City's Premises and Facilities by its participants and spectators. The Recreation Provider will insure that all vehicles are parked in designated, legal parking spaces.
- t. No Extreme Use: The Recreation Provider shall not use, occupy, or permit Premises and the Facilities, or any part of the Premises and Facilities, or any improvements located thereon, to be used in any manner that will:
 - 1. in any way make void or voidable any insurance then in force with respect to the Premises and Facilities;
 - 2. cause or be likely to cause structural damage to any improvements located on the Premises and the Facilities or any part thereof; or
 - 3. constitute waste or a public or private nuisance.
 - 4. Violate any applicable laws, as set forth in Section 20.
- u. Liens: The Recreation Provider shall not permit any mechanic's, material men's, or other lien to stand against the Premises and Facilities thereon for work or material furnished to the Recreation Provider or to its contractors. The Recreation Provider shall defend, indemnify and hold harmless the City against any mechanic's or other lien arising out of the making of any alteration, addition, repair, or improvement by Recreation Provider.

- v. **Hazardous Materials:** The City has no obligation to inform the Recreation Provider with regard to any problems or defects in the Premises and Facilities thereon, including any Hazardous Materials that may be, or were, located on the Premises and Facilities thereon that could prevent or impair Recreation Provider's ability to use the Premises and Facilities thereon for the uses stated in this Agreement. However, if the Recreation Provider learns of any such Hazardous Materials, Recreation Provider shall immediately upon learning of such a situation, make it known to the City, and, if the City at its sole and absolute discretion, chooses to make no remediation, the Recreation Provider may declare this Agreement null and void effective as of the date that Recreation Provider gives the City notice of such.
 - w. **Other Rules and Regulations:** The Recreation Provider shall obey all rules and regulations which the City shall from time to time impose, including nationally recognized or other official rules and regulations applicable to the sport activity for which the Recreation Provider is using the facilities.
 - x. The City specifically requires that all teams have matching numbered jerseys, including for any alternate or substitute players. The City also requires a team roster with names, addresses and phone or email contact information prior to execution of this Agreement. The Recreation Provider agrees to provide a supplemental team roster upon City request during the term of this agreement.
 - y. The Recreation Provider shall initiate and cooperate in reporting injuries and incidents using the City of Albuquerque Sports Services Report form and in compliance with the City's policies and procedures and shall call 911 or 242-COPS as appropriate for emergency and non-emergency assistance.
10. **FIRE OR OTHER CASUALTY LOSS.** In the event of damage to or destruction of the Premises and Facilities thereon, or any improvements, by fire or other casualty, the City has no obligation to rebuild, replace, or restore the Premises or Facilities or improvements. The Recreation Provider may retain all insurance proceeds from any insurance policy purchased by the Recreation Provider to cover Recreation Provider's insurable interest in the risk of the damage or destruction caused by fire or other casualty.
11. **RECREATION PROVIDER'S INSPECTION:** The Recreation Provider acknowledges and agrees that it has examined the Premises and Facilities thereon, including its surface and subsurface, is suitable and usable for the purposes, uses and activities intended by Recreation Provider. The Recreation Provider acknowledges that the City has made no representation, warranty or guaranty, express or implied, that the Premises and Facilities thereon now or hereafter is suitable or usable for the purposes or uses which Recreation Provider intends to make of the Premises and Facilities thereon.
12. **UTILITIES:** The City makes no representations, promises or assurances and undertakes no obligations to supply utilities or infrastructure appropriate for utilities to the Premises and Facilities thereon.
13. **RIGHT TO TERMINATE:** Notwithstanding any provision contained herein, the City may terminate this Agreement in writing, at its sole discretion and convenience, or for the Recreation Provider's default. Upon notice of termination, the Recreation Provider shall immediately leave the Premises and Facilities thereon. The Recreation Provider's obligations and liability to City shall survive termination. Unless waived in writing by City, the Recreation Provider shall restore the Premises and Facilities thereon to its condition at the commencement hereof, ordinary wear and tear accepted.
14. **INDEMNIFICATION:** The Recreation Provider shall indemnify and hold harmless the City from and against any and all liabilities, damages and claims of third parties arising from Recreation Provider's use hereunder of the Premises and Facilities thereon. This indemnification includes, but is not limited to, defending,

indemnifying and saving harmless the City and its officers, agents and employees from and against all suits, actions or claims of any character brought because of any injury, including death, or damage received or sustained by any person, persons, or property arising out of the Recreation Provider's or its invitees, agents, employees, contractors and subleases use of or activities on the Premises and Facilities thereon or any improvements on the Premises and Facilities thereon, or arising out of improvements on the Premises and Facilities thereon, or by reason of any act or omission, neglect or misconduct of the Recreation Provider or of its agents, contractors, employees, invitees or subleases. This indemnity provision will apply equally to injuries to the Recreation Provider's employees, volunteers, invitees, guests, participants, spectators and agents occurring on the Premises and Facilities thereon. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

