

CITY OF VIRGINIA & INDEPENDENT SCHOOL DISTRICT NO. 2909

AGREEMENT FOR USE OF CITY TENNIS FACILITIES

THIS AGREEMENT is made and entered into this _____, 20__, between The City of Virginia, Minnesota, a municipal corporation, ("City") and INDEPENDENT SCHOOL DISTRICT NO. 2909, a school district, ("User").

ARTICLE 1

GRANT OF USE

In consideration of the mutual, dependent covenants and agreements hereinafter set forth, City does hereby demise and agree to allow User to use the Quad City Tennis for All Facility and adjacent Outdoor Courts, known as 1310 S 5TH AVE VIRGINIA MN 55792 (hereinafter the "Premises"). User hereby agrees to usage as prescribed from City the Premises for the Term set forth below. This Agreement does not grant the right to operate any concessions on the Premises, which rights are reserved to City.

ARTICLE 2

PERMITTED USE; PURPOSE; COMPLIANCE WITH LAWS

A. Permitted Use. City allows and permits User to use and access the portions of the Quad City Tennis for All Building, located at and the adjacent Outdoor Tennis Courts known as 1310 S 5TH AVE VIRGINIA MN 55792

B. Purpose. The express purpose of this Agreement is to allow and permit User the use and access to the aforementioned land, facilities and equipment for purposes of conducting Minnesota State High School League sanctioned interscholastic programs, physical education, recreational, athletic, extracurricular and curricular programs, and such other programs and uses which are within the educational purpose and mission of User , specifically as follows:

1. User operates both a fall girls and spring boys tennis team each lasting eleven (11) weeks, as the User does not have tennis courts the City will provide access to the Premises indoor and outdoor courts for User sanctioned practice and matches.
2. It is agreed that the User and City will establish a practice and match schedule for both girls and boys tennis. Premises usage will be coordinated through the tennis professional at the Premises.
3. User will furnish all game officials (including ticket sellers and ticket takers and ushers, if needed) that the User may be required to provide at their own cost, police

protection as communicated by the Parks and Recreation Director and school officials or as may be made mandatory by policy.

4. No practice shall ever be held, nor players allowed on the courts unless under the direction of specified program staff (school coaches).
5. User agrees that use of the Premises shall be for its intended purpose, no other activities will be permitted within the facility.
6. User agrees that after each practice or match, it will leave said premises in as neat, clean and respectable condition, as possible.
7. When School is cancelled, the Activities Director will contact the Park and Recreation Director for approval for the User program to use the facility to practice. Without approval, no practice will be held.
8. User's occupancy of the Premises shall not be exclusive and it is understood between the parties that the User district shall not be able to regulate access and control over the facilities. All common areas and spectator seating areas shall retain their public character and be controlled by City policies, restriction, and regulation including specifically the City's COVID-19 safety plan. The timing and nature of User's occupancy shall be agreed upon by User's
9. Future dates will coincide with MSHSL Activity Calendars for the corresponding year.

C. Compliance with Laws. User shall in no event use the Premises or any portion thereof in such a manner as to violate any applicable law, rule, ordinance or regulation of any governmental body.

If an employee or representative of the City sees any student or coach performing what is considered to be an act of improper conduct or vandalism, they should report the incident to both the coach in charge and the Park and Recreation director for appropriate action.

ARTICLE 3

TERM

The Term of this Agreement shall begin on the commencement date and shall end on June 1, 2029. Notwithstanding any other term of this Agreement, City shall be entitled to immediately terminate this Agreement if: 1) City no longer operates tennis programming at the Premises; 2) a change occurs to tennis programming or otherwise that no longer allows City to continue to own and operate the Premises for tennis programming; or 3) User fails to comply with the requirements of Article 4(B).

ARTICLE 4

RENT

A. **Date Rent Begins.** All gross rent shall begin to accrue on the commencement date.

B. **Gross Rent Amount.** User hereby covenants and agrees to pay to City, for the use and occupancy of the Premises, at the times and in the manner hereinafter provided, the gross annual rent for usage of as set forth in Article 4D. The annual lease payment is to be divided into two equal payments, with the first payment due the fifteenth day of September of each academic year, and the second payment due on or before the fifteenth day of April of the academic year, to be paid in U.S. dollars, during the Term hereof, commencing upon the Commencement Date and ending upon the expiration date of this Agreement.

