

CITY OF VANCOUVER 89759
PROFESSIONAL SERVICES AGREEMENT No.
VANCOUVER TENNIS CENTER OPERATIONS AND MANAGEMENT

This Agreement is made and entered into as of the Effective Date defined below by and between the City of Vancouver, a municipal corporation, organized under the laws of the State of Washington, hereinafter referred to as "City," and United States Tennis Association/Pacific Northwest Section, a public benefit corporation of the State of Oregon, hereinafter referred to as "Contractor," whose address is 9746 S.W. Nimbus Ave., Beaverton OR 97008.

WHEREAS, the City leases the property and improvements thereon generally known as the Vancouver Tennis Center ("VTC"), located at 5300 E. 18th St., Vancouver, Washington, from the Vancouver School District No. 37 ("District") pursuant to lease dated February 12, 2018 ("Lease") a copy of which is attached hereto and incorporated as Addendum D;

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 desires to engage the Contractor to operate and maintain the VTC, and other related services, pursuant to Addendum B – Statement of Work;

WHEREAS, the Contractor has agreed to provide its professional services of the nature described in Addendum B – Statement of Work, attached hereto;

WHEREAS, the City Council approved on February 12, 2018, Staff Report No. 202-18; and

WHEREAS, the Contractor has represented by entering into this Agreement that it is fully qualified to perform the services under the Addendum B – Statement of Work in a competent and professional manner, and to the standards required by City as defined herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

The City hereby agrees to engage the Contractor and the Contractor hereby accepts the engagement and agrees to perform the services under the Statement of Work solely with respect to the Premises outlined in Addendum E attached hereto and incorporated herein, and as set forth

herein.

A. ROLES AND RESPONSIBILITIES

1. City Obligations. Subject to this Agreement, the City shall be responsible for overseeing Contractor's services provided for under the Addendum B – Statement of Work and this Agreement for the operation of VTC. The City further agrees that it shall comply with the terms of the Lease and take no action to purposefully cause the Lease to terminate. The City shall be available to provide historical and community perspective, and shall assist in communications to stakeholders and facility users when requested by Contractor. The City shall also be responsible for its other obligations as specifically set out herein.

2. Contractor Obligations. Subject to this Agreement, the Contractor shall provide the services set out in the attached Addendum B – Statement of Work, and no other services unless separately agreed to in writing by these Parties. The Contractor is responsible for ensuring that VTC is managed and operated as a public tennis facility, with access and use by the students and staff of the District as set out in Addendum A, attached hereto. The Contractor shall also be responsible for its other obligations as specifically set out herein. Notwithstanding anything contained herein to the contrary, the Contractor shall determine in its sole discretion how best to provide its services, including operation days, hours and staffing. Contractor is permitted to close VTC for up to two weeks each year for cleaning and maintenance, and Contractor will use its best efforts not to interfere with the schedule set out in Addendum A.

3. Consent. The City consents to allow Contractor to retain a third-party retail vendor to provide limited sales of equipment, clothing and food on the Premises.

B. TERM OF CONTRACT AND TERMINATION

1. Initial Term. The initial term is for five (5) years commencing on the Effective Date.

2. Renewal Term. The term of the Agreement shall continue without interruption automatically following the Initial Term for an extended, renewal term of an additional fifteen (15) years unless this Agreement is first terminated pursuant to this Section.

3. Early Termination Upon Breach and Failure to Cure. This Agreement may be terminated by a Party (the "Terminating Party") providing Notice of Termination to the other Party ("Breaching Party") in the event the Breaching Party becomes in breach of its obligations under this Agreement and fails to cure reasonably the breach within thirty (30) days following receipt by the Breaching Party of Notice of Breach from the Terminating Party, which Notice of Breach specifies in detail the elements of breach. In the event that the breach cannot be cured within the thirty (30) day period notwithstanding reasonable efforts undertaken by the Breaching Party, then it shall be sufficient for the Breaching Party to commence reasonable efforts to cure the breach within the said thirty (30) day period provided that the cure is completed within a reasonable time thereafter. Only in the event that the Breaching Party fails to undertake and affect cure efforts as provided for above shall the Terminating Party be permitted to provide a Notice of Termination.

4. Termination. The parties agree that if the Lease is terminated for any reason, this

Agreement shall also terminate. The City shall provide the Contractor with as much notice as possible should the process to terminate the Lease be initiated. Notwithstanding the foregoing, this Agreement will not terminate if the sole reason for the termination of the Lease is due to the City's purchase of the VTC from the District.

5. Termination for Insolvency. Notwithstanding anything contained herein to the contrary, either Party may terminate this Agreement upon ten (10) days' advance notice to the other Party if the other Party becomes insolvent, files for bankruptcy protection, is placed into receivership, or is liquidated.

6. Termination for Recapture. The City agrees to provide at least sixty (60) days advanced written notice to Contractor of the District's intent to recapture, and to repay to the Contractor the depreciated value of tenant improvements calculated as of the date of the recapture and based on the industry standard life cycle of the asset, within ten (10) days after the recapture. At the completion of initial tenant improvements, the City 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 dollars.

