

## ROBERT CROWN CENTER USE AGREEMENT

City of Evanston

This Use Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2019 by and among EVANSTON YOUTH HOCKEY ASSOCIATION, a not-for-profit corporation, with offices located at 1701 Main Street, Evanston, Illinois 60202 (hereinafter referred to as “User”), and the CITY OF EVANSTON, an Illinois home rule municipal corporation, with offices at 2100 Ridge Avenue, Evanston, Illinois 60201 (hereinafter referred to as “the City”).

The User and the City agree as follows:

1. Purpose. The City of Evanston is constructing a new Robert Crown Community Center (the “Center”) with athletic fields and a new branch library (the “Project”). In order to support the long term financial viability of the center, the City agrees to enter into a long term facilities use agreement for the Center with User to use the ice rinks, locker room, training room, and storage space. This Agreement is not a lease agreement; User does not have exclusive control of the Center or a portion thereof. User is permitted to use the facility according to specified time periods each day during the Term defined below and restricted to the agreed upon schedule with the City.
2. Term:
  - a. The Term of the Agreement shall be for a period of five (5) years (“Term”). The commencement date is 1/1/2020 and the termination is 12/31/2025.
  - b. Option to extend the lease: The Term cannot be automatically renewed. If the Parties seek to negotiate an extension of the Agreement, the Parties will meet and confer to negotiate a five-year extension which must be approved by both parties in writing.
3. Fees:
  - a. Use Fees. User agrees that it will be assessed hourly rates to utilize the facility. User will be charged an ice rental rate of \$325.00 per hour, ice cut included, with a maximum increase of 2.8% each year.
  - b. Payment of Fees. The Parks, Recreation and Community Services Department (“Department”) will invoice User monthly for its usage of the Center. Payments shall be made payable to the City of Evanston and mailed to: Robert Crown Community Center, 1801 Main Street, Evanston, Illinois 60202. Please note on the check the invoice number to ensure that payment is properly credited. If and when the City is able to receive electronic payment, the Parties may agree to do so without amending the terms of this Agreement.

4. Facilities Covered:

a. Outdoor Facilities

The term “Outdoor Active Use Areas” will be used for purposes of this Agreement to mean the turf fields, baseball fields, and tennis courts. User will not have any exclusive use provided for the Outdoor Active Use Areas. User may request use as any other user and payable at rates established by the Department.

b. Indoor Facilities

The term “Indoor Active Use Areas” will be used for purposes of this Agreement to mean the ice rinks and training room. The Parties shall have the right to add or exclude Indoor Active Use Areas during the term of this Agreement, provided that any such change shall be in writing and approved by both the Parties.

5. Indoor Active Use Area Guidelines: The City hereby grants permission to User to use the Indoor Active Use Areas as set forth below for the sole purpose of providing its team members practice and contest space to compete, and any related uses to the activities described in Section 4.

- a. Use Schedule. User will receive at least 25 hours per week of dedicated ice rink access over six time slots on an annual basis during specified times as set forth in the schedule attached hereto as Exhibit “A”. User will have the option to purchase additional hours if ice time becomes available.
- b. Cancellation. Cancellations made in writing within 10 business days of scheduled date with receipt confirmed by the City will be refunded in full. With the exception of cancellations made during playoff or tournament weeks, fees paid for reservations cancelled less than 10 business days in advance of scheduled date will be forfeited and are non-refundable.
- c. Locker facilities. User will be permitted to utilize the locker room during the Use Schedule time. User understands that the locker room will be utilized by other patrons of the facility as well.
- d. Storage. Storage space will be made available to User to accommodate equipment and other gear for four (4) teams. Storage space will be located underneath the bleachers in Rink 1 of the Center.
- e. User understands and agrees that during the Term, if User is not scheduled to utilize the Indoor Active Use Area, it will be used by other City patrons and users not affiliated with User. User must conduct its activities so as not to interfere or impede other users from using the Indoor Active Use Areas.