C. **When Payments Are Due.** All payments of gross rent amount shall be paid or mailed to City's mailing address found or to such other payee or address as City may designate in writing to User. This Agreement shall be construed as though the covenants herein between City and User are independent, and not dependent. Every installment of gross rent shall be payable without notice or demand, and without setoff or deduction except as expressly set forth herein. If any rent is unpaid more than 15 days after it is due, City may charge User a late fee of 5% of the overdue amount (unless such a fee is not permitted by law), plus interest on the unpaid amount from the due date until paid, at 6% per year.

D. **Rent.** User agrees to pay to City during the term of this Facilities Use Agreement, as follows:

2026-2027: \$36,750

2027-2028: \$38,500

2028-2029: \$40,500

ARTICLE 5

FACILITY OWNERSHIP & RESPONSIBILITIES

A. Ownership of all of the instruction facilities listed in this agreement shall remain with the City, thus maintenance of the facilities shall be the responsibility of the City.

1. **Owner Provides Utilities.** City shall not be liable to User in damages or otherwise if any utilities or services are interrupted or terminated because of repairs, installations, or improvements undertaken by a third party (not at City's request), or any other cause beyond the City's reasonable control; provided however, City shall use best efforts to assist User to cause such utilities or services to be reestablished as soon as possible
2. **Snow Removal and Lawn Maintenance.** City shall be solely responsible for and shall promptly pay all charges for reasonably required snow removal and lawn maintenance at the Premises.

B. User agrees that after each use of any city owned facility, the User or it's representatives will ensure that they will leave said premises in as neat, clean and in an acceptable condition.

C. All repairs and maintenance of the Premises shall be the responsibility of City. User shall not make any alterations to the Premises.

D. User may not install any signage on the premises without prior written authorization from the City.

E. User shall be responsible for any repairs and/or pay for all repairs to the Premises necessitated by actions of User, its members, its participants, or its invitees.

F. All of User's equipment, furniture, and moveable trade fixtures, (collectively "User's Property") shall remain User's property. User may remove User's property at any time within fourteen (14) days after expiration of the term, provided that User repairs any damage to the Premises occasioned by removal.

G. The City will provide 10 cases of Tennis Balls per season to each the Boys and Girls Tennis team to be used in match play. The tennis balls after use will remain in the facility to be used by both the team and public for practice and recreational tennis use.

ARTICLE 6

INSURANCE

A. City's Insurance. Commencing on the Commencement Date and continuing throughout the Term, City shall carry and maintain insurance as required by the laws of the State of Minnesota.

B. It is understood that during the life of this Agreement, User shall take out and maintain City's protective liability insurance covering City for all activities, (and this shall also include User program for tennis), practice sessions and games with minimum limits of \$500,000.00 per occurrence/\$1,000,000 aggregate. This policy, in duplicate, shall be delivered to the City and premiums will be paid by User.

ARTICLE 7

TERMINATION OR SEVERANCE OF AGREEMENT

It is the intent of the City to maintain this agreement for the entire duration, to the best of their ability.

A. Both parties agree to give a thirty (30) day notice of intent to terminate or cancel this contract.

B. City shall not be liable for any loss of wages, income, and/or profits for any reason.

C. User agrees that if this agreement is terminated by either party, they will ensure that all facilities and all leased areas are returned to a condition that is satisfactory to the City, barring any normal wear and tear.

D. At the time of termination, City shall certify any outstanding bills and obligations that has been obligated for the use of the leased areas.

E. Upon termination of this agreement by City, a prorated amount of lease fees shall be returned to the User.

F. User shall, within two (2) weeks after the termination of this Agreement, remove from the premises all personal property, goods and effects, and upon failure to do so, the City, by its officers and agents, may cause such removal to be made and said property, goods and effects to be stored at the cost and expense of user.

