

CITY OF BROKEN ARROW
PARKS AND RECREATION USE AGREEMENT

This Agreement is entered by and between the City of Broken Arrow, Oklahoma, a municipal corporation (**CITY**) and the Broken Arrow Rugby Football Club (**BARFC**).

I. LICENSE

CITY grants a **non-exclusive** license to **BARFC** to use land and improvements located in the **CITY**, popularly known as the Events Park and more particularly described as the area depicted on Exhibit "A", that has been adapted for use as a rugby playing field and associated facilities (**PREMISES**).

As partial consideration for this Agreement, **BARFC** agrees to and shall comply with the **CITY'S** Parks and Recreation Criminal Background Check Policy for Youth Sports Managers and/or Coaches. A copy of which has been previously provided to **BARFC** and is available at the City Clerk's office.

BARFC users shall be defined as teams registered with **BARFC**. All other groups or individuals shall be considered non-**BARFC** users.

BARFC shall submit a weekly written schedule or give access to an electronic daily schedule of all games, scrimmages, tryouts, clinics and camps to the **DIRECTOR** of the Broken Arrow Parks and Recreation Department prior to the commencement of the rugby season. **BARFC** shall stagger the starting times of games so as to minimize traffic flow problems at the park.

BARFC shall submit in writing, any and all bid materials regarding tournaments/clinics/camps, to the **DIRECTOR** if said tournament/clinic/camp will require additional **CITY** involvement in regards to the playing surfaces or improvements, before documents are submitted to the Rugby Governing Body. The **DIRECTOR** shall confirm, in writing whether said specifications and improvements to the facility can be met.

DIRECTOR reserves the right, in his-sole discretion, to close **PREMISES** and cancel all activities when, due to inclement weather or other problems, public safety or the preservation of **PREMISES** are threatened.

BARFC may not rent the **PREMISES** out to third party users. Third party users are considered non-**BARFC** users. **BARFC** shall allow the City to use, at no charge, the rugby fields when schedule permits. In case of scheduling conflict, the decision of **DIRECTOR** shall be final.

BARFC shall pay a user fee to the **CITY** a sum of five dollars (\$5.00) per each regular season game, scrimmage, and or tournament game. Clinics, camps, training sessions, and try-outs are to be paid at a rate of five dollars (\$5.00) per two-hour period. All user fees are to be paid to the **CITY** no later than one month after the season. All activities scheduled shall be under the supervision of a uniformed referee in the case of games or scrimmages or **BARFC** approved training coaches for clinics, camps and try-outs. This fee may increase in future contracts due to an increase in utility costs and/or general operating costs.

BARFC may operate mobile concessions when participation warrants and after obtaining any necessary permits and submitting copies of said permits to **CITY**.

CITY shall appoint one person who may attend any of the **BARFC** meetings. **BARFC** shall send the appointee timely notice of all meetings. Appointee shall serve as liaison between **CITY** and **BARFC**.

BARFC shall maintain accounts with correct entries of all income and expenditures. Books of accounts and related invoices shall be the property of **BARFC**, but shall be open for inspection and copying by **CITY** upon reasonable notice during normal business hours.

II. TERM

This Agreement shall commence upon execution and shall expire December 31, 2017 unless terminated earlier in accordance with the terms and conditions of this Agreement. This Agreement does not renew automatically.

III. IMPROVEMENTS

PREMISES shall remain the property of **CITY**, and may not be modified, altered, or destroyed without the prior written permission of **CITY**. Further, no improvements, structures or fixtures of any kind may be built or brought upon said property without the prior written permission of **CITY**.

Any additions or modifications shall become the property of **CITY** unless **CITY** gives **BARFC** prior written permission to remove the additions or modifications, in which case **BARFC** shall remove the improvements in a manner approved by **CITY** immediately upon termination of this Agreement and restore **PREMISES** to the condition which existed prior to the addition or modification.

