

LEASE AGREEMENT

A LEASE AGREEMENT ("Lease") between the Vancouver School District No. 37 ("District") and the City of Vancouver ("City"), collectively referred to as the "parties," relating to the lease of certain real property herein described, for an initial term of ten years in order for the City to continue operating and maintaining for said term a building known as the Vancouver Tennis Center hereinafter referred to as the ("VTC.") This Lease supersedes and replaces both the Lease Agreement dated February 10, 1975, the Lease Extension Agreement between the District and the City dated February 25, 2010, and the Agreement between the District and the City dated July 1, 2013.

WHEREAS, Vancouver School District No. 37 owns certain property in the City of Vancouver, Clark County, Washington, which the City has leased from the District since 1975, and has used such property to operate and maintain the VTC;

WHEREAS, the School District made substantial capital improvements during the expansion of the VTC;

WHEREAS, the City and District desire to continue having the City lease the property described herein in order to operate and maintain the VTC at its present location;

WHEREAS, the City and District have a history of entering into cooperative and mutually beneficial agreements for the use of each party's property;

WHEREAS, over the last decade, the VTC has struggled financially and has fallen short of the 100% cost recovery goals set for an "enterprise operation";

WHEREAS, the cost recovery ratio has dropped from 85.8% in 2013 to 74.9% cost recovery in 2016;

WHEREAS, there are many operational issues that make running the most efficient tennis center extremely difficult for a governmental agency;

WHEREAS, in order to operate this important community asset well into the future, the City decided to look for a different provider to operate the VTC in the most effective and efficient manner;

WHEREAS, the City has currently determined that the United States Tennis Association/Pacific Northwest Section ("USTA/PNW") possesses the qualities and experience to operate the VTC in a professional, efficient and effective manner for the improved benefit of the community; and

WHEREAS, the Parties are aware that the City and USTA/PNW intend to enter into an agreement for the operation and management of the VTC by USTA/PNW ("Services Agreement") subject to City and District entering into a new lease arrangement.

NOW, THEREFORE, it is hereby AGREED between the parties as follows:

1. **Property Description and Use.** Since 1975, the District has leased to the City approximately 5.14 acres of land in order for the City to operate and maintain the VTC. The VTC is located at 5300 East 18th Street Vancouver, WA 98661.

The building, and associated grounds, shall continue to be used only for a tennis center with ancillary uses such as pickleball activities, related retail sales and associated parking. No other uses shall be allowed except such as may be approved by written modification as provided in Paragraph 17 below. The Parties further agree that no onsite parking meters will be placed at the VTC during the term of this Lease.

2. **Term and Consideration.** This new lease is for an initial term of ten (10) years and shall commence on ~~3/22~~ 2018, and shall expire on ~~3/22~~ 2028. As full consideration for this Lease, the City shall allow the District to use the VTC as set forth in Exhibit A, attached hereto and incorporated herein. The term of the Agreement will continue without interruption automatically following the Initial Term for an extended, renewal term of an additional ten (10) years, at the consideration and upon the terms of this Lease, unless this Agreement is first terminated pursuant to this Section 14. If the Lease is extended for the additional ten (10) year term, it shall expire on March 22, 2038. The Parties agree that with the execution of this Lease and as of the Effective Date, the former lease[s] is hereby terminated and of no further force and effect, except that any and all rights that survive termination, shall continue to survive according to their terms.

3. **Annual Meeting.** The City, the District, and its 3rd party vendor shall meet with the District's Athletic Director annually. The meeting shall take place no later than July 15th each year to determine the following school year's schedule. Any proposed change in usage by the District including additional court usage time by the District shall be reviewed.

4. **Property Purchase.** During the term of this Lease the City and District may agree for the City to purchase such land and building (or any portion of such land) pursuant to the provisions of RCW 28A.335.120, as it now provides or as amended. Subject to Section 14b, the City shall have the right of first refusal regarding the purchase of the VTC in the event that the District elects to sell or change the use of the VTC, subject to execution of a formal purchase and sale agreement.