- f. **Supervision.** User is responsible for providing personnel necessary for the direction and supervision of activities in Indoor Active Use Areas. User shall enforce all City rules, regulations, and policies provided by the City while supervising the Indoor Active Use Areas. User is responsible for notifying the City within 24 hours in the event that an Active Use Area suffers damage during User's scheduled time.
6. **Compliance with Law.** All use of the Center shall be in accordance with state and local law. In the case of a conflict between the terms of this Agreement and the requirements of state law, the state law shall govern. Any actions taken by User that are required by state law, but are inconsistent with the terms of this Agreement shall not be construed to be a breach or default of this Agreement.
7. **Obligations of City**
- a. **Access and Security**
- The City shall provide the personnel necessary to open and close the Indoor and Outdoor Active Use Areas during the hours of the Center. The City believes the hours of operation to be 5:30 a.m. to midnight at the time of signing this Agreement, these hours are subject to change, with no amendment to the Agreement necessary.
- b. **Inspection and Notification**
- City personnel shall inspect the Indoor and Outdoor Active Use Areas to ensure these sites are returned in the condition they were received.
- c. **Custodial**
- The City shall make its trash receptacles available during the Center hours of operation. User will encourage users to dispose of trash in the trash receptacles. User will ensure that its users leave the Indoor Active Use Areas and locker rooms with any equipment stowed away.
8. **Maintenance.** The City shall perform normal maintenance of Outdoor and Indoor Active Use Areas and the equipment contained therein to basic level of service subject to normal wear and tear. The City shall notify User of any known change in condition of the Active Use Areas. The City will maintain and repair equipment and fixtures contained in the Outdoor and Indoor Active Use Areas, including the equipment in the training room and ice rinks during the Term.
9. **Restitution and Repair**
- a. **Inspection and Notification.** User shall, through its designated employee, inspect and notify the City of any damage, as described above in subsection 5(h).

- b. If equipment, fixtures, or property of the City is damaged by User, except for repairs which are due to ordinary wear and tear and mutually agreed by the Parties, User is responsible for the cost of replacement or repair. The City agrees to make such repairs or replacement, depending on the extent of the damage, within the estimated and/or fixed costs agreed upon. If it is mutually determined or if it is the result of User under Section 10(c) of this Agreement that User is responsible for the damage, then User agrees to reimburse the City at the final cost invoiced to the City.
- c. Reimbursement Procedure. The City shall send the paid invoice to User's designated employee within ten (10) business days of completion of repairs or replacement of damaged property. The invoice shall itemize all work hours, equipment and materials with cost rates as applied to the repair work. If the repair is completed by a contractor, a copy of the contractor's itemized statement shall be attached. Actual costs shall be reimbursed if less than estimated and/or fixed costs. User shall reimburse the City within thirty (30) days from receipt of such invoice.
- d. Disagreements. User shall retain the right to disagree with any and all items of damage to buildings, facilities, property, or equipment as identified by the City, provided this disagreement is made within five (5) business days after a first notification.
  - i The City shall notify User of any disagreements in writing by email to User's designated employee. User shall clearly identify the reasons for refusing responsibility for the damages. Failure to make the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by User.
  - ii After proper notification, representatives from the Parties, or other designated representatives of the City and User, shall make an on-site investigation and attempt a settlement of the disagreement.
  - iii In the event an agreement cannot be reached, the matter shall be referred to the City Manager and User's President or their designees, for resolution.
  - iv The City shall have the right to make immediate emergency repairs or replacements of property without voiding EYHA's right to disagree.

11. Operational Costs

a. Documentation of Costs

The City and User shall maintain records of costs associated with the Agreement.

b. Payment of Overtime

Each party shall bear the cost of any overtime incurred by their employees in carrying out this Agreement.

12. Damage or Destruction. If the Center is damaged or destroyed by fire or other casualty (“Casualty”), City may, within one hundred eighty (180) days after such incident occurs (subject to being able to obtain all necessary permits and approvals, including, without limitation, permits and approvals required from any agency or body administering environmental laws, rules or regulations, and taking into account the time necessary to effectuate a satisfactory settlement with any insurance company) repair such damage at City’s expense and this Use Agreement shall not terminate. Notwithstanding any provision contained herein to the contrary, either party will have the option and right to terminate this Use Agreement if such an event occurs.
13. Liability and Indemnification. User hereby indemnifies and holds harmless the City, its elected officials, employees and agents (collectively, the “City Parties” and individually, a “City Party”) from, and if requested, shall defend them against all liabilities, obligations, losses, damages, judgments, costs or expenses (including reasonable legal fees and costs of investigation) (collectively “Losses”) as a result of or arising out of (a) personal injury or property damage caused by any act or omission during User’s use of the Center under this Agreement; or (b) any damage to any City property as a result of access granted pursuant to this Agreement; provided, however, User shall not be obligated to indemnify the City to the extent any Loss arises out of gross negligence or willful misconduct of the City.
14. Insurance
  - a. User: User agrees to obtain at its own cost and expense a policy or policies of commercial general liability insurance written by an insurance carrier rated at least Class A or better in Best’s Key Rating Guide of Property-Casualty Insurance Companies and licensed to do business in the State of Illinois which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others not arising out of any one occurrence. Said policy or policies shall provide, among other things, blanket contractual liability insurance. Tenant will provide at the time of signing this Use Agreement a Certificate of Insurance naming the City of Evanston, its elected officials, employees, and agents.
  - b. City: City is self-insured up to \$1.25 Million and agrees to maintain an excess policy or policies of commercial general liability insurance over the self-insured limit written by an insurance carrier with a rating at least Class A or better in the Best’s Key Rating Guide and licensed to do business in the state in which the Center is located which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of