7. Terms Run To End of Month. All term periods shall continue through the last day of the applicable month in which the term ends.

C. FINANCIAL OVERVIEW

1. No Rent. Except as expressly provided for herein, Contractor shall not pay any rent or other form or style of compensation or consideration to City, except that Contractor is responsible for the direct payment of all utility costs associated with the operation of the VTC and any applicable taxes that may be assessed, including but not limited to Business and Occupation (B&O) taxes. In the event that Contractor does not pay due and owing B&O taxes, the City may make any necessary payment, but Contractor shall remain liable to City for reimbursement of the payment along with any assessed fines or fees.

2. No Payment by City. Except as expressly provided for herein, City shall not pay any form or style of compensation or consideration to Contractor.

3. Financial Affairs of VTC. The Contractor shall directly incur all expenses and collect all revenues associated with operations of VTC, and shall track VTC expenses and revenues in a designated account separate from other Contractor's other business activities so that they can be tracked accurately and effectively. It is the expectation of both parties that over time revenues from VTC shall cover expenditures. At such time that revenue exceeds expenditures, Contractor may, but is not required to, apply revenue to capital recovery up to the initial \$1.4 million capital investment. After such time that revenue exceeds expenditures and the capital recovery of \$1.4 million has been met, Contractor may, but is not required to, apply excess funds to VTC improvements as Contractor sees fit.

4. Quarterly Reporting. The Contractor shall provide quarterly financial reports to the City to verify compliance with applicable laws and procedures relating only to this Agreement and the operation of the VTC. Reports must be provided within 45 days of the quarters end. Additionally,

Contractor agrees specifically to comply and cooperate reasonably with any audit required by the City or the State Auditor including the use of a third party auditor by either agency. Any unreasonable failure to comply with the applicable laws, procedures, and terms of this Section is a material breach of the Agreement.

5. Annual Financial Reports. The Contractor shall provide annual audited financial reports from a third party vendor to the City pertaining solely to operation of VTC by May 15th for the prior fiscal year. The Contractor shall track all expenses and revenues in a manner that meets current accounting principles and regulations.

6. Fees and Charges for Use of VTC. Contractor is responsible to establish usage programs and memberships, and to set and collect usage charges for use of the VTC facilities by VTC members and the public. Unless otherwise agreed to in writing by these Parties, the use of VTC by the District pursuant to the provisions of Addendum A hereto shall be without fees and charges. Contractor may collect certain information from individuals as part of a registration process. Contractor agrees to use the collected information in compliance with all applicable laws, rules and regulations, including, without limitation, those governing online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder); and applicable Payment Card Industry Data Security Standards.

D. TRANSITION OF SERVICES

1. Transition Date and Closure. The City and Contractor (Parties) agree that a transition period is necessary to transfer the operation of the VTC from present management and staff to Contractor. The Contractor shall select an appropriate transition date and shall notify the City of a final date of transition of services within sixty (60) days of the execution of this agreement. This transition must occur no later than September 1, 2018, unless the City grants a written extension. The City shall grant the extension if the City has failed to substantially complete by September 1, 2018, its Current Improvements set out in Addendum C hereto. Contractor may close the VTC for up to four (4) weeks beginning with the transition date in order to accommodate move in, staff training and related needs, and Contractor will use its best efforts not to interfere with the schedule set out in Addendum A.

2. Transition Assistance and Process. The Contractor and the City shall work together in good faith with one another and with other key stakeholders to ensure a smooth transition of operations and maintenance of the VTC. Following VTC reopening after the date of transition, the Contractor shall have trained staff scheduled to work, a registration and point-of-sale system, updated building signage, additional signage on the grounds at Contractor's discretion, on-court tennis equipment at Contractor's discretion, and website. VTC members and regular customers shall be advised of new fees, processes and systems.

3. City Equipment. At the time of transition, all equipment, furnishings, and supplies at VTC owned by the City shall be inventoried by the City and shall remain the sole property of the City. All computers, phones and other IT systems shall be removed from the VTC. This does not include the in wall fiber optic wiring, which shall remain on site. Contractor may use remaining City property at no charge, or may ask that it be removed. If Contractor wants anything removed prior to transition, or to use any of the City property after transition, the Contractor must provide the City a

written request at least thirty (30) days prior to transition date. Notwithstanding the foregoing, the following City equipment shall remain at VTC following the transition date for use by Contractor until such time that Contractor requests that the following be removed: all office furniture and furnishings, including desks, cabinets and chairs. City shall leave the VTC bathrooms, showers, welcoming area, storage spaces in the indoor center and the external racquetball center, and all offices and staff spaces, broom clean and free of debris as of the transition date.