5 **Dispute Resolution.** In the event of a dispute between the parties concerning any matters arising under this Lease, the parties shall first attempt to negotiate a settlement of such a dispute between themselves. Absent such a settlement, a Dispute Panel shall decide such dispute in the following manner: each party to this Lease shall appoint one member to the Dispute Panel, and the members so appointed shall jointly appoint an additional member to the Dispute Panel. The Dispute Panel shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The parties shall equally share the costs, if any, for the services of the Dispute Panel. A decision of the Dispute Panel shall be nonbinding and inadmissible in any arbitration or litigation.

If the Dispute Panel does not resolve the issue to the satisfaction of all parties, either party may

seek resolution of the dispute through litigation, the venue of which shall be in the Clark County, Washington Superior Court.

Nothing in this Lease shall impair a party's right to seek injunctive relief from the Clark County, Washington Superior Court if immediate and irreparable injury, loss or damage to any rights arising from this Lease is alleged prior to the dispute resolution process described in Section 5 of the Lease.

6. **Indemnity and Hold Harmless.** The City agrees to indemnify and hold harmless the District from all injuries or damages which may accrue or be alleged to accrue to any person or corporation, public or private, as a result of this Lease or any use to which such building may be put during the term of this lease caused by the negligence of the City or its third-party vendor. This indemnity and hold harmless shall not apply in the case where liability arises from the sole negligence of the District.

7. **Subcontracting.** The City and District agree that the City may subcontract daily management, operations and maintenance of the VTC to a third-party vendor. The City is responsible for compliance with the terms of this Lease. All subcontracting agreements require prior review and approval by the district's Assistant Superintendent, Chief Operations Officer. District has reviewed and approved PSA No. 89759.

8. **Utilities and Taxes.** The City shall be solely responsible to pay for all utility services provided to the VTC. The City further agrees to be responsible for all taxes and assessments which may hereinafter be assessed against the property during the term of this lease and agrees to hold the District harmless thereof.

9. **Maintenance of Property.** The City agrees that it, or its third-party vendor, shall maintain the property during the Lease period and agrees that such property shall be maintained to approximately the same standards as other similar properties under the City of Vancouver Parks & Recreation Department with general wear and tear to be expected over time.

10. **Surrender of Property.** Unless provided otherwise in any extension made to this Lease under paragraph 2, the City upon the termination date of this Lease or extension thereof or termination by the City under paragraph 14, shall either negotiate to determine if the parties can agree upon purchase of the VTC from the District or surrender the VTC and all appurtenances to the District. No part of any building or of the premises or any fixtures shall be removed by the City during the term of this Lease except with the prior written approval of the District except as reviewed and approved in PSA No. 89759.

11. **Insurance.** The City, and/or its third-party vendor, shall reasonably insure or otherwise provide for bodily injury, liability and property insurance of all insurable property and equipment in an amount at least equal to that usually carried for comparably operated private properties.

12. **Failure to perform.** Time is of the essence for this Lease and the failure on the part of the City to pay the costs to operate and maintain the facility; or to keep and perform each and every obligation on their part shall constitute a breach of this Lease. Prior to any claim for breach being made, both the City and the District shall have an opportunity to cure any alleged breach. If a party fails to comply with any provision of this Lease, the other party shall deliver written notice to the non-complying party, as well as the 3rd party vendor, specifying the non-compliance. The non-complying party shall have thirty (30) days after delivery of such notice to cure the non-compliance or to reach substantial compliance. If after expiration of the cure period, the claimed breach is not cured, substantial compliance is not reached, or if more time is not granted, the District may, at its option, elect to declare this Lease null and void, and in which case the City agrees to immediately quit and surrender the premises.

13. **Transfers and Assignments.** It is understood that this Lease shall not be assigned or transferred by the City either directly or indirectly, nor shall the premises be sub-leased by the City either directly or indirectly without the written consent of the District, which shall not be unreasonably withheld. It is understood that the City may use a third-party vendor for daily management, operations, and maintenance of the VTC. The City shall remain solely responsible for compliance with the terms of the Lease.