15. **INSURANCE:** The Recreation Provider shall procure and maintain at its expense insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by the Recreation Provider or its agents. Upon execution of this Agreement and upon the renewal of all coverages, the Recreation Provider shall furnish to the City a certificate or certificates in a form satisfactory to the City, showing that it has complied with this Section. All certificates of insurance will provide that ten (10) days written notice be given to the Risk Manager, City of Albuquerque, P O Box 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter. Various types of required insurance may be written in one or more policies. The City of Albuquerque must be listed as Certificate Holder as well as Additional Insured. Certificate Holder shall be listed as follows: City Of Albuquerque, 7205 Constitution NE, Albuquerque, NM 87110. If the Recreation Provider is granted permission to use APS or CNM facilities, they must provide either APS or CNM a Certificate of Insurance, which is the responsibility of the Recreation Provider. Proof must be given to the City that Recreation Provider has delivered Certificate of Insurance coverage to APS or CNM. Kinds and amounts of insurance required are as follows:

- a. Commercial General Liability Insurance: A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows (requirements are shown as listed on a standard form certificate of insurance):

\$1,000,000.	Per Occurrence
\$1,000,000.	Policy Aggregate
\$1,000,000.	Products Liability/Completed Operations
\$1,000,000.	Personal and Advertising Injury
\$ 50,000.	Fire, Legal
\$ 5,000.	Medical Payments

The policy of insurance must include coverage for all operations performed by the Recreation Provider on the Premises and Facilities thereon, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

- b. Workers' Compensation: Worker's Compensation insurance policy for the Recreation Provider's employees in accordance with the provisions of the Workers Compensation Act of the State of New Mexico.
- c. Increased Limit: During the Term of this Agreement, the City may require the Recreation Provider to increase the maximum limits of any insurance required herein.

16. **RECREATION PROVIDER'S PROPERTY:** All property, facilities and improvements owned by the Recreation Provider that are placed in or upon the Premises and Facilities thereon are done at the sole risk of the

Recreation Provider. The City will not be liable for any damage to any property owned by the Recreation Provider thereon arising from including, but not limited to fire, water, flood, wind, vandalism, theft, larceny or burglary.

17. **ASSIGNMENT:** The Recreation Provider shall not assign, sublease or otherwise transfer the use of the Premises or the Facilities thereon or this Agreement or any part thereof or allow any other group to use the Premises during its scheduled use of the Premises.

18. **AUDITS AND INSPECTIONS.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Recreation Provider's records with respect to all matters covered by this Agreement. The Recreation Provider shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Recreation Provider understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and the Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

19. **DISCRIMINATION PROHIBITED.** Under all provisions of the Agreement, the Recreation Provider shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

20. **COMPLIANCE WITH LAWS.** Under all provisions of the Agreement, the Recreation Provider shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments.

21. **WAIVER OF DEFAULT:** No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Agreement or to exercise any right or remedy available on the breach thereof, and no acceptance of full or partial rent during the continuance of any breach will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Agreement that the Recreation Provider is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City.

22. **NOTICES:** All notices or payments required by this Agreement to be given any party shall be deemed to have been fully delivered, given, made, or sent when made in writing and deposited in the United States mail, certified, with postage prepaid thereon, and addressed to the following unless either the City or the Recreation Provider change their respective address by giving written notice of such change to the other:

- a. Notice to Recreation Provider shall be sent to the company, c/o contact: at the corporate address listed on the Summary Sheet.
- b. Notice to the City:

City of Albuquerque
One Civic Plaza, 11th Floor
Attn: Director, Department of Parks and Recreation
P.O. Box 1293
Albuquerque, New Mexico 87103

With a copy to:
Attn: Sports Division Manager
City of Albuquerque Parks and Recreation Department

Jerry Cline Park
7205 Constitution, NE
Albuquerque, NM 87110

23. **BINDING EFFECT AND EFFECTIVE DATE:** This Agreement will not be binding upon the parties until approved and signed by the City's Director of Parks and Recreation Department or designee. Once this Agreement is made, the covenants, terms and conditions of this Agreement will be binding upon and inure to the benefit of the parties. The effective date of this Agreement is the date on which this Agreement is approved by the City's Director of Parks and Recreation Department.

24. **ENTIRE AGREEMENT AND MODIFICATION:** This Agreement is full and final agreement of the parties on all subjects contained herein and supersedes any and all other agreements or understandings. No subsequent agreement may modify this Agreement, unless it is in writing and signed by the parties or their authorized agents.

25. **SEVERABILITY:** If any term of this Agreement is found to be void, voidable or invalid, such finding shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The parties agree that if any provisions of this Agreement are found to be not enforceable, they shall be deemed modified to the extent necessary to make them enforceable consistent with the true intent hereof.

26. **HEADINGS AND CAPTIONS:** Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

27. **APPLICABLE LAW:** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

28. **FORUM SELECTION:** Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the Second Judicial District Court located in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. The provisions of this section shall survive the termination of this Agreement.

29. **APPROVAL REQUIRED:** This Agreement shall not become effective or binding until approved by the City's representative.

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IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT AS OF THE DATE indicated by each signature, and the Agreement is effective only upon the signature of the City's authorized representative.

CITY OF ALBUQUERQUE

Approved By:

Alexandra Kiska
Recreation Division Manager

Date: _____

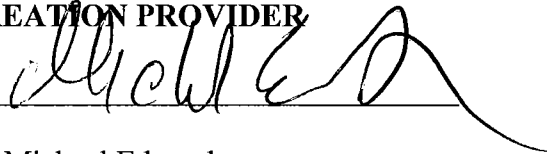
Recommended By:

Name:

Title: _____

Date: _____

RECREATION PROVIDER

By: 

Name: Michael Edwards

Title: Treasurer

Organization: Albuquerque Soccer League