



**Spokane Park Board Agenda**  
3:30 p.m. Thursday, Jan. 9, 2020  
City Council Chambers, lower level City Hall  
808 W. Spokane Falls Blvd., Spokane, Washington

**Park Board Members:**

Nick Sumner – President  
Jennifer Ogden – Vice president  
Garrett Jones – Secretary  
Ted McGregor  
Rick Chase  
Greta Gilman  
Sally Lodato  
Gerry Sperling  
Jamie SiJohn  
Bob Anderson  
Barb Richey

**Agenda**

1. **Roll Call:** *Pamela Clarke*
2. **Additions or deletions to the agenda:**
3. **Consent agenda**
  - A. Administrative and committee-level items:
    1. Dec. 19, 2019, special Park Board meeting minutes
    2. Claims – December 2019 (\$2,908,597.19)
4. **Special guests**
5. **Financial report and budget update:** *Mark Buening*
6. **Special discussion/action items:**
  - A. Park Board member retirement and appreciation plaque/Ted McGregor – *Nick Sumner*
  - B. Nomination Ad Hoc Committee appointment – *Nick Sumner*
7. **Committee reports:**

**Urban Forestry Tree Committee:** (The committee did not meet.) – *Rick Chase*

  - A. Action items: None

**Golf Committee:** (The committee did not meet.) – *Gerry Sperling*

  - A. Action items: None

**Land Committee:** (The committee did not meet.) – *Greta Gilman*

A. Action items: None

**Recreation Committee:** (The committee did not meet.) – *Sally Lodato*

A. Action items: None

**Riverfront Park Committee:** (The committee did not meet.) – *Ted McGregor*

A. Action items: None

B. 2014 Advisory Committee lookback

**Finance Committee:** Jan. 7, 2020 – *Bob Anderson*

A. [Spokane Public Facilities District land lease/SportsPlex](#)

B. [Spokane Public Facilities District joint use agreement/SportsPlex](#)

8. **Reports**

A. President: *Nick Sumner*

B. Liaisons:

1. Conservation Futures – *Nick Sumner*
2. Parks Foundation – *Ted McGregor*
3. City Council – *Mike Fagan*

C. Director: *Garrett Jones*

9. **Executive Session:**

10. **Correspondence:**

A. Letters/emails: None

B. Newsletters: Hillyard Senior Center

11. **Public Comments:**

12. **Adjournment:**

13. **Meeting Dates:**

A. Next committee meeting dates:

Urban Forestry Tree Committee: 4:15 p.m. Feb. 4, 2020, Finch Arboretum Woodland Center, 3404 W. Woodland Blvd.

Land Committee: 4 p.m. Feb. 5, 2020, Finch Arboretum Woodland Center, 3404 W. Woodland Blvd.

Recreation Committee: 5:15 p.m. Feb. 5, 2020, Finch Arboretum Woodland Center, 3404 W. Woodland Blvd.

Riverfront Park Committee: 8:05 a.m. Feb. 10, 2020, Pavilion conference room, Riverfront Park

Golf Committee: 8 a.m. Feb. 11, 2020, Finch Arboretum Woodland Center, 3404 W. Woodland Blvd.

Finance Committee: 3 p.m. Feb. 11, 2020, Pavilion conference room, Riverfront Park

B. Next Park Board: 3:30 p.m. Feb. 13, 2020, City Council Chambers

C. Park Board Study Session: No session scheduled at this time.

*Agenda is subject to change*

**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6367, 808 W. Spokane Falls Blvd., Spokane, Washington, 99201; or [erahrclerks@spokanecity.org](mailto:erahrclerks@spokanecity.org). Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

# Spokane Park Board

## Briefing Paper



<b>Committee</b>			
<b>Committee meeting date</b>			
<b>Requester</b>	Pamela Clarke	<b>Phone number:</b> 625-6241	
<b>Type of agenda item</b>	<input checked="" type="radio"/> Consent <input type="radio"/> Discussion <input type="radio"/> Information <input type="radio"/> Action		
<b>Type of contract/agreement</b>	<input type="radio"/> New <input type="radio"/> Renewal/extension <input type="radio"/> Amendment/change order <input checked="" type="radio"/> Other		
<b>City Clerks file (OPR or policy #)</b>	n/a		
<b>Item title:</b> (Use exact language noted on the agenda)	Dec. 19, 2019, special Park Board meeting minutes		
<b>Begin/end dates</b>	Begins:	Ends:	<input type="checkbox"/> Open ended
<b>Background/history:</b> Park Board minutes for the Dec. 19, 2019, special Park Board meeting			
<b>Motion wording:</b> Move to approve the Park Board minutes as presented as a consent agenda item.			
<b>Approvals/signatures outside Parks:</b> <input type="radio"/> Yes <input type="radio"/> No If so, who/what department, agency or company: Name: _____ Email address: _____ Phone: _____			
<b>Distribution:</b>			
<b>Fiscal impact:</b> <input type="radio"/> Expenditure <input type="radio"/> Revenue Amount: _____ Budget code: _____ n/a			
<b>Vendor:</b> <input type="radio"/> Existing vendor <input type="radio"/> New vendor <b>Supporting documents:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Quotes/solicitation (RFP, RFQ, RFB)  <input type="checkbox"/> Contractor is on the City's A&amp;E Roster - City of Spokane  <input type="checkbox"/> UBI: _____ Business license expiration date: _____         </div> <div> <input type="checkbox"/> W-9 (for new contractors/consultants/vendors)  <input type="checkbox"/> ACH Forms (for new contractors/consultants/vendors)  <input type="checkbox"/> Insurance Certificate (min. \$1 million in General Liability)         </div> </div>			