4. Contractor Equipment and IP. Contractor shall provide its own equipment, furnishings and supplies for use at VTC. All such items provided by Contractor shall remain the sole and exclusive property of the Contractor, free from any claim or right by City or the District. Notwithstanding anything contained herein to the contrary, the Contractor in its sole discretion shall determine what equipment and furnishings to bring onto the VTC together with the timing for doing so, which discretion shall be influenced by the extent and timing of the anticipated capital repairs and remodel of VTC. Additionally, all signage, trademarks, logos, marketing material, marketing and branding concepts and art, educational material, operational material, Contractor's website and domain, including all content on the website, curricula, programming, staffing and training philosophies, the point of sale system, the membership tracking software and its data, the registration and scheduling system, that Contractor develops, acquires or uses in its operation of VTC shall be and shall remain the sole and exclusive property of Contractor, free from any claim or right by City or the District. The City agrees not to use, copy or interfere with Contractor's rights in Contractor's property identified herein except upon Contractor's prior written consent.

5. VTC Staffing. The Contractor shall create a process to ensure that the City's VTC staff will be invited to apply for all positions that are posted for hiring at the VTC. All current VTC staff will be guaranteed a first round interview for positions they apply for at the VTC, and Contractor agrees to conduct a fair interview process.

6. Existing Memberships. The City has sold memberships to use at VTC that remain outstanding. Contractor shall complete an analysis of the best manner in which to honor existing memberships, including potentially "grandfathering" these members in at current pricing for a defined period of time, however Contractor is not precluded from modifying the terms of existing memberships if it sees fit to do so. The Contractor shall also identify new pricing and membership fee structures prior to the first day of operations. The pricing and membership fee structures must include an option for daily drop-in play. Contractor is free to modify pricing and membership fee structures periodically. Contractor shall develop strong business practices with performance targets to ensure ongoing access and recreational benefits to the community, including reasonable hours and competitive rates and fees.

E. COMMUNICATIONS AND PERFORMANCE REVIEW

1. Annual Review. The City and Contractor agree to meet at least annually to review primary performance measures including financial reports, court utilization and customer updates. Both parties agree to endeavor to maintain regular communication between their key staff to ensure that issues are dealt with quickly and efficiently. Both parties agree the fiscal year, as related to VTC is January through December. Relating only to this Agreement and the operation of the VTC

2. Performance Matrix. Contractor shall develop and provide the City at least annually with

a Performance Matrix that measures and monitors customer satisfaction, employee satisfaction and key financial performance indicators. Relating only to this Agreement and the operation of the VTC

3. Operational Report and Plans. On or before December 1st during the Term, the Contractor shall provide a written update to the City on facility performance and operating plans for the upcoming year relating only to this Agreement and the operation of the VTC. This update shall provide information such as current financial performance, facility utilization, membership, instruction participation and other major measures of performance to be defined by the Contractor. An annual operating plan shall also be presented which shall include anticipated changes to rates and fees, significant program changes, significant tournaments or special events, changes in organization or staff, major marketing efforts and other reasonable items deemed noteworthy. In addition, Contractor shall be required to prepare and submit annual marketing, maintenance, business, and budget plans and fee schedule to City for review relating only to this Agreement and the operation of the VTC. Contractor shall be responsible for preparing an annual operating budget to address ongoing operational needs and shall provide City an annual income and expense report. The City may make comments or suggestions, but final operational decisions shall remain with the Contractor as operator. All records specific to VTC and the Contractor's operation of VTC shall be retained and made available upon request to City for the duration of the contract. City reserves the right to request reasonable additional information pertaining to the operation of the VTC at any reasonable time. Notwithstanding anything contained herein to the contrary, the Contractor is not required to provide City with any information of any type pertaining to any other of its business affairs and operations apart from its services under this Agreement.

4. Marketing. The City agrees to provide the opportunity to Contractor to market through the City's communications tools including website, catalog, email newsletters and other strategies that are identified. The frequency of messaging and space provided shall be at the discretion of the City in planning and publishing these materials. The City may provide these marketing services at no cost (\$0) to the Contractor. The Contractor is not required to use the City's communication tools, but may do so in its sole discretion. Any information that Contractor contributes to or publishes through the City's communications tools remains the sole and exclusive property of the Contractor and the City does not obtain any rights therein.

F. CAPITAL COMMITMENTS

1. By the City. At its sole cost, the City shall make repairs and improvements equaling at least \$700,000 by correcting the currently identified and known exterior roof leaks, wall gaps and door weatherization, which repairs shall be completed no later than August 30, 2018, and which repair and improvements are defined in the attached Addendum C ("Current Improvements"). Further, the City at its sole cost shall be responsible for the ongoing repair, maintenance and replacement, if reasonably necessary, of the (a) roof, (b) all structural components, and systems of the VTC and on the Premises (Addendum E) except for any structural, components, and systems brought onto the VTC and Premises by Contractor or any modifications made to structural components, and systems of the VTC by Contractor, (c) mold remediation, (d) the VTC parking lot, including resurfacing, resealing and/or restriping when required, and (e) the exterior parking lot lighting and walkway lighting ("Future Improvements") not to exceed \$12,000 dollars per year reasonably adjusted for current inflation rate. The City shall undertake the Current Improvements and Future Improvements promptly and reasonably so as to minimize any inconvenience to

Contractor and to users of VTC. The City shall conduct evaluations and determine the appropriate actions and shall share this information with the Contractor. The City is solely responsible for obtaining any necessary permits for the above described work, the cost, if any, associated with those permits, and any contingency funding necessary to complete the work. The ongoing repair, maintenance, and replacement described herein specifically excludes the racquetball courts at the VTC. Due to the fact that the City has permanently closed the racquetball courts to public access, neither the City nor USTA is required to make any improvements, repairs, maintenance or replacement of the racquetball courts pursuant to this Agreement, but either Party may do so at their sole discretion.