not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others not arising out of any one occurrence. The City will issue a certificate of insurance at the time of execution of this agreement naming User as an additional insured. City shall maintain casualty insurance covering the entire Center and any alterations, improvements, additions or changes made by City thereto in an amount not less than their full replacement cost from time to time during the Term, providing protection against any peril included within the classification of "all risks".

- c. **Waiver of Subrogation.** Neither Party shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income for property or general liability losses, even though such loss or damage might have been occasioned by the acts or omissions of such party, its agents, contractors or employees. Notwithstanding anything to the contrary contained herein, City and User hereby release and waive any and all rights of recovery, claim, action or cause of action, against the other, or its respective directors, shareholders, officers, agents, invitees and employees, for any loss or damage that may occur to the property or the equipment, fixtures and improvements comprising any part of the Center, by reason of fire, the elements, or any other cause which could be insured against under the terms of an "all risk" fire insurance policy, in the state where the Center is located, regardless of cause or origin, including negligence of the parties hereto, their agents, officers, invitees and employees. Subject to the provisions of the Agreement, no insurer of a party hereunder shall ever hold or be entitled to any claim, demand or cause of action against either party by virtue of a claim of loss paid under any such insurance policies, whether such insurer's claim be in the nature of subrogation or otherwise.
15. **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to the subject matter of the Agreement and is subject to the laws of the State of Illinois. This Agreement also supersedes all other agreements and understandings, both oral and written, between the Parties relating to the subject matter of the Agreement. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.
16. **Attorneys' Fees.** The Parties shall bear its own costs, charges, expenses and attorney's fees, and any other fees incurred in the event of a dispute between the Parties. If User is providing indemnification, User will cover any attorneys' fees and costs.
17. **Amendment.** By mutual consent of the City and User or the User's legally or duly appointed agent or attorney-in-fact, any provision of this Agreement may be amended, modified, or deleted. Any such changes, deletions or additions shall be recorded in written signed addenda, which shall form part of this Agreement. User may not assign or transfer this Use Agreement or enter into a license agreement for any portion thereof without the written consent of the City.

18. Third Parties. Nothing herein expressed or implied is intended or shall be construed to give any person other than the parties hereto any rights or remedies under this Agreement.
19. No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.
20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction.
21. Freedom of Information Act. This Agreement and all related public records maintained by, provided to or required to be provided to the City are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this Agreement
22. Notices. Any notices required to be given hereunder, or which either party hereto may desire to give to the other, shall be in writing. Such notice may be given by reputable overnight delivery service (with proof of receipt available), personal delivery or mailing the same by United States mail, registered or certified, return receipt requested, postage prepaid, at the following addresses identified for Landlord and Tenant, or to such other address as the respective parties may from time to time designate by notice given in the manner provided in this Section.

If to the City:

City of Evanston  
 Attn: City Manager  
 2100 Ridge Avenue  
 Evanston, IL 60201

with a copy to:

City of Evanston  
 Attn: Corporation Counsel  
 2100 Ridge Avenue  
 Evanston, IL 60201

If to User:

Evanston Youth Hockey Association  
 ATTN: Brad Dunlap  
 1701 Main Street  
 Evanston, IL 60201

23. Severability. Except as otherwise provided herein, the invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other

provisions, and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein.

- 24. Savings Clause. If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions, or results, the remaining parts or portions of this Agreement shall remain in full force and effect.
- 25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile copy of a signature shall be as binding as an original signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above by their respective officers thereunto duly authorized.

EVANSTON YOUTH HOCKEY  
ASSOCIATION  
A not-for-profit organization

CITY OF EVANSTON  
An Illinois home rule municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: President

Its: City Manager

Print Name: Brad Dunlap

Print Name: Wally Bobkiewicz