## Spokane Park Board Special Meeting

3:30 p.m. Dec. 19, 2019

City Council Chambers, lower level City Hall  
808 W. Spokane Falls Blvd., Spokane, Washington

### Park Board Members:

- X Nick Sumner – President
- X Jennifer Ogden – Vice President
- X Garrett Jones – Secretary
- X Ted McGregor
- X Rick Chase
- X Greta Gilman
- X Sally Lodato
- X Gerry Sperling
- Jamie SiJohn (Absent/excused)
- X Bob Anderson
- X Barb Richey
- X Mike Fagan – Council Liaison

### Parks Staff:

- Jason Conley
- Fianna Dickson
- Nick Hamad
- Mark Buening
- Al Vorderbrueggen
- Jennifer Papich
- Mark Poirier
- Angel Spell
- Jonathan Moog
- Berry Ellison
- Megan Qureshi
- Katie Kosanke
- Pamela Clarke

### Guests:

- Theresa Sanders
- Carol Neupert
- Hal McGlathery
- Ken Van Voorhis

## MINUTES

(Click [HERE](#) to view a video recording of the meeting.)

1. **Roll Call:** *Pamela Clarke*
2. **Additions or deletions to the agenda:**
  - A. Action item: Spokane Public Facilities District land lease/SportsPlex
  - B. Action item: Spokane Public Facilities District Joint Use Agreement/SportsPlex
  - C. Executive session: Litigation matters

**Motion No. 1:** Jennifer Ogden moved to defer the Spokane Public Facilities District land lease/SportsPlex and Spokane Public Facilities District Joint Use Agreement/SportsPlex action items to the Jan. 9 Park Board meeting. Garrett Jones recommended the executive session also be removed from the meeting agenda. Ms. Ogden agreed to add the removal of the executive session to her motion.

Bob Anderson seconded.

Motion carried with unanimous consent (10-0 vote).

3. **Special Guests:**
  - A. City Administrator Theresa Sanders – *Garrett Jones* introduced City Administrator *Theresa Sanders* who has been a strong advocate of Parks and Recreation during her eight years as city administrator. Ms. Sanders commended Mr. Jones and his team for all the amazing accomplishments achieved over the years. Ms. Sanders will be leaving her city position at the end of the year with the end of Mayor Condon's last term. She was presented with a poinsettia from the Manito Park greenhouse, and a commemorative Parks and Recreation coin.
  - B. Spokane Parks Foundation Campaign Manager Carol Neupert – Spokane Parks

Foundation Campaign Manager *Carol Neupert* presented an overview of the Riverfront Spokane fundraising campaign headed by the Spokane Parks Foundation. Her tenure as campaign manager ends this year. Ms. Neupert thanked the Park Board and staff for the strong partnership which has resulted in raising \$2.4 million toward the \$3 million campaign goal. She added she looks forward to future opportunities which help make all of Spokane's parks safe and fun places for the community to continue to enjoy and gather. In appreciation of her work and dedication, Ms. Neupert was presented with a poinsettia from the Manito Park greenhouse and a commemorative Parks and Recreation coin.

C. Remembering Marian Herzer/Hal McGlathery – *Garrett Jones* introduced *Hal McGlathery* who presented an overview of the numerous contributions made to the community by Marian Herzer who passed away Oct. 22. In 1972, Ms. Herzer founded Project Joy, a non-profit corporation which promotes seniors entertaining seniors. Since its inception, approximately 300 volunteers and 35 groups have provided about 400 performances each year.

4. **Consent agenda**

A. Administrative and committee-level items:

1. Nov. 14, 2019, regular Park Board meeting minutes
2. Claims – November 2019 (\$2,373,032.80)
3. Engineering Remediation Resources Group change order #3/Dutch Jakes Park (\$127,061.25, tax inclusive)
4. Ditches Unlimited change order #2/Mirror Pond (\$27,609.85, tax inclusive)
5. 2020-2022 Athletic tournament fees correction
6. Recreation/community centers annual contracts (\$638,578, no tax)
7. Strata Engineering amendment #5/West Havermale Island material testing (\$22,581, no tax)
8. Berger Partnership amendment #16/West Havermale and north bank wayfinding and signage graphics (\$11,000, no tax)
9. Garco Construction change order #22/Pavilion and Promenade (\$7,988, plus tax)
10. PlayCreation/West Havermale playground equipment purchase (\$326,655.13, tax inclusive)
11. Heritage Links change order #2/Esmeralda Golf Course (\$39,666, tax inclusive)
12. Spokane Parks Foundation Memorandum of Understanding no-cost extension

**Motion No. 2:** Nick Sumner moved to approve Consent Agenda items #1 - #12, as presented.

Mike Fagan seconded.

Motion carried with unanimous consent (10-0 vote).

5. **Financial report and budget update:** – *Mark Buening* provided the November financial report and budget update. Park Fund revenue is tracking at 123.59% of the projected budget. Parks and Recreation expenditures are tracking at 102.64% of the projected budget. The Golf Fund revenue is tracking at 112.51% of the projected budget. The Golf Fund expenditures are tracking at 93.77% of the projected budget. Of the \$68.06 million Riverfront Park Bond, \$54.24 million has been expended and \$3.24 million expended/committed, leaving a \$10.58 million budget balance. The goal is to spend/encumber all bond funds by the end of 2019.