2. By the Contractor. At its sole cost, the Contractor agrees to complete capital improvements in an amount equal to at least \$1,400,000 to address, at minimum, the following areas of improvement: remodeled entrance and lobby, remodeled restrooms/locker rooms, installation of ceiling liner, indoor court improvements including lighting, court resurfacing, on-court technology and repainting indoor mainframe, development of a website, and reservation and point of sale system. Also included is resurfacing of tennis courts at other city parks which is reflected in a separate contract between City and Contractor. These improvements should be completed no later than eighteen (18) months after the City completes Current Improvements. Contractor will not take possession of the VTC until such time as the Current Improvements (Addendum C) are substantially completed by the City. The Contractor is solely responsible for obtaining any necessary permits and inspections, and the associated costs. Additionally, the Contractor is solely responsible for any contingency funding necessary to complete its work. Further, Contractor agrees that ongoing repair and maintenance of these capital improvements shall remain the sole responsibility of the Contractor during the term of this Agreement. The City shall approve the final scope of improvements, if there are any changes, prior to construction after detailed cost estimates have been developed. The value of any tenant improvements must be added to the financial audits and properly amortized. Upon termination of this Agreement, any attached fixture shall become the property of the City. During the Term of this Agreement, Contractor agrees to allow the City periodic inspections of the VTC and associated grounds at a reasonable time. City shall provide reasonable advanced notice of any inspection.

3. Coordination. The Parties shall coordinate with one another to complete capital projects in a manner that minimizes disruption to VTC facility operations, the Contractor and VTC users. Temporary closures of a portion of the facility or the entire facility shall be discussed by the Parties in advance of construction and shall be kept to a minimum.

4. Damages. The Parties agree that Contractor cannot fully undertake the capital projects set out in F 2 above until the City first completes its Current Improvements. In the event that City fails to complete its Current Improvements timely, as outlined in Section F 1, the Parties agree that Contractor may incur damages consisting of reduced revenues and increased costs relating to operating the VTC.

5. Ongoing Small Capital Projects. Subject to the City's obligation for Current Improvements and Future Improvements, the Contractor shall be responsible at its sole expense for other ongoing small capital projects valued at \$10,000 or less, which Contractor determines in its sole discretion may be beneficial for the operation of the VTC. Contractor will use its best efforts not to disrupt or delay the District's access as provided in Addendum A.

6. Other Large Capital Projects. Apart from the City's obligation for Current Improvements and Future Improvements, and apart from the Contractor's obligations identified in section F 2, the Parties may, but are not required to, mutually agree from time to time concerning additional future large capital projects of a cost in excess of \$10,000. Contractor shall take the lead in designing and planning construction of improvements, including vendor selection, due to its access to experts in tennis facility design and management when the project is solely funded by the Contractor. If the City jointly funds a large capital project with Contractor, the Contractor shall take the lead in designing and planning construction of improvements, unless rules and policies regarding City's contribution to the project dictate otherwise. The Parties may, but are not required to, agree to jointly fund future capital improvements. Prior to any project, both Parties shall commit in writing to the scope of improvements, financial commitment and which Party shall manage implementation. Either Party may also decide to entirely fund a capital improvement project. Contractor will use its best efforts not to disrupt or delay the District's access as provided in Addendum A.

7. Procurement Rules. The Parties agree that the Contractor, by virtue of its specialized knowledge and experience in operating tennis programs and facilities, may be required to employ technical and specialized services and goods from experienced third-party vendors. The Contractor shall have sole authority to select vendors for goods and services and the capital improvement projects that it participates in. If no City funds are being contributed, the Contractor agrees that it shall comply with all applicable state laws governing the process including, but not limited to, procurement, prevailing wage, if required by law, and all relevant and applicable rules of the Washington State Human Rights Commission, the Washington State Law Against Discrimination, and the U.S. Equal Employment Opportunity Commission and any other applicable Revised Code of Washington (RCW) or Vancouver Municipal Code.

If any City funds are contributed, the Contractor agrees that the City's procurement process must be followed and that the City shall take the lead on these projects from start to completion.