The **PREMISES** and or Events Park will require future improvements such as a playground and shelters which may require **BARFC** to relocated the Rugby field during the life of this contract. **BARFC** has been made aware of these future improvements and accepts them fully and knowingly.

IV. MAINTENANCE

BARFC acknowledges that it has inspected the **PREMISES** thoroughly, has participated in the construction and maintenance of improvements and equipment on the **PREMISES**, and has had open access to **PREMISES**, and therefore has full knowledge of the conditions of the **PREMISES**. **CITY** makes no representations or warranties, express or implied, as to the condition of **PREMISES**.

BARFC shall inspect **PREMISES** immediately prior to and immediately after each use, and shall immediately notify **CITY** of any damages or of any repairs, which may be required. In the event that any defect may threaten the safety and welfare of participants or the general public, **BARFC** shall not allow individuals to utilize **PREMISES** until the defective portion of **PREMISES** has been repaired or replaced. **BARFC** shall be solely responsible for any replacements or repairs it authorizes or performs.

As partial consideration for this Agreement: **BARFC** shall supply, solely at its own expense, all necessary equipment to operate a rugby program. After each use of **PREMISES**, **BARFC** shall pick up all trash at the rugby complex, and deposit the same in commercial dumpster(s) provided by **CITY**.

BARFC shall supply field marking paint and **BARFC** personnel shall paint field lines. Paint for field lines and any agricultural chemicals to be used on **PREMISES** shall first be approved by the **CITY**.

CITY shall regularly mow **PREMISES** and re-seed or re-sod as necessary. **CITY** shall regularly perform turf maintenance (weed control and fertilization) on **PREMISES**.

BARFC agrees to take all reasonable precautions to prevent waste, damage or injury to **PREMISES** by **BARFC** or by any team or individual under **BARFC'S** auspices or by any member of the audience attending **BARFC** events.

BARFC agrees to provide staff or volunteers to control the parking lot during all **BARFC** activities and to prevent individuals from parking on any unpaved or unauthorized areas.

CITY retains the right to enter **PREMISES** at any and all times, without prior notice, to inspect **PREMISES** or to conduct maintenance or repairs, or for the purpose of determining whether **BARFC** is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of **CITY** under this Agreement.

BARFC shall promptly reimburse **CITY** for the cost of parts and labor for the replacement or repair of turf and other improvements to the land, for any cause other than normal and routine wear and tear and "Acts of God," and for **CITY'S** cost in performing any of **BARFC'S** contractual duties. **BARFC** shall not be liable to **CITY** for any acts of vandalism which, upon investigation, are not attributable to the acts, omissions, negligence or misconduct of **BARFC**, its guests, invitees, members, volunteers, representatives, employees' agents, officers, contractors or subcontractors.

V. SIGNS

BARFC may place temporary signs near playing field, according to the following terms and conditions:

- a) All signs shall only be constructed of canvas, plastic or cardboard and shall be of a size and shape that will not cause damage to the premises. Under no circumstances shall signs constructed of wood, metal, or other heavy material be used, nor shall any extension be used to enlarge the area covered. All signs shall be easily removable from premises. **Signs may not be displayed in locations where they are visible from any public street.**
- b) No signs shall be affixed before the first day of seasonal sanctioned play and all signs shall be removed on the last day of seasonal sanctioned play, including preseason or postseason tournament play.
- c) No signs shall contain advertisement selling items that are not legally available to minors, including, but not limited to, alcoholic beverages (both "intoxication" and "non-intoxicating" as defined by Oklahoma Statutes) and tobacco products, nor shall they contain obscene or profane language, symbols, or pictures. **BARFC** agrees that the term "obscene" as defined in Section 7-45 of the Broken Arrow Code shall be applicable with respect to all signs affixed under this license.
- d) **BARFC** agrees to make reasonable efforts to remove all signs during periods of high wind, flooding, and/or similar inclement weather.
- e) **BARFC** agrees that it is solely responsible for the maintenance of signs and further agrees that it is responsible for the removal of any signs that become damaged during the course of the season. **BARFC** releases the **CITY** from any and all liability for damages to any signs resulting from said **CITY'S** maintenance of the playing fields, acts or omissions or **CITY** officials and/or employees, wind, flooding, fire, or other acts of god, and further acknowledges that **CITY** has the right to remove any and all damaged signs without permission of **BARFC**. If any sign becomes a nuisance, the **CITY** has the right to remove it without permission of **BARFC**. The **CITY** agrees, to an extent reasonable and possible, to try to notify **BARFC** that it has removed a sign(s), which the **CITY** easily and readily determined belonged to **BARFC**. The **CITY** shall not be held liable and is relieved of any and all liability