6. **Special Discussion/Action Items:**

A. Riverfront Park bond budget amendment #9 – *Berry Ellison* presented the proposed Riverfront Park bond budget amendment #9. Mr. Ellison explained the amendment is necessary to properly allocate funds to various Riverfront Park redevelopment projects. The

proposed reallocations are based on actual costs-to-date, forecasts, commitments of the Master Plan, agreements with other departments and Park Board authorized expenditures.

**Motion No. 3:** Nick Sumner moved to approve amendment #9 to the Riverfront Park bond budget, as presented.

Bob Anderson seconded.

Motion carried with unanimous consent (10-0 vote).

B. LaRiviere Inc. construction contract/North bank construction contract (\$9,260,989, tax inclusive) – *Garrett Jones* explained that a bid protest has been received relating to this project. One of the bidders is protesting the award of the project to low bidder LaRiviere Inc. Parks staff is working with city legal, purchasing and procurement staff on the items presented in the protest. Mr. Jones presented specific motion wording the Park Board may use if the board wishes to award the project to the low bidder. The suggested wording includes that a review of the protest will be made prior to executing the contract. *Ted McGregor* asked if such an action by the board conveys any judgement on the validity of the challenges. Mr. Jones said no. It was also noted that the review process could take up to a few weeks. *Berry Ellison* presented the proposed north bank construction contract with LaRiviere in the amount of \$9,260,989, tax inclusive. In addition to the base bid, the proposed project includes \$808,731 administrative reserve and alternates 1, 4, 6a, 6b, and 7 for the maintenance and operations facility, additional wheels park and a signature basketball court.

**Motion No. 4:** Nick Sumner stated, “This motion awards the bid to LaRiviere for the north bank playground – Riverfront Park (Re-bid) #PW ITB 5188-19 for \$ 9,260,989.00, tax and contingency included. This award is subject to a review of the contentions contained in the protest of one of the other bidders, and a response to the protest. No contract will be executed or notice to proceed issued to LaRiviere until completion of the review and notice of the decision to the protestor.”

Bob Anderson seconded.

Barb Richey recused herself.

Motion carried (9-0-1 vote).

C. Bacon Concrete construction contract/West Havermale (\$2,120,713, tax inclusive) – *Berry Ellison* presented the proposed West Havermale construction contract with responsive low bidder Bacon Concrete in the amount of \$2,120,713, tax inclusive. In addition to the base bid, the proposed project includes \$144,777 Administrative Reserve and Alternates 1, 2, and 3 for the all-inclusive playground, installation of prefabricated restroom building, and Stepwell site improvements.

**Motion No. 5:** Nick Sumner moved to approve the West Havermale construction contract with low bidder Bacon Concrete in the amount \$2,120,713, tax inclusive.

Jennifer Ogden seconded.

Motion carried with unanimous consent (10-0 vote).

D. Goric Marketing Group/West Havermale playground equipment purchase (\$50,524.16, freight and tax inclusive) – *Berry Ellison* presented the proposed playground equipment purchase for the West Havermale all-inclusive playground from Goric Marketing Group in the amount of \$50,524.16, freight and tax inclusive. Following delivery of six pieces of playground equipment, including The Dish, The Rain Maker, Stone Abacus and The Grass, Bacon Concrete will install the equipment on West Havermale Island.

**Motion No. 6:** Nick Sumner moved to approve the playground equipment purchase from Goric Marketing Group for the West Havermale playground in the amount of \$50,524.16, freight and tax inclusive.

Gerry Sperling seconded.

Motion carried with unanimous consent (10-0 vote).

7. **Committee Reports:**

**Urban Forestry Tree Committee:** Dec. 3, 2019, *Rick Chase*

A. Action items: None

B. The next regularly scheduled meeting is 4:15 p.m. Feb. 4, 2020, at the Woodland Center, Finch Arboretum.

**Golf Committee:** Dec. 10, 2019, *Gerry Sperling*

A. Action items: None

B. The next scheduled meeting is 8 a.m., Feb. 11, 2020, Finch Arboretum, Woodland Center.

**Land Committee:** Dec. 4, 2019, *Jennifer Ogden*

A. AM Landshaper irrigation renovation contract/Manito Park (\$601,858.72, tax inclusive) – *Nick Hamad* presented the proposed irrigation renovation contract with AM Landshaper for work on the Manito Park project in the amount of \$601,858.72, tax inclusive. Mr. Hamad explained this project constructs the first phase of a new high-efficiency, automated irrigation system at Manito Park which will replace the antiquated irrigation system along Grand Boulevard from 17th to 21st avenues. In addition to irrigation upgrades, the project also converts about two acres of poorly performing turf grass to new shrub beds, wildflower seed mixes and ornamental dry land grasses with new gravel pathways. The project is designed to reduce water consumption within this area of the park by 30%.

**Motion No. 7:** Jennifer Ogden moved to approve the irrigation renovation contract with AM Landshaper for work on the Manito Park project in the amount of \$601,858.72, tax inclusive.

Bob Anderson seconded.

Motion carried with unanimous consent (10-0 vote).

B. Great Gorge Park concept – *Ted McGregor* presented an overview of a proposal to explore bringing a number of individual city parks located west of Post Street Bridge, along the north and south riverbanks of the Spokane River, under the conceptual title of the Great Gorge Park. The Olmsted Brothers identified the concept in their original report to the Park Board in the early 1900s. Staff is requesting approval to explore this concept further.

**Motion No. 8:** Jennifer Ogden moved to approve staff to further explore the concept of the Great Gorge Park.

Rick Chase seconded.