ARTICLE 8

HOLD HARMLESS AND INDEMNIFICATION

Each party shall hold harmless and indemnify the other against all expenses, liabilities, and claims of every kind, by or on behalf of any person or entity, arising out of:

1. Failure by either party to perform any of the terms or conditions of this facilities use agreement;
2. Any injury or damages happening on or about the Premises as result of the other's activities and/or programs, or in conjunction with the use of the facilities and its equipment;
3. Failure to comply with any law, rule, regulation or safety standard of any governmental agency or authority;

The actions of either party, whether by omission or commission, which in any way relate to these facilities use agreement and the performance of its obligations and duties in conjunction therewith.

ARTICLE 9

DISPUTE RESOLUTION

Any disputes arising from this agreement or the use of the facilities that the parties cannot resolve between themselves, may be submitted to mediation through the Bureau of Mediation Services, and, if unsuccessful, to binding arbitration through the Bureau of Mediation Services and its procedures upon the agreement of both parties. Should arbitration be necessary, each party shall be responsible for its own costs and expenses.

ARTICLE 10

ASSIGNMENT AND SUBLETTING

A. User may not assign its interest in this Agreement or any estate or interest herein, or sublet the Premises or any part thereof, or grant any license, concession or any other right

of occupancy of any portion of the Premises without the prior written consent of the City, which consent shall not be unreasonably withheld.

B. No assignment or other transfer of the Agreement by City shall be binding on User unless the assignee or transferee shall assume and agree to be bound by the terms of the Agreement. City shall provide User with prior notice of any such assignment or transfer of the Agreement.

ARTICLE 11

RELATIONSHIP BETWEEN THE PARTIES

Nothing contained in or by this Agreement shall be deemed, construed or interpreted as to create a partnership or joint venture between the parties, or to create any other relationship between the parties other than that which is clearly provided and intended hereby.

ARTICLE 12

NOTICES

No notice, request, consent, approval or other communication under this Lease shall be effective unless the same is in writing and is served either by (a) electronic mail, (b) personal delivery, or (c) overnight courier service at the following addresses:

To City: City of Virginia
Attn: Britt See-Benes
327 S. 1st Street
Virginia MN 55792
Copy to: Brian Silber; brians@virginiamn.us

With copy to: Bryan M. Lindsay, Atty at Law
City Attorney
225 N. 1st St., Suite 1000, Post Office Box 958
Virginia MN 55792
Copy to email: blindsay@trentilaw.com

To Tenant: ?

To Guarantor: ?

With copy to: ?

ARTICLE 13

MISCELLANEOUS

- A. **Governing Law.** This Agreement is governed by and construed and interpreted in accordance with the laws of the State of Minnesota.
- B. **Survival.** The representations, warranties and indemnities contained in this Agreement shall survive the termination or expiration of this Agreement.
- C. **Interpretation.** The parties hereto agree that it is their intention hereby to create only the relationship of City and User, and no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the parties hereto.
- D. **Severability.** Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof and such other provisions shall remain in full force and effect.
- E. **Successors and Assigns.** Except as provided in Article 10, all covenants, promises, conditions, representations and agreements herein contained shall be binding upon, apply and inure to the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- F. **Amendment, Modification, and No Waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the Commissioner of Minnesota Management and Budget, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.
- G. **Counterparts.** This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. This Agreement may be signed and delivered by email and said emailed pages shall constitute originally executed and delivered documents.
- H. **Entire Agreement.** This Lease, including the exhibits or riders attached hereto, sets forth the entire agreement between the parties. There are no understandings or other agreements outside of this Lease.

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IN TESTIMONY WHEREOF, the said parties have signed, sealed and executed this instrument in duplicate the day and year first above written.

Independent School District #2909 has duly approved this Agreement on the ____ day of _____, 20____.

The City Council of Virginia, Minnesota duly approved this Agreement on the 14th day of May, 2024.

The parties hereto have executed this Agreement to be effective as of the date set forth in the introductory paragraph hereof.

USER:

INDEPENDENT SCHOOL DISTRICT 2909

By: _____

Name: _____

Title: _____

CITY:

THE CITY OF VIRGINIA

By: _____

Name: LARRY CUFFE, JR

Title: MAYOR

By: _____

Name: BRITT SEE-BENES

Title: CITY ADMINISTRATOR