

Facility Use Agreement

Between

**El Paso County Parks and
Pikes Peak Pickleball Association**

This Facility Use Agreement (Agreement) is made this 5th day of December, 2019 by and between El Paso County Parks, ("EPCP" or "El Paso County") and the Pikes Peak Pickleball Association ("PPPA"). EPCP and PPPA may be collectively referred to as Parties.

WHEREAS, El Paso County is developing twelve pickleball courts in Bear Creek Regional Park (Venue) that are scheduled to be completed in the summer, 2020; and

WHEREAS, PPPA is a local non-profit 501(c)3 organization incorporated under the auspices of the Secretary of State of Colorado for charitable and educational purposes to enhance the health and welfare of the general public by organizing, promoting, and helping to grow the sport of pickleball in El Paso County by: 1) fostering participation in local amateur pickleball activities, and 2) helping to reduce the administrative and financial burdens of local government; and

WHEREAS, EPCP and PPPA seek to share and utilize the skills and assets of their organizations, respectively, in further developing and enhancing services and capabilities at the Venue for use by the general public; and

WHEREAS, PPPA supports the public input/planning process, court design, Request for Proposal development, proposal evaluation, contract award and construction of the Venue and will provide \$100,000 in cash from PPPA and secure a \$20,000 grant from the El Pomar Foundation by January 1, 2020 that will be used for the development of the Venue; and

WHEREAS, PPPA's mission is to raise additional funds for local Colorado Springs and El Paso County pickleball court planning, development, maintenance and improvements through, and in coordination and partnership with the City of Colorado Springs Parks, Recreation and Cultural Services and El Paso County Parks; and

WHEREAS, PPPA has expressed a desire to further promote the sport of pickleball through community outreach, education, and training activities; and

WHEREAS, PPPA and EPCP agree that this public-private partnership for court development, collaborative community programming, fundraising, tournament-related tourism, and volunteer efforts at the Venue will benefit El Paso County, PPPA and the pickleball community; and

WHEREAS, EPCP recognizes the tremendous financial and technical support PPPA is providing to the County for the development, improvement, and maintenance of the Venue, and as such desires to allow for the PPPA to utilize the Venue under the terms of this Agreement.

NOW, THEREFORE, it is mutually agreed between the parties as follows:

Term: The term of this Agreement shall begin January 1, 2020 and shall terminate on January 1, 2023. The Agreement may be renewed for additional three-year terms with written agreement by both parties.

Site Hours of Operation: The Venue is available for pickleball use from 5 a.m. to dusk daily.

Payment: PPPA agrees to make a one-time donation of \$100,000 to El Paso County in addition to a \$20,000 grant from the El Pomar Foundation for a total contribution of \$120,000. All El Pomar Foundation grant funds donated for this project shall be spent for the development of the Venue. All other monies donated to El Paso County under this Agreement shall be used solely for the development, improvement, and ongoing maintenance of the Venue. PPPA agrees to cooperate with EPCP in the best method for providing the donations to El Paso County, which will be appropriately recognized by the El Paso County Board of County Commissioners. All donations will be provided to El Paso County by March 1, 2020.

PPPA Responsibilities: PPPA agrees to utilize the Venue consistent with their mission to promote the sport of pickleball through community outreach, education, training, conduct of amateur pickleball competitions, and sponsorship of other pickleball-related special activities.

1. Assist with the coordination of drop-in play from 7 a.m. to noon daily.
2. Provide education and training activities including free public lessons as well as PPPA managed guided play, round robin play, ladder play, skills & drills training and referee / line judge training and certification from noon to 5pm daily on mutually agreed upon reserved courts.
3. Conduct community outreach and other pickleball-related special activities that may include youth clinics, retirement center seminars, membership events, partner and sponsor teambuilding activities, and fundraising events.
4. Host, plan, coordinate, and conduct annual local, state / area, regional, or national pickleball tournaments in partnership with EPCP. PPPA will provide EPCP \$500 from the proceeds from PPPA-hosted or sponsored state / area tournaments and \$1,000 from the proceeds of PPPA-hosted regional and national tournaments to support the maintenance of the venue.
5. Serve as the point of contact for all public inquiries regarding PPPA-sponsored programs and events.
6. Provide liability insurance coverage per EPCP guidelines for all PPPA-sponsored program and events.
7. In coordination and partnership with EPCP, raise funds from corporate sponsorships, grants and tournament proceeds to help further develop, improve, and maintain the Venue.