G. SIGNAGE

The Contractor is permitted to install, at its sole cost and discretion, signage bearing its trademarks and brands at the premises of the VTC, both interior and exterior, including a sign near the abutting roadways and exterior roof signs. All signs must comply with state law, City zoning regulations and the Vancouver Municipal Code. The City consents to allow its name, trademark and branding to be incorporated into the signage at Contractor's sole discretion without charge. Contractor is authorized to create outside signage that includes only the "Vancouver Tennis Center" and the USTAPNW". Any additional names or language must be approved by the City in writing prior to permitting and installation.

H. CONSISTENT APPLICATION OF DOCUMENTS

This Agreement and its Addendums shall be interpreted and applied consistently and as a part of the entire understanding and agreement of these Parties. Any amendment of this Agreement or its Addendums shall be limited by its terms and shall not take priority over any aspect of this Agreement or Addendums except as expressly provided in the amendment. In the event either Party issues a future purchase order, request for proposal, memorandum of work, or any other document

("Miscellaneous Documents") relating to the obligations of one Party or the other hereunder, then the provisions of the Miscellaneous Documents shall not supersede or control any aspect of this Agreement or Addendum unless the Miscellaneous Document is first signed by both Parties.

I. RELATION OF THE PARTIES

The Contractor, including its agents and contractors, are independent contractors performing professional services for City pursuant to this Agreement, and for no other purpose, and are not employees of City. The Contractor, its employees, agents and contractors, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees. The Contractor, its agents and contractors, shall not have the authority to bind City in any way except as may be specifically provided herein.

J. E-VERIFY

Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after the Effective Date. Contractor shall ensure all Contractor employees and agents retained under Section A 3 of this Agreement assigned to perform work under this Agreement, are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply reasonably with this paragraph shall be considered a material breach.

K. ACCESS TO RECORDS AND DOCUMENTS

The Contractor shall ensure that records generated from operation of VTC, including but not limited to, financial transactions and customer actions at the VTC, are maintained and retrievable pursuant to the applicable City retention period. The City shall be granted access to any such VTC records it deems necessary to satisfy oversight responsibilities and any other legal requirements, and shall be granted the right to copy any such records necessary to fulfill these obligations. The Contractor shall provide access to these records upon request in a timely manner. Notwithstanding the foregoing, the City shall use the information included within such records, including the list of VTC members and staff, solely to accomplish the City's oversight responsibilities, and for no other purpose. In particular, the City shall not transfer the records and membership list, and the information contained therein, to any third-party who is or could be a direct competitor to Contractor unless specifically required by applicable law, nor shall the City use the records and membership list, and the information therein, to market City services or to otherwise communicate with the public or with VTC members apart from the City's oversight responsibilities unless specifically required by applicable law. Contractor shall maintain a secondary back up system for storage of records in accordance with standard industry practice.

L. EVALUATION AND COMPLIANCE WITH THE LAW

The Contractor shall have the authority to control and direct the performance and details of the work described herein. The Contractor agrees to comply with all relevant federal, state and municipal laws, rules and regulations relating thereto.

M. CITY BUSINESS AND OCCUPATION LICENSE

Contractor shall be required to obtain a business license when contracting with the City of Vancouver, unless allowable exemptions apply. Businesses/Contractors shall contact the State of Washington Business License Service (BLS) at: <http://bls.dor.wa.gov/file.aspx>, telephone 800-451-7985, or go to www.bls.dor.wa.gov/cities/vancouver.aspx, or www.cityofvancouver.us/businesslicense, to determine whether a business license is required pursuant to VMC Ch. 5.04.

N. LIABILITY AND HOLD HARMLESS

1. By Contractor. Contractor agrees to indemnify, defend, save and hold harmless the City and the District, their officials, employees and agents, from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature, to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct of Contractor's work pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, in which event such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. Contractor specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the Parties that Contractor provides the broadest scope of indemnity permitted by RCW 4.24.115. Contractor is an independent contractor and responsible for the safety of its employees.

2. By City. City agrees to indemnify, defend, save and hold harmless the Contractor and the District, their officers, managers, directors, officials, employees and agents, from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature, to the extent arising out of, or in connection with, or incident to, any default, the negligent performance or willful misconduct in performing the obligations imposed on the City pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the Contractor by an employee of City or subcontractor or agent even if City is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, in which event such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. City specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the Parties that City provides the broadest scope of indemnity permitted by RCW 4.24.115.

O. INSURANCE

Contractor shall obtain and keep in force during the entire term of this agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed or contracted by either the Contractor.

1. Liability Insurance. Contractor shall maintain Commercial General Liability insurance with a limit of not less than one million dollars (\$1,000,000) for each occurrence and not less than one million dollars (\$1,000,000) combined single limit automobile liability coverage. The policy shall include coverage for bodily injury, broad form property damage, personal injury, athletic participation, products and completed operation and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement. All liability insurance required herein shall be under a commercial general liability and business policies.

2. City and District Listed as an Additional Insured. The City of Vancouver, its agents, representatives, officers, directors, officials, and employees and the District must be named as an additional insureds on the Commercial General Liability policy and shown on the certificate as additional insureds. A copy of the additional insured endorsement CG 20 10 11 85, CG 20 10 07 04 and CG 20 37 07 04, or their equivalents, must be included with the certificate of insurance.