Motion carried with unanimous consent (10-0 vote).

C. The next scheduled meeting is 4 p.m. Feb. 5, 2020, Woodland Center, Finch Arboretum.

**Recreation Committee:** Dec. 4, 2019, *Sally Lodato*

A. Action items: None

B. The next scheduled meeting is 5:15 p.m. Feb. 5, 2020, Woodland Center, Finch Arboretum.

**Riverfront Park Committee:** Dec. 9, 2019, *Ted McGregor*

A. Spokane Public Facilities District stormwater facilities general maintenance agreement/North bank – *Berry Ellison* presented the proposed stormwater facilities general maintenance agreement with the Spokane Public Facilities District relating to the north bank project. In this agreement, Parks and the district will share a storm wastewater system at Riverfront Park's north playground site. There is no exchange of funds as part of the agreement and the cost of maintenance will be shared.

**Motion No. 9:** Ted McGregor moved to approve the proposed north bank stormwater facilities general maintenance agreement with the Spokane Public Facilities District, as presented.

Jennifer Ogden seconded.

Motion carried with unanimous consent (10-0 vote).

B. The next scheduled meeting is 8:05 a.m. Feb. 10, 2020, Pavilion conference room, Riverfront Park.

**Finance Committee:** Dec. 10, 2019, *Bob Anderson*

A. Action items: None

B. The next regularly scheduled meeting is 3 p.m. Jan. 7, 2020, Pavilion conference room, Riverfront Park.

8. **Reports:**

**Park Board President:** *Nick Sumner*

1. In addition to highlighting some of this year's accomplishments, Nick Sumner focused attention on the 2020 projects, including the SportsPlex, north bank and West Havermale redevelopment projects, the Parks and Open Space Plan and the golf course irrigation projects. Mr. Sumner thanked Mr. Jones and his staff for the team's amazing accomplishments in 2019. He also expressed his gratitude to the Park Board for their leadership and dedication throughout the year. Mr. Sumner concluded with sincere appreciation to Councilmember Mike Fagan for the valued role he has served on the Park Board. Mr. Fagan was presented with a commemorative Parks and Recreation coin.

**Liaisons:**

1. Conservation Futures – *Nick Sumner* reported a meeting is schedule at the being of the year to discuss the Paras property and other nominated properties around Beacon Hill/Camp Sekani area.
2. Parks Foundation – *Ted McGregor* thanked Carol Neupert for the tremendous accomplishments achieved during her tenure as the foundation's campaign manager.
3. City Council – *Mike Fagan* said it has been a wonderful eight years as a member of city council and attributes successes to teamwork with staff and the Park Board.

**Director:** *Garrett Jones*

1. Garrett Jones reflected on 2019 accomplishments, and extended gratitude to staff and the board for their dedication, professionalism and teamwork. He recalled starting 2019 with a landmark decision to proceed with the SportsPlex facility in partnership with the Public Facilities District. The year continued with additional community partnerships, including the Numerica Skate Ribbon and SkyRide, Providence Health's donation for the inclusive playground, and the Summer Youth card pilot program in partnership with STA, the school district and libraries. He

concluded with the idea that we can't do it alone. These accomplishments come about through partnerships and teamwork. On behalf of staff, Mr. Jones presented each Park Board member with a poinsettia from the Manito Park greenhouse.

9. **Executive Session:**

A. None

10. **Correspondence:**

A. Letters/emails: None

B. Newsletters: None

11. **Public Comments:** None

12. **Adjournment:** The meeting was adjourned at 5:19 p.m.

13. **Meeting Dates:**

A. Next Committee meeting dates:

Urban Forestry Committee: 4:15 p.m. Feb. 4, 2020, Woodland Center, Finch Arboretum

Land Committee: 4 p.m. Feb. 5, 2020, Woodland Center, Finch Arboretum

Recreation Committee: 5:15 p.m. Feb. 5, 2020, Woodland Center, Finch Arboretum

Riverfront Park Committee: 8:05 a.m. Feb. 10, 2020, Pavilion conference room, Riverfront Park

Golf Committee: 8 a.m. Feb. 11, 2020, Woodland Center, Finch Arboretum

Finance Committee: 3 p.m. Jan. 7, 2020, Pavilion conference room, Riverfront Park

B. Next Park Board: 3:30 p.m. Jan. 9, 2020, City Council Chambers

C. Park Board Study Session: No session scheduled at this time.

Minutes approved by:



