

## City of Palmer

### SHERROD SOCCER FIELDS USE AGREEMENT

This use agreement (hereinafter called "Agreement") is made and entered into on \_\_\_\_\_, 201\_ by and between the City of Palmer (hereinafter called "City") and [\_\_\_\_\_], herein after called "USER"

WHEREAS, the City owns certain real property (hereinafter called "soccer fields")," located within Section 33, Township 18 North, Range 2 East, Seward Meridian, Palmer Recording District, Third Judicial District, and \_\_\_\_\_ 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 "Sherrod 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 the Field Schedule times (hereinafter 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 Sherrod 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.

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 the City 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 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.

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 person on the basis of race, religion, age, color, national origin, sex, marital status, physical handicap, or status as a disabled veteran or veteran of the Vietnam era.

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 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, Worker's 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 limits 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 persons 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 19 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.

Termination under this Section shall be by written notice stating the reason for termination and shall be effective thirty (30) days from the date of the notice. Any appeal must be written and formally presented to the City manager within ten (10) days of receipt of notice.

Section 22. Modifications.

The parties may mutually agree to written modification of the terms of this Agreement.

Section 23. Notice.

All notices shall be sent to both parties as follows:

ORGANIZATION/USER: \_\_\_\_\_  
 AUTHORIZED PERSON(S): \_\_\_\_\_  
 \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

CITY OF PALMER  
 ATTN: COMMUNITY DEVELOPMENT DEPT.  
 645 E. COPE INDUSTRIAL WAY  
 PALMER, AK 99645

Section 24. User Fee.

The annual user fee shall be ONE DOLLAR (\$1.00) per fiscal year or portion thereof commencing \_\_\_\_\_ 201\_ through \_\_\_\_\_ 201\_. USER shall not be entitled to any other use fee from the City. The initial fee shall be paid upon execution of this Agreement by both parties.

Section 25. No Waiver.

That no assent, expressed or implied, by the City to any breach of any USER's covenants shall be deemed to be a waiver of any succeeding breach of the same covenant, nor shall any forbearance by the City to seek a remedy for any breach of USER be deemed a waiver by the City of the rights or remedies with respect to such breach.

Section 26. Integration and Modification.

This document contains the entire Agreement of the parties hereto. All negotiations, statements, representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of the Agreement and the performance of either party hereto, are merged and integrated into the terms of this document.

IN WITNESS WHEREOF, the parties hereto have set their hands the day stated herein above.

CITY OF PALMER

USER

\_\_\_\_\_  
City Manager or Designee

\_\_\_\_\_  
Authorized User Designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT A  
SHERROD SOCCER FIELDS  
201\_ FIELD SCHEDULE**

**ORGANIZATION NAME:** \_\_\_\_\_

**Please indicate preferred days and times below. Attach a '2<sup>nd</sup> choice' schedule to improve our ability to coordinate with all groups.**

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

MONTH & DATES	TIME OF DAY		DAY OF WEEK						
	FROM	TO	M	T	W	TH	F	Sa	Su
June ____ to ____, 201_									
Indicate size and number of fields needed during above dates.									
July ____ to ____, 201_									
Indicate size and number of fields needed during above dates.									
Aug ____ to ____, 201_									
Indicate size and number of fields needed during above dates.									
Sept ____ to ____, 201_									
Indicate approximate size, and number of fields needed during above dates.									
Do you need to reserve adjacent Pavilion E during your field use sessions? <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/>									

**City Rep:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**ATTACHMENT B**  
**SCOPE OF WORK - SHERROD SOCCER FIELDS 201\_**

1. User shall sign and submit to the City a Sherrod Soccer Fields 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. Contract for installation, cleaning of grounds.
  - d. Weekly inspection of facilities and site for hazardous conditions and immediate remedy and reporting of hazardous conditions.
  - e. Provide portable toilets as needed per number of players.
  - f. Field layout shall be in accordance with the annual field rotation determined by the City.
  - g. City will provide equipment for moving large goals.



**ATTACHMENT C**  
**SEASON ACTIVITY REPORT – SHERROD SOCCER FIELDS**  
**201\_**

NAME OF GROUP		CONTACT PERSON	
MAILING ADDRESS		PHONE	FAX
<b>SUMMARY OF SEASONAL ACTIVITY</b>			
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			
<b>FEES</b>			
Did your organization collect any fees from participants this season? Yes <input type="checkbox"/> No <input type="checkbox"/>	How much did you collect?	What was the event(s)?	
	\$		
<b>ADDITIONAL COMMENTS</b>			
Suggestions for improvement of facilities, scheduling of fields, other:			
Does your organization hope to use the fields <u>next</u> year?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>PLEASE ATTACH THE FOLLOWING TO THIS REPORT:</b> <b>1) Receipts for fees collected    2) Receipts for expenses    3) Preliminary 201_ Schedule</b>			
Signature:		Date:	