3. Washington Stop Gap. The commercial general liability policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well. This must be indicated on the certificate.

4. Worker's Compensation. Contractor shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than one million dollars (\$1,000,000) for each accident, one million dollars (\$1,000,000) for each disease for each employee, and one million dollars (\$1,000,000) for each disease policy limit.

5. Cyber Liability Coverage. Cyber Liability Insurance, with limits not less than one million dollars (\$1,000,000) per occurrence or claim, two million (\$2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of copyright, trademark, trade dress arising from electronic publishing activity, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

6. Fidelity Coverage. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, Employee Dishonesty or Fidelity Bond coverages for city-owned property in the care, custody, or control of the Contractor. Coverage limits shall not be less than ten thousand (\$10,000) dollars.

7. Umbrella Liability. The Contractor shall obtain Umbrella Liability coverage at limits of not less than two million dollars (\$2,000,000) per occurrence and annual aggregate. This umbrella liability coverage shall apply, at a minimum, to both the Commercial General and Auto insurance policy coverage. This requirement may be satisfied instead through the Contractor's primary Commercial General and Automobile Liability coverage, or any combination thereof.

8. Trainers Professional Liability. The Contractor shall obtain professional liability

insurance (errors and omissions) against any and all claims for damages to person or property which may arise out of the performance of this Contract, whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor. The amount of coverage provided by such insurance shall be not less than one million dollars (\$1,000,000) combined single limit.

9. Employment Security. The Contractor shall comply with all other relevant employment security laws of Washington State, and shall timely make all required payments in connection therewith.

10. Waiver of Subrogation. The City and the District shall be listed on the Certificate as the Certificate Holders. Additionally, the Contractor agrees to waive any claim for subrogation and that the Contractor's policy is primary without contribution to defense or indemnification from any additional insureds' policies. The Contractor shall execute an endorsement to their policy confirming the same.

11. Coverage Trigger. The insurance must be written on an "occurrence" basis. This must be indicated on the certificate. Except, claims-made policies shall be accepted for professional liability coverage only.

12. ACORD Form. Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

P. NOTICES

All notices which are given, or required to be given, pursuant to this Agreement shall be given by (a) hand delivery in which event the notice is deemed given as of the time of hand delivery, (b) mailed with postage pre-paid and correctly addressed, in which event the notice is deemed given three days after delivery to the U.S. Postal Service, (c) overnight carrier, correctly addressed, in which event notice is deemed given as of the time of physical delivery by the carrier to the Party, or (d) e-mail correctly addressed, in which event the notice is deemed given as of the time the e-mail is received by the Party, to the Parties addresses set out below or as subsequently amended following notice; that is:

If to the CITY:

Julie Hannon
City of Vancouver
415 W. 6th Street
P.O. Box 1995
Vancouver WA 98668-1995
Phone: 360.487.8309
E-mail:
julie.hannon@cityofvancouver.us

If to the CONTRACTOR:

China Kirk
United States Tennis Association/Pacific Northwest
Section
9746 S.W. Nimbus Ave.
Beaverton OR 97008
Phone: 503.520.1877
E-mail: ckirk@pnw.usta.com

With a copy to:

With a copy to:

Procurement Manager
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
Phone: 360.487.8429
E-mail: procurement.services@cityofvancouver.us

Michael M. Ratoza, Attorney At Law
Bullivant Houser Bailey PC
888 S.W. Fifth Avenue, Ste. 300
Portland, Oregon 97204
Phone: 503.228.6351
E-mail: notices@bullivant.com

Q. AMENDMENTS

All changes to this Agreement must be made by written amendment, agreed upon by both Parties and signed by all Parties to this Agreement.

R. SCOPE OF THE AGREEMENT

This Agreement, including its Addendum, incorporates all the agreements, covenants and understandings between the Parties hereto relating to the subject matter set out herein. No other or prior agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable except to the extent included in this Agreement.

S. DISPUTE RESOLUTION

In the event there is any dispute between the Parties to this Agreement relating in any way to this Agreement, the Parties must mediate such dispute before commencement of any legal action. No party to this Agreement can bring legal action against another Party to this Agreement without first participating in mediation, unless one Party refuses to submit to mediation and legal action is brought to specifically enforce this mandatory mediation provision of this Agreement. If the Parties cannot agree upon the person to act as the mediator, then the U.S. Arbitration and Mediation Service of Portland, Oregon shall select a person to act as the mediator. The mediator shall be neutral, unbiased and impartial. The mediator's charges and expenses shall be split by the Parties on an equal basis. Each party shall be responsible for its own attorney fees and costs at mediation.

T. GOVERNING LAW/VENUE

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. The contractor shall have legal authority to enter into this agreement. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

U. COOPERATIVE PURCHASING

The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City of Vancouver incurring any

financial or legal liability for such purchases. The City of Vancouver agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.