Garrett Jones, Director of Parks and Recreation

# Spokane Park Board

## Briefing Paper



<b>Committee</b>			
<b>Committee meeting date</b>			
<b>Requester</b>	Pamela Clarke	<b>Phone number:</b> 625-6241	
<b>Type of agenda item</b>	<input checked="" type="radio"/> Consent <input type="radio"/> Discussion <input type="radio"/> Information <input type="radio"/> Action		
<b>Type of contract/agreement</b>	<input type="radio"/> New <input type="radio"/> Renewal/extension <input type="radio"/> Amendment/change order <input checked="" type="radio"/> Other		
<b>City Clerks file (OPR or policy #)</b>	n/a		
<b>Item title:</b> (Use exact language noted on the agenda)	Claims – December 2019 (\$2,908,597.19)		
<b>Begin/end dates</b>	Begins: 12/01/2019	Ends: 12/31/2019	<input type="checkbox"/> Open ended
<b>Background/history:</b> Claims for the month of December 2019 in the amount of \$2,908,597.19.			
<b>Motion wording:</b> Move to approve claims for the month of December 2019 as a consent agenda item.			
<b>Approvals/signatures outside Parks:</b> <input type="radio"/> Yes <input checked="" type="radio"/> No If so, who/what department, agency or company: Name: _____ Email address: _____ Phone: _____			
<b>Distribution:</b>			
<b>Fiscal impact:</b> <input type="radio"/> Expenditure <input type="radio"/> Revenue Amount: n/a    Budget code: _____			
<b>Vendor:</b> <input type="radio"/> Existing vendor <input type="radio"/> New vendor <b>Supporting documents:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Quotes/solicitation (RFP, RFQ, RFB)  <input type="checkbox"/> Contractor is on the City's A&amp;E Roster - City of Spokane  <input type="checkbox"/> UBI: _____ Business license expiration date: _____         </div> <div> <input type="checkbox"/> W-9 (for new contractors/consultants/vendors)  <input type="checkbox"/> ACH Forms (for new contractors/consultants/vendors)  <input type="checkbox"/> Insurance Certificate (min. \$1 million in General Liability)         </div> </div>			

**CITY OF SPOKANE PARK AND RECREATION DIVISION  
DECEMBER 2019 EXPENDITURE CLAIMS  
FOR PARK BOARD APPROVAL - JANUARY 9, 2020**

**PARKS & RECREATION:**

SALARIES & WAGES	\$	796,574.41
MAINTENANCE & OPERATIONS	\$	535,591.34
CAPITAL OUTLAY	\$	651,139.97
PARK CUMULATIVE RESERVE FUND	\$	293,694.99

**RFP BOND 2015 IMPROVEMENTS:**

CAPITAL OUTLAY	\$	299,371.53
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**GOLF:**

SALARIES & WAGES	\$	71,108.15
MAINTENANCE & OPERATIONS	\$	102,638.86
CAPITAL OUTLAY	\$	158,477.94

<b>TOTAL EXPENDITURES:</b>	<b>\$</b>	<b>2,908,597.19</b>
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*City of Spokane*  
***PARKS***  
***& RECREATION***