suffered by **BARFC** or any of its members, representatives, officers, agents, or assigns for any losses that **BARFC** may incur by the **CITY'S** failure to make such notification.

VI. INDEMNIFICATION

As partial consideration for this Agreement, **BARFC** agrees to indemnify, defend (at **CITY'S** option), and hold harmless **CITY**, its employees, officials, agents, representatives and volunteers from and against any and **all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature**, arising out of or in connection with any aspect of the acts, omissions, negligence or misconduct of **BARFC**, its guests, invitees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors, including but not limited to permitted and non-permitted uses of **PREMISES**, whether during an approved, supervised activity or not, any injury or damage that occurs on or about the **PREMISES** relating to **BARFC** activities, or **BARFC'S** performance or failure to perform the terms and conditions of this Agreement.

Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of **CITY** and in accordance with the terms, conditions and exceptions contained in the Governmental Tort Claims Act. The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.

BARFC shall provide **CITY** with prompt written notice of any serious injuries (serious injuries include all injuries which require medical treatment), written or oral complaints received, actual or anticipated disputes with or claims by any individual, and any lawsuits by any individual relating to any activities on or about **PREMISES**.

VII. INSURANCE / WAIVER OF SUBROGATION

Without limiting **CITY'S** right to indemnification, **BARFC**, its contractors and subcontractors shall obtain insurance in no less than or in terms more restrictive than the following:

General Liability Insurance covering all **PREMISES** and activities. The applicable limit of liability shall not be less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate;

Worker's Compensation Insurance Coverage in compliance with the Worker's Compensation Laws of the State of Oklahoma; and

Comprehensive Automobile Liability Insurance applicable to all owned, hired and non-owned vehicles in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

BARFC shall include **CITY**, its officials, representatives, agents and employees as Additional Insured on all required insurance policies. **BARFC** shall also require its contractors and subcontractors to list **CITY** as Additional Insured. **BARFC** shall arrange for certificates of insurance and endorsements to be submitted to the **CITY'S** Risk Manager for approval prior to allowing any individuals, including but not limited to any contractors or subcontractors, to commence work or engage in any activities under this Agreement.

Such coverage shall not be canceled or materially changed without giving **CITY** at least thirty (30) days prior written notification thereof. The insurers shall have no recourse against **CITY** for payment of any

insurance premiums. Any insurance protecting **CITY** against any loss relating to or arising out of the subject of this Agreement shall be made payable solely to **CITY**.

BARFC and its contractors and subcontractors shall maintain the required insurance with insurers that carry a Best's "A" or equivalent rating and which are licensed and admitted to write insurance business in Oklahoma. Such insurance shall not be invalidated by any action or inaction of **BARFC** and shall insure **CITY** regardless of any breach or violation by **BARFC** of any warranty, declaration or condition contained in such insurance. Failure of **BARFC** or its contractors and subcontractors to obtain and maintain any required insurance shall not relieve **BARFC** from any liability hereunder.

BARFC hereby waives, on its own behalf and on behalf of its insurers, every claim for recovery from **CITY** for any and all loss or damage to the extent that the damage is covered by valid and collectible insurance policies. **BARFC** agrees to give to each insurance company, which has issued, or may issue in the future, policies of insurance, written notice of the terms of this waiver and to have said insurance policies endorsed as necessary by reason of this waiver.