14. **Termination.**

- a. This Lease may be terminated by either party for a material breach of the Lease that is not cured, with proper notice of the breach being provided as specified in Section 12.
- b. The City and the District acknowledge the requirements of RCW 28A.335.040, which requires the District be permitted to recapture the use of the facility should it be needed for school purposes, based on a finding that programs vital to the current educational needs of the District cannot be conducted except by use of the facility. If the District elects to recapture the property and structure of VTC pursuant to RCW 28A.335.040, the District agrees to provide no less than six (60) days written notice of recapture to City and agrees to repay to the City the depreciated value of tenant improvements based on the industry standard life cycle of the asset. At the completion of initial tenant improvements, the District will receive a summary of improvements with their final costs and the industry standard life cycle for each. The total value of the initial tenant improvements that can be claimed will not exceed \$1.1 million.

15. **Non-Waiver.** Any waiver of any breach of covenant, condition or agreement herein contained to be kept and performed by the City shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the District from declaring a forfeiture for any subsequent breach either of the same covenant, condition or agreement or otherwise.

16. **Severability.** Any provision of this Lease, which proves to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease, and such other provisions

remain in full force and effect.

17. Modification. This Lease contains the entire agreement between the parties hereto, and no modification of this Lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this Lease.

18. Additional Miscellaneous. No remedy herein conferred upon or reserved to either Party shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative. In interpreting or construing this Lease, it is understood that if the context so requires, the singular pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations, partnerships, and individuals. Section headings are for convenience and shall not affect any of the provisions of this Lease. All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

19. Ratification. Acts taken pursuant to Lease, but prior to its approval are hereby ratified and confirmed.

20. Covenant of Quiet Enjoyment. District covenants and agrees that, as long as no event of default shall have occurred that remains uncured beyond any applicable cure period allowed by this Lease, City shall peaceably and quietly have, hold and enjoy the Premises during the term of this Lease without any interruption or disturbance from District or any party claiming by, through or under the District, subject to the terms and conditions of this Lease.

21. Force Majeure. Whenever a period of time is prescribed in this Lease for action to be taken by either Party, such Party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, acts of terrorism, laws, or any other causes of any kind whatsoever, which are beyond the reasonable control of the party.

CITY OF VANCOUVER, WASHINGTON



Eric Holmes, City Manager

Dated: 3-21-18

ATTEST:



VANCOUVER SCHOOL DISTRICT NO. 37



Michelle Giovannozzi, District Board President

Dated: MAR 09 2018

ATTEST:

Natasha Ramras, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Dated: 3/22/18

Approved as to form:


E. Bronson Potter, City Attorney

Dated: 3/21/18



Dr. Steven Webb, Secretary to the Board

Dated: 3.9.18

Approved as to form:


Marilee Searbrough, Attorney for the District

Dated: 3-9-18

EXHIBIT A

VANCOUVER SCHOOL DISTRICT USAGE OF VTC

The City, and its third-party vendor, agree to provide reasonable tennis court space and time, including use of the ball machine and video system, to team members and coaches of the tennis teams of the following Vancouver School District #37, Clark County, Washington high schools: Fort Vancouver High School, Hudson's Bay High School, Columbia River High School, and Skyview High School, and to no other district's schools or persons. The listed high schools shall be further referred to as the "District." The City, and its third-party vendor, shall not charge a fee for such services.

Such services shall be provided upon the following schedules, unless the third-party vendor and the District agree in writing to modify the following schedules. The District reserves the right to place individual schools within the schedule, as it deems necessary.