Financial Reports

December 2019



# City of Spokane Parks & Recreation

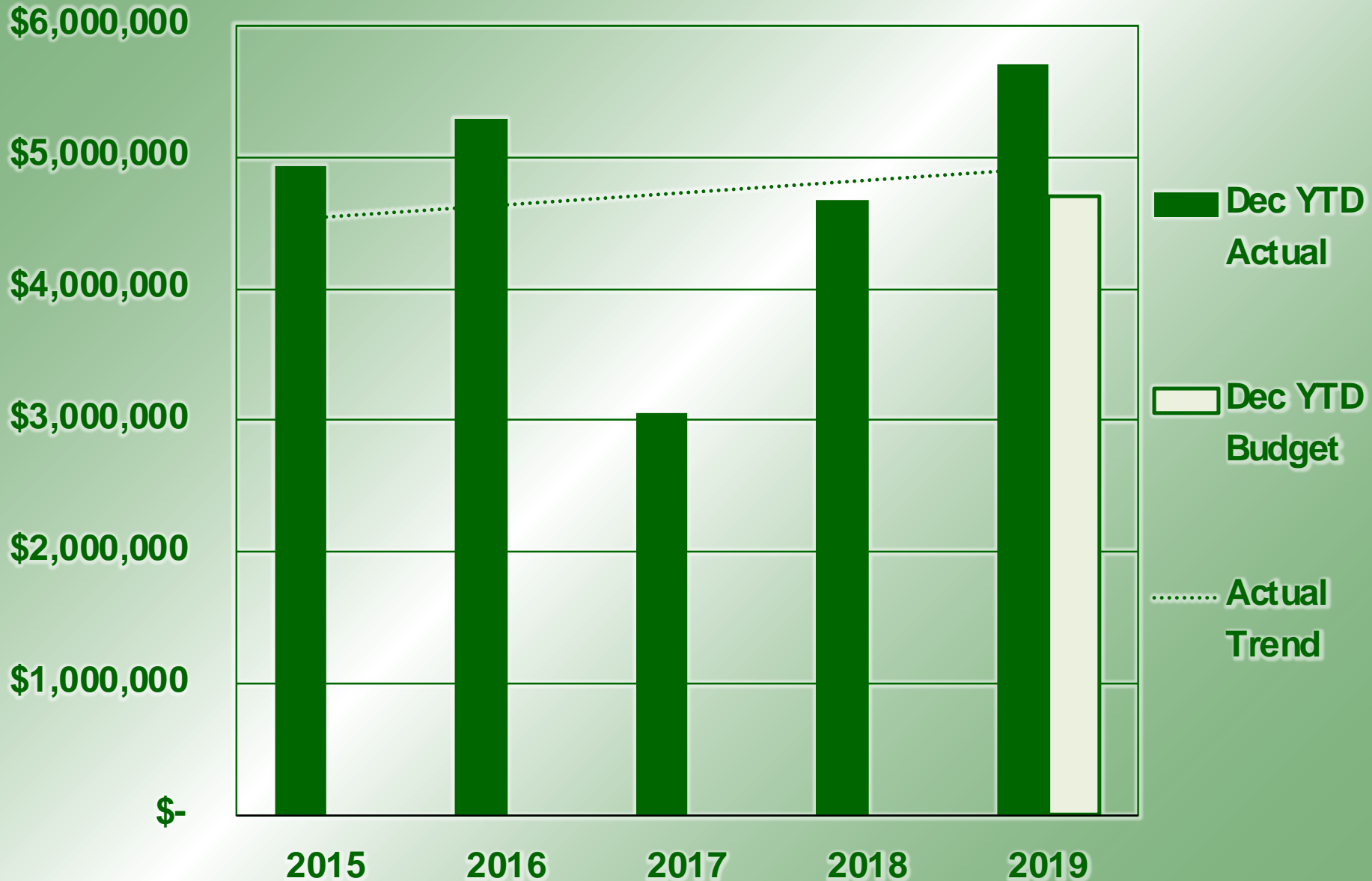
## PARK FUND – Revenues & Expenditures

As of December 2019	2019	YTD	YTD	%YTD
(in millions)	Budget	Budget	Actual	Budget
Park Revenue	5.86	4.70	5.70	121.27%
Transfers In	17.05	16.56	15.55	93.91%
<b>Funds Available</b>	<b>22.91</b>	<b>21.26</b>	<b>21.25</b>	<b>99.96%</b>
Expenditures	-20.30	-19.53	-19.83	101.55%
Net Capital Outlay	-4.83	-2.42	-1.15	47.71%
Transfers Out	-0.29	-0.29	-0.29	100.00%
<b>NET</b>	<b>-2.51</b>	<b>-0.98</b>	<b>-0.03</b>	
<b>Beg. Noncommitted Bal*</b>			<b>-0.05</b>	
<b>End Noncommitted Bal</b>			<b>-0.37</b>	

\*For clarification purposes, the 5% Reserve is a reduction against the Beginning Balance.