EPCP Responsibilities: EPCP agrees to complete the following responsibilities to support the use of the Venue:

1. Reserve the Venue for drop-in play from 7 a.m. to noon daily.

2. Provide permits for mutually agreed upon reserved use at the Venue for free public lessons as well as PPPA managed guided play, round robin play, ladder play, skills & drills training, referee / line judge training and certification, and other PPPA-sponsored community outreach and pickleball-related special events. Courts will be provided free of charge for these activities that are free to the public and / or PPPA membership.
3. Establish and enforce rules at the Venue.
4. Oversee all site improvements or upgrades in collaboration with PPPA.
5. Oversee daily court maintenance.
6. Collaborate with PPPA on tournaments / special events requested by others at the Venue to ensure effective scheduling and resource planning.
7. Provide permits for mutually agreed upon use of the Venue for PPPA-hosted and / or PPPA-sponsored tournaments. If such tournaments are state / area, regional, or national tournaments, only the contributions listed under PPPA Responsibilities - #4 will apply. No fees will be required for PPPA-sponsored local pickleball tournaments on mutually agreed upon reserved courts.

Indemnification: PPPA agrees to hold harmless, defend and indemnify El Paso County, its elected officers, appointees, and employees against any all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the any activities, actions, or other conduct performed under this Agreement by the PPPA, its agents and/or employees on County property.

EPCP is prohibited by the Colorado Constitution from indemnifying PPPA; however, EPCP agrees to be solely responsible for its own willful misconduct or negligence of its own employees in relation to performing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to EPCP by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et. seq.* and Article XI of the Colorado Constitution.

Cooperative Efforts: This Agreement shall be liberally construed in order to promote continued partnership and harmonious relations between the Parties with regard to their responsibilities under this Agreement. In the event of a dispute between the parties regarding the interpretation of this Agreement, or the rights or obligations of the parties in any situation arising from the performance of the obligations or responsibilities under this Agreement, the parties shall meet and negotiate in good faith a resolution designed to promote the relationship between the parties.

Termination: It is understood and agreed that either party may terminate the Agreement. Termination shall be valid only after written notice by the terminating party is served upon the other party, at least thirty (30) days prior to the proposed date of termination.

Amendment: No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the Parties.

Merger and Integration: This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto.

Assignment: This Agreement may not be assigned without the written approval of both EPCP and PPPA.

Notice:

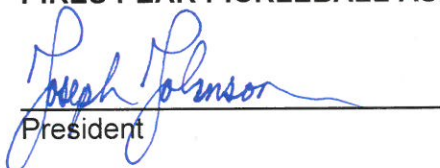
For PPPA: President, Pikes Peak Pickleball Association
8521 Dry Needle Place
Colorado Springs, CO 80908

For EPCP: Executive Director
Community Services Department
2002 Creek Crossing
Colorado Springs, CO 80905

All notices so given shall be considered effective when delivered by hand or in writing, as stated above.

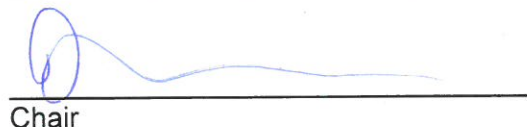
Third Party Beneficiary: The enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to EPCP and PPPA, and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other or third person.

PIKES PEAK PICKLEBALL ASSOCIATION:



President

BOARD OF COUNTY COMMISSIONERS:



Chair

ATTEST



Clerk and Recorder



APPROVED AS TO FORM:



County Attorney's Office