VIII. DEFAULT

This Agreement shall be subject to termination upon the abandonment of **PREMISES** for a period of thirty (30) days, or upon the failure of **BARFC** to keep, perform and observe all promises, covenants, conditions and agreements set forth in this Agreement, provided that time limits may be extended in the manner and to the extent allowed by **CITY**, where fulfillment of such obligation requires activity over a period of time and **BARFC** has commenced to perform whatever may be required to cure the default and continues such performance diligently.

The right to terminate this Agreement upon default of **BARFC** is not exclusive and is in addition to any other rights and remedies provided by law or under this Agreement. Any waiver of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping **CITY** from enforcing the full provisions thereof.

IX. TERMINATION

Either party may terminate this Agreement for cause upon giving the other ten (10) days prior written notice. If this Agreement is terminated, **CITY** will be paid for costs incurred up to and including the date of termination, including but not limited to the costs of repairing **PREMISES** to the condition existing at the beginning of this agreement and the costs of storing **BARFC'S** property at a public warehouse selected by **CITY**. The rights reserved in this section are alternative and in addition to, not in lieu of, any other rights and remedies provided by law or under this Agreement. Termination of this Agreement shall not terminate **BARFC'S** liability for any losses, which have occurred on or prior to that date, regardless of whether notice of the claimed loss has been received by either party.

Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned or encumbered by **BARFC**. Any attempt to sell, assign, alienate or encumber **PREMISES** or this Agreement shall be cause for immediate termination of this Agreement.

In the event of substantial or total destruction of **PREMISES** from any cause, either party may declare this lease terminated if repairs or restoration cannot be effectively accomplished within thirty (30) days of the loss at a reasonable cost, with the reasonableness of said costs being within the sole judgment of

CITY. In the event that the PREMISES are repaired or restored by BARFC at the sole expense of BARFC or at the expense of insurance carriers, this Agreement shall not be terminated.

X. LAWS

This Agreement shall be construed under the laws of the State of Oklahoma; Exclusive Original Jurisdiction for any action relating to this Agreement shall be solely in the Tulsa County District Courts of Oklahoma. BARFC shall conform to and abide by all Federal, State and local laws and regulations regarding the subject of this Agreement. This Agreement is not a waiver of any permit, Inspection or other legal requirements, and does not assure approval based upon any circumstances other than compliance with the law.

XI. NOTICES

Any notice or demand required or permitted to be given by the terms of this Agreement or by law shall be in writing and may be given by depositing said notice or demand in the U.S. Mail, certified mail with return receipt requested, addressed to the other party's address, or by personal delivery. Service of said notice or demand shall be complete upon receipt of said notice or demand.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Agreement.

If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable. The parties shall agree, if reasonably practicable, upon provisions, which are equivalent from an economic point of view to replace any provision, which is determined to be invalid.

This document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter set forth.

Approved as to Form:



Assistant City Attorney

City of Broken Arrow

By: _____
Michael Spurgeon, City Manager

Attested:

Broken Arrow Rugby Football Club, President

Signature 

Printed Name: Gayla B. Adcock

City Clerk Seal

BARFC Mailing Address: PO Box 332

Date of Execution:

Broken Arrow, OK 74013

VERIFICATION

State of Oklahoma)
)ss.
County of Wagoner)

Before me, a Notary Public, on this 8th day of March, personally appeared Gary R. Adcock, Representative of the Broken Arrow Rugby Football Club, known to me to be the Identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

3-28-19

Aleisha Wickersham
Notary Public

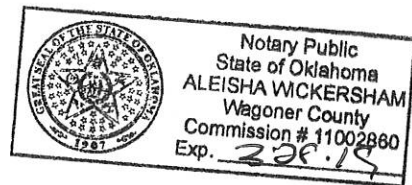


EXHIBIT A