# Park Fund Revenue

## 5 Year Trend & YTD Budget



# City of Spokane Parks & Recreation

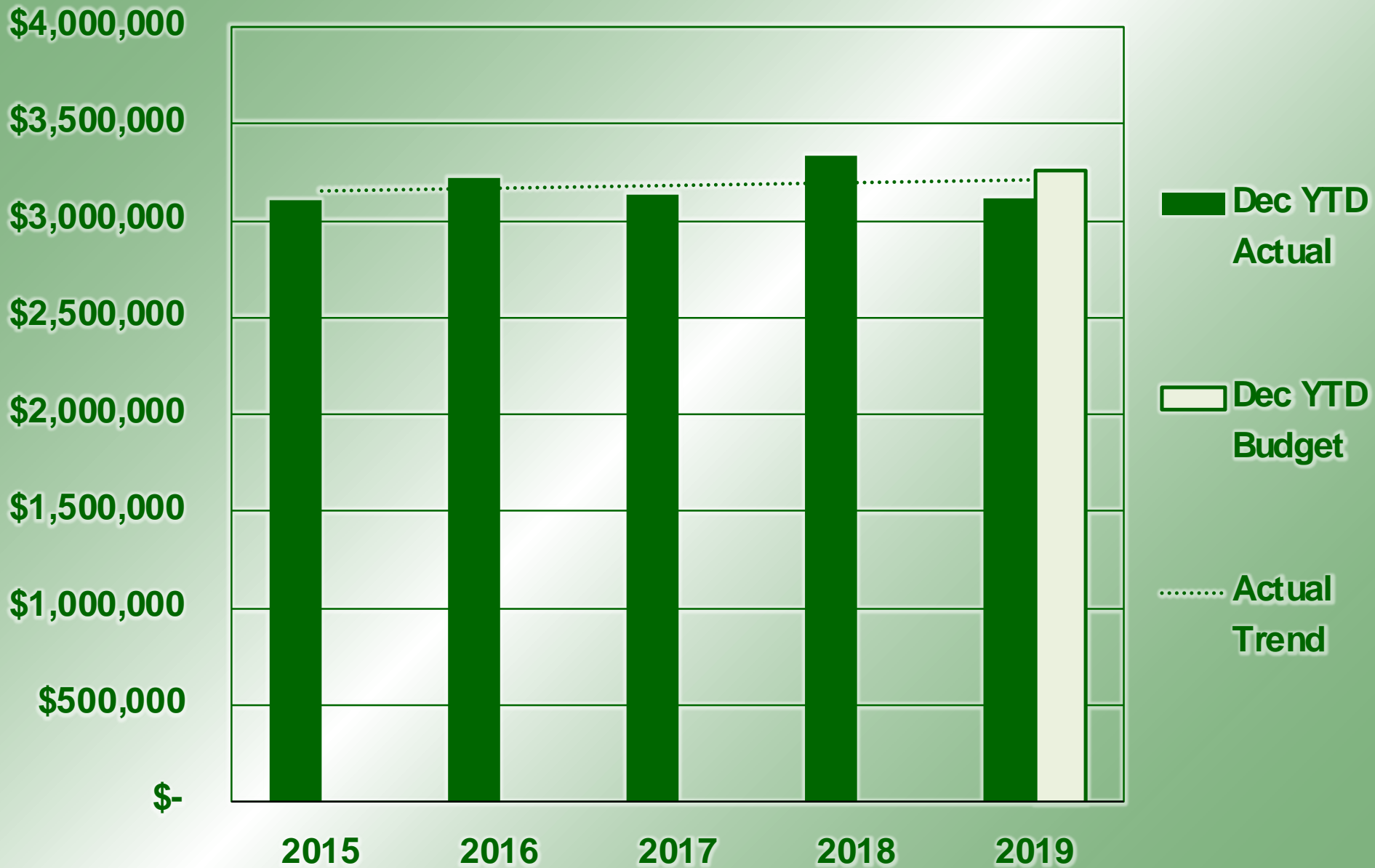
## GOLF FUND – Revenues & Expenditures

As of December 2019	2019	YTD	YTD	% YTD
(in millions)	Budget	Budget	Actual	Budget
Golf Revenue	3.81	3.26	3.68	112.78%
Transfers In	0.00	0.00	0.00	0.00%
<b>Funds Available</b>	<b>3.81</b>	<b>3.26</b>	<b>3.68</b>	<b>112.78%</b>
Expenditures	-3.26	-3.12	-2.95	94.35%
Transfers Out	-0.28	-0.28	-0.23	81.88%
Capital Outlay	-0.27	-0.06	-0.10	100.00%
<b>NET</b>	<b>0.00</b>	<b>-0.19</b>	<b>0.41</b>	
<b>Beg. Noncommitted Bal*</b>			<b>-0.63</b>	
<b>End Noncommitted Bal**</b>			<b>-0.22</b>	

\*For clarification purposes, the 7% Reserve is a reduction against the Beginning Balance.

# Golf Fund Revenue

## 5 Year Trend & YTD Budget





# Riverfront Park Bond Fund

Project Component	Budget Adopted December 2019	Expended as of December 31, 2019	Committed to Date	Budget Balance
1. South Bank West	\$ 10,412,530.00	\$ 10,412,530.00	\$ -	\$ -
2. South Bank Central	\$ 11,744,616.00	\$ 11,739,297.00	\$ 5,282.95	\$ 36.05
3. Howard St. SC Bridge	\$ -	\$ -	\$ -	\$ -
4. Promenades & Cent. Trail	\$ 8,307,274.00	\$ 5,998,113.00	\$ 358,428.93	\$ 1,950,732.07
5. Havermale Island	\$ 22,386,073.00	\$ 21,061,036.00	\$ 1,168,291.33	\$ 156,745.67
6. snxw mene <sub>2</sub>	\$ 1,741.00	\$ 1,741.00	\$ -	\$ -
7. North Bank	\$ 9,893,396.00	\$ 1,095,496.00	\$ 1,112,009.95	\$ 7,685,890.05
8. South Bank East	\$ 156,847.00	\$ 156,847.00	\$ -	\$ -
Program Level	\$ 5,492,815.00	\$ 4,078,461.00	\$ 401,615.31	\$ 1,012,738.69
Total	\$ 68,395,292.00	\$ 54,543,521.00	\$ 3,045,628.47	\$ 10,806,142.53

# Spokane Park Board

## Briefing Paper



<b>Committee</b>	Finance Committee		
<b>Committee meeting date</b>	Jan. 7, 2020		
<b>Requester</b>	Garrett Jones	<b>Phone number:</b> 509-363-5462	
<b>Type of agenda item</b>	<input type="radio"/> Consent <input type="radio"/> Discussion <input type="radio"/> Information <input checked="" type="radio"/> Action		
<b>Type of contract/agreement</b>	<input checked="" type="radio"/> New <input type="radio"/> Renewal/extension <input type="radio"/> Amendment/change order <input type="radio"/> Other		
<b>City Clerks file (OPR or policy #)</b>	New OPR; Cross reference: OPR 2018-0855 & OPR 2019-0021		
<b>Item title:</b> (Use exact language noted on the agenda)	Spokane Public Facilities District land lease/SportsPlex		
<b>Begin/end dates</b>	Begins: 01/10/2020	Ends: 01/09/2050	<input type="checkbox"/> Open ended
<b>Background/history:</b> City of Spokane, Parks and Recreation to lease land to the Spokane Public Facilities District (SPFD) for the SportsPlex per terms stipulated approved Inter-Local Cooperation agreement approved by Park Board in January 2019.			
<b>Motion wording:</b> Move to approve the SportsPlex land lease agreement with Spokane Public Facilities District.			
<b>Approvals/signatures outside Parks:</b> <input checked="" type="radio"/> Yes <input type="radio"/> No If so, who/what department, agency or company: Spokane Public Facilities District Name: Stephanie Curran    Email address: scurran@spokanepfd.org    Phone: 509-279-7169			
<b>Distribution:</b> Parks – Accounting    scurran@spokanepfd.org Parks – Pamela Clarke Requester: Garrett Jones Grant Management Department/Name:			
<b>Fiscal impact:</b> <input type="radio"/> Expenditure <input checked="" type="radio"/> Revenue Amount: 1.00    Budget code: 1400			
<b>Vendor:</b> <input checked="" type="radio"/> Existing vendor <input type="radio"/> New vendor <b>Supporting documents:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Quotes/solicitation (RFP, RFQ, RFB)  <input type="checkbox"/> Contractor is on the City's A&amp;E Roster - City of Spokane  <input type="checkbox"/> UBI:    Business license expiration date:         </div> <div> <input type="checkbox"/> W-9 (for new contractors/consultants/vendors)  <input type="checkbox"/> ACH Forms (for new contractors/consultants/vendors)  <input type="checkbox"/> Insurance Certificate (min. \$1 million in General Liability)         </div> </div>			

## GROUND LEASE WITH CITY OF SPOKANE PARK BOARD

This lease agreement ("**Lease**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 ("**Execution Date**"), by and between the Spokane Public Facilities District, a Washington municipal corporation ("**District**" or "**Lessee**") and the City of Spokane, a municipal corporation of the State of Washington acting through its Park Board ("**Park Board**" or "**Lessor**"), jointly referred to as "**Parties**."