A. Indoor Court Schedule – Inclement Weather for all four high schools.

BOYS PROGRAM – Practice Schedule (1 court per school per day) (August, September, October)	Monday	Tuesday	Wednesday	Thursday	Friday	Total Hrs. Per Week
District slot A	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 4:15pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
District slot B	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 4:15pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
District slot C	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:30pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
District slot D	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:30pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
					Total Hrs. Per Week	32

GIRLS PROGRAM – Practice Schedule (1 court per school per day) (February, March, April, May)	Monday	Tuesday	Wednesday	Thursday	Friday	Total Hrs. Per Week
District slot A	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 4:15pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
District slot B	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 4:15pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
District slot C	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:30pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
District slot D	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:30pm	
# of Hours	1.5	1.5	1.5	1.5	2	8
					Total Hrs. Per Week	32

- * The District shall determine which schools may need the available indoor court slots during inclement weather and will communicate that to the 3rd party vendor.
- * All players advancing through to the State Tournament shall receive reasonable access to courts.
- * Indoor court usage during the off-season is not available.
- * District shall provide the 3rd party vendor a minimum of 3 weeks' notice of court use cancellation.
- * The VTC shall abide by all applicable WIAA and District rules

B. Outdoor Court Schedule – for Fort Vancouver High School only.

BOYS PROGRAM – Practice Schedule (4 courts) (August, September, October)	Monday	Tuesday	Wednesday	Thursday	Friday	Total Hrs. Per Week/Per School
Fort Vancouver High School	2:15pm – 7:15pm	2:15pm – 7:15pm	2:15pm – 7:15pm	2:15pm – 7:15pm	2:15pm – 7:15pm	
# of Hours	5	5	5	5	5	25

						Total Hrs. Per Week	25 per week x 4 courts = 100 total hours
GIRLS PROGRAM – Practice Schedule (4 courts) (February, March, April, May)	Monday	Tuesday	Wednesday	Thursday	Friday	Total Hrs. Per Week/Per School	
Fort Vancouver High School	2:15pm – 7:15pm	2:15pm – 7:15pm	2:15pm – 7:15pm	2:15pm – 7:15pm	2:15pm – 7:15pm		
# of Hours	5	5	5	5	5		25
					Total Hrs. Per Week		25 per week x 4 courts = 100 total hours
BOYS/GIRLS PROGRAM – Practice Schedule (2 courts) (June/July)	Monday	Tuesday	Wednesday	Thursday	Friday	Total Hrs. Per Week/Per School	
Fort Vancouver High School	7:00am – 9:00am	7:00am – 9:00am	7:00am – 9:00am	7:00am – 9:00am	7:00am – 9:00am		
# of Hours	2	2	2	2	2		10
					Total Hrs. Per Week		10 per week x 2 courts = 20 total hours

* VTC may request to utilize up to 6 days of pre-allocated summer court dates, for summer programs and events for the community.

Additional benefits offered by the VTC:

1. Free ball machine use (subject to availability) for indoor practice times.
2. Extra court time in the morning before 7:30 a.m. or in the evening after 8:30 p.m. with the ball machine (subject to court and ball machine availability) during the season on school dates.

Facility Usage:

1. The City, the 3rd party vendor, and the District shall meet with the District's Athletic Director annually. Meetings shall take place no later than July 15th each year to determine the following school year's schedule. For example, the July 15, 2018 meeting shall determine the 2018/2019 school year schedule. The parties shall negotiate in good faith to determine if any changes to VTC usage schedule are appropriate for each school year. In the event that the parties are not able to agree, then the schedule set out above shall apply. Notwithstanding the foregoing, and subject to the provisions of Section 9 of the lease agreement, the above schedule shall not apply, and tennis court time and use of VTC facilities shall not be available, when VTC is closed due to construction, adverse weather, or other conditions.
2. Use of the VTC indoor courts shall be made solely by the District's high school tennis team members and coaches for team practices and for no other person or purpose. Each high school's maximum indoor tennis court usage shall not exceed 60 practices. No other uses are allowed.
3. Use of VTC outdoor courts shall be made solely by the Fort Vancouver High School tennis team members and coaches for team practices and for matches. An additional 160 courts hours is provided to Fort Vancouver High School for the months of June and July for its tennis team practice only. No other uses are allowed.
4. Each high school, and/or tennis team members, shall supply their own tennis equipment and balls, including practice balls and balls for the ball machine.