V. PUBLIC DISCLOSURE COMPLIANCE

The parties acknowledge that the City is an “agency” within the meaning of the Washington Public Records Act, Ch 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part, and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Ch.42.17 RCW for withholding or delaying public disclosure of such information. In the event that Contractor receives a public record request directly, Contractor must notify the City immediately of the record request and immediately provide a copy of the request to the City.

W. QUIET ENJOYMENT

City covenants that, as long as no event of default shall have occurred that remains uncured beyond any applicable cure period allowed by this Agreement, Contractor shall peaceably and quietly have, hold and enjoy the VTC premises during the entire term, including any extended term, of this Agreement without interruption, interference or disturbance from the City, subject to the terms and conditions of this Agreement.

X. MISCELLANEOUS

1. Waiver. No waiver by either Party of performance of any provision of this Agreement shall be deemed to be a waiver of nor prejudice such Party’s right to otherwise require performance of the same provision or any other provision.

2. Force Majeure. Whenever a period of time is prescribed in this Agreement 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.

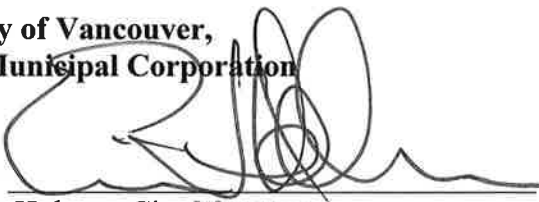
3. Additional Miscellaneous. No remedy herein conferred upon or reserved to either Party shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative. In interpreting or construing this Agreement, it is understood that if the context so requires, the 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 Agreement. If any provision of this Agreement or the application thereof to any person or circumstance is, at any time or to any extent, held to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law unless the invalid or unenforceable provision causes a Party to lose the material benefit of this Agreement on which it relies, in which case the Parties shall in good faith promptly negotiate and agree to a reasonable accommodation in respect thereof. All agreements (including, but not limited to, indemnification agreements) set forth in this Agreement, the full performance of which are not required prior to the expiration or earlier termination of this Agreement, shall survive the expiration or earlier termination of this Agreement and be fully enforceable thereafter.


4. Effective Date. This Agreement shall become effective (the "Effective Date") as of the date set out immediately below.

DATED this 22nd day of March, 2018.


**City of Vancouver,
a Municipal Corporation**

By: 
Eric Holmes, City Manager

Attest:


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

**United States Tennis Association/Pacific
Northwest Section**

By: 
Print Name Matthew Warner
Title: Executive Director

Approved as to form:


E. Bronson Potter, City Attorney

ADDENDUM A – HIGH SCHOOL HOURS

VANCOUVER SCHOOL DISTRICT USAGE OF VANCOUVER TENNIS CENTER

The Contractor agrees to provide reasonable tennis court space and time, including use of the ball machine and video system, to existing team members and coaches of the tennis teams of the following 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 schools or persons. The listed high schools shall be further referred to as the "District." The Contractor shall not charge a fee for such services. Except as specifically required by this Agreement, the Contractor is not required to obtain specialized equipment or space outside of the VTC for such services.

The Contractor shall provide such services upon the following schedules, unless the Contractor and the District agree in writing to modify the following schedules:

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 USTA PNW General Manager a minimum of 3 weeks' notice of cancellation.
- * 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

*Match Day schedule – 2:15 p.m. to completion

*Matches will be cancelled due to inclement weather

* 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 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, and USTA/PNW will meet with the District's Athletic Director annually. Meetings shall take place no later than July 15th each year to determine the following year's schedule. For example, the July 15, 2018 meeting will determine the 2018/2019 school year schedule. The parties will negotiate in good faith to determine the appropriate VTC usage schedule for each year. In the event that the parties are not able to agree, then the schedule set out above will apply. Notwithstanding the foregoing, the above schedule will not apply, and tennis court time and use of VTC facilities will not be available, when VTC is closed due to construction, adverse weather, or other conditions.
2. Use of the VTC indoor courts will be made solely by the four named 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 the 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.

ADDENDUM B

STATEMENT OF WORK

Contractor shall provide the following management, maintenance, and operations services for the VTC located solely within the Premises as illustrated in Addendum E attached hereto and incorporated herein, and no other services unless first agreed to in writing by the Parties:

1. Contractor shall operate the VTC as a tennis center with associated and related services pertaining to the operation of a tennis center, including but not limited to offering tennis play time, tennis instruction, related retail sales, and including similar sports play and services. Tennis instruction shall be offered that is targeted to various age groups and ability levels.

2. Contractor shall be completely and solely responsible for the day to day maintenance and operation, cash handling, booking and court reservations; including all responsibility for all facets of the operation of VTC, for hiring and managing staff, establishing athletic programs, scheduling use of courts and facilities, setting pricing, marketing, controlling all aspects of maintenance, management and operations of VTC, programming lessons, leagues and special events, complete court reservation scheduling, cash/credit control for financial transactions related to the VTC, website management and retail sales, and ground maintenance to include snow and ice removal when necessary.

3. Contractor shall provide the court space and services to the District consistent with the provisions of Addendum A, attached hereto.

4. Contractor shall be responsible for all marketing strategy creation and ongoing implementation. Contractor shall co-brand VTC using the two partner names "Vancouver Tennis Center" and "USTA PNW." Contractor shall be responsible for all costs and decision making of updating logo and brand, as well as expenses associated with new signage on VTC facility, banners and promotional materials.

5. Contractor shall be required to abide by all state, federal and locally applicable laws and shall obtain and maintain all business licenses and other permits required to conduct business at the facility.

6. Customer service is an integral part of the business of running the VTC. Contractor maintains a strong commitment to high quality customer service and to the success of the facility. Staff working at VTC shall be well trained and professional, including use of USTA National Campus resources.

7. Contractor shall create a routine maintenance and cleaning of grounds, buildings and restrooms/locker rooms to keep them clean, hygienic, litter free and in good operating condition. Contractor shall provide all janitorial and hardscape maintenance within the building and outdoor tennis court area and patio. Through cleaning and maintenance of the components that are the responsibility of the Contractor under this Agreement, the Contractor shall make reasonable effort to ensure the property is free from dangerous conditions.

8. The facility is managed as a community center that welcomes members and non-members, with drop in hours and rates. There shall be drop-in times and fees available for members of the public. Contractor shall also provide reasonable need-based scholarships and a process for the public to apply for scholarships. VTC programs shall be equitable, accessible and affordable through a competitively priced membership and court fee model as compared to other similar facilities in the greater Vancouver – Portland metro area.

9. Contractor shall select, obtain, implement, and maintain a fully-functional independent point of sale (POS) system to improve cash handling and reporting of sales and bookings for all operations at VTC. The Contractor shall also track tennis center activities such as, but not limited to, court fees, rentals, lessons, memberships and any retail sales or ball machine use and provide this information to the City on an annual basis.

These reservation and POS systems must meet the following basic requirements:

a. Reservations

- Track all reservations, tournament and group, individuals and payment activity
- Track all booking and player-specific payment activity, including groups
- Allow online booking by customers

b. Customer Relationship Management (CRM)

- Track customer contact information including e-mail addresses
- Identify customer spending in detail
- Application must maintain e-mail and short message service (SMS) functionality that may include reminders, confirmations and event invitations.

c. Point of Sale (POS)

- Integrated with the reservation and membership software where appropriate
- Transaction processing, including refunds, cash, credit card, split form of payment
- Coupon/discount capability
- Real time inventory
- Cash out reports by cash drawer
- End of day close out with integrated batch settlement

d. Technical Requirements

- Contractor shall develop, administer, maintain and support all aspects of the operating system and application, and website hosting, including upgrades to support new technologies and new functional needs
- Contractor shall setup, maintain, monitor and reply to and from e-mail and social networking
- Application must be accessible through a web browser
- Application must be tested and work on the following browsers: IE, Chrome, Fire Fox, Safari, and Edge.
- Application should be both mobile web compatible, and a mobile web application
- Application must be PCI compliant, with evidence provided to City.

ADDENDUM C

LIST OF CITY'S CURRENT IMPROVEMENTS

The City shall undertake the following capital improvements, equal to at least \$700,000 to the VTC at its sole cost as part of its obligation of Current Improvements:

1. Repair existing roof defects and ensure that the new roof over the tennis courts is structurally sound and weather proof.
2. Fill all current wall gaps between concrete panels and structural supports.
3. Seal all doors to ensure that they are weather tight.

ADDENDUM D
LEASE AGREEMENT

See following document.

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 __, 2018, and shall expire on __, 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 __, 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. _____.
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. _____.
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

VANCOUVER SCHOOL DISTRICT NO. 37

Eric Holmes, City Manager

Michelle Giovannozzi, District Board President

Dated: _____

Dated: _____

ATTEST:

ATTEST:

Natasha Ramras, City Clerk

Dr. Steven Webb, Secretary to the Board

Vancouver Tennis Center Lease Agreement

Page 5

By: Carrie Lewellen, Deputy City Clerk

Dated: _____

Approved as to form: _____

Dated: _____

Approved as to form: _____

E. Bronson Potter, City Attorney

Dated: _____

Marilee Scarbrough, Attorney for the District

Dated: _____

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 – 3:45pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	8
District slot B	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	8
District slot C	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	8
District slot D	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	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 – 3:45pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	8
District slot B	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	2:15pm – 3:45pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	8
District slot C	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	8
District slot D	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	2:30pm – 4:00pm	
# of Hours	1.5	1.5	1.5	1.5	1.5	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

Vancouver Tennis Center Lease Agreement

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						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	3:15pm – 7:15pm	3:15pm – 7:15pm	3:15pm – 7:15pm	3:15pm – 7:15pm	3:15pm – 7:15pm		
# of Hours	4	4	4	4	4		20
						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.

ADDENDUM E

MAP OF LOCATION OF PREMISES



Note: The VTC and Premises are located within the red dotted area illustrated above.