### I. BACKGROUND

A. The District, pursuant to RCW Chapter 36.100 is authorized to acquire, develop, construct and operate multi-purpose sports facilities within the City of Spokane, to include the project known as the "**Sportsplex**."

B. The Sportsplex will be located on property owned by the Park Board as "Lessor" which is legally described in Section 1, below.

C. The Parties have entered into an "Interlocal Cooperation Agreement for Development of the Sportsplex" on January 15, 2019 ("**Interlocal Agreement**"), which provides, among other things, for the lease and acquisition of Sportsplex property through agreement between the Park Board and the District, ~~which includes the development of surface parking and other improvements.~~

D. The Interlocal Agreement further requires: (1) coordination between the District and the City of design work for the Sportsplex to include pedestrian connection(s) from the Sportsplex property to Riverfront Park; (2) execution of a Joint Use Agreement; and (3) other matters set forth in a letter of understanding between the District and the Park Board dated January 11, 2018.

~~E. The Parties have also executed an "Interlocal Agreement, Section 4 Between the Public Facilities District and the City of Spokane, By and Through the Spokane Park Board, Regarding provides the Parties shall establish "scheduling of use and events, including use by Parks for recreational programming and large tournament style events" Joint Use of at the Sportsplex Facility ("Joint Use Agreement"). The Joint Use Agreement is a material consideration of the Spokane Park Board in executing this Ground Lease. See Interlocal Agreement, Section 4.2.~~

~~E~~F. The Parties desire to enter into this agreement to lease the Property.

NOW, THEREFORE, for and in consideration of the following terms, conditions and covenants, Lessor does hereby lease to the Lessee as follows:

1. **Property.** The real property which is the subject of this Lease is legally described on Exhibit A, which is attached hereto and incorporated herein by this reference and depicted on Exhibit B, attached hereto (the "**Property**").



A. Improvements. Pursuant to the Interlocal Agreement, the District intends to construct the Sportsplex, which is generally defined as a facility consisting of a field house to generate sports tourism through use by the general public that will host basketball, volleyball, indoor track and other court sports with associated meeting rooms, locker rooms, rest rooms, public areas, office space, concession areas and possibly an ice house ("**Improvements**"). The District is presently proceeding with preliminary work to develop and prepare for the construction of the Sportsplex pursuant to the "Alternative Public Works Contracting Procedures," RCW Chapter 39.10, to include entering into an agreement with a design-build team, Lydig Construction.

## 2. Term.

2.1 Lease Term. The initial term of this Lease is thirty (30) years (the "**Initial Term**") commencing on the date of the Lease Notice (defined below). Thereafter, Lessee is granted the right to extend this Lease as set forth in Section 2.2. The date this Lease commences shall be known as the "**Commencement Date**."

2.2 Lease Option. Unless, at least six (6) months prior to the expiration of the Initial Term, Lessee notifies Lessor of its intention to terminate this Lease, this Lease shall be automatically extended for an additional thirty (30) year period upon the same terms ("**Lease Extension**") unless agreed otherwise by the Parties.

2.3 Lease Commencement. The Lease will commence by the District delivering to ~~Lessee-Lessor~~ written notice stating the date that the District intends to commence development and construction of the Improvements and thereafter use and occupy the Property for its intended purpose (the "**Lease Notice**"). The Lease Notice shall be delivered to the Mayor with a copy to the Director of the Parks Department according to section 15.45.

## 3. ~~Title~~ Representation and Inspection.

~~3.1 Title. Within thirty (30) days after the Execution Date, Lessor shall provide to Lessee at Lessee's cost and expense, a commitment for a standard coverage Lessee's policy of title insurance with respect to the Property in the minimum amount of \$1,000,000.00 (the "**Title Commitment**") issued by a title insurance company (the "**Title Company**"). The Title Commitment shall show the status of title to the Property as of the date of the Title Commitment and shall be accompanied by copies of all documents referred to in the Title Commitment. Lessee shall review the Title Commitment and notify Lessor in writing of Lessee's disapproval of any Schedule B exceptions shown thereon (the "**Disapproved Exceptions**") within thirty (30) days following the date on which the Title Commitment is delivered to Lessee. Lessee's failure to notify Lessor in writing of its disapproval of any exception within such time period shall be deemed approval of such exception; provided, any matters that would prevent Lessee from using the Property for Lessee's intended purpose shall be deemed disapproved, whether or not Lessee provides notice of its disapproval. All exceptions which are either approved or deemed approved shall be referred to herein as "**Permitted Exceptions**."~~

~~Lessor shall have thirty (30) days from the date of receipt of any notice of disapproval to cause Disapproved Exceptions to be removed from the Title Commitment or cause the Title Company to commit to insure against loss or damage that may be occasioned by such Disapproved Exceptions.~~

~~However, Lessor shall have no obligation to cause Disapproved Exceptions to be removed from the Title Commitment or to cause the Title Company to commit to insure against loss or damage that may be occasioned by such Disapproved Exceptions through an endorsement or endorsements acceptable to Lessee. Lessor shall notify Lessee within the thirty (30) day period whether Lessor has caused the Disapproved Exceptions to be removed from the Title Commitment, or caused the Title Company to commit to insure against loss or damage that may be occasioned by the Disapproved Exceptions. Lessor's failure to notify Lessee in writing of its decision not to cause such Disapproved Exceptions to be removed from the Title Commitment or to cause the Title Company to commit to insure against loss or damage that may be occasioned by the Disapproved Exceptions shall be deemed an election by Lessor not to cause the Disapproved Exceptions to be removed or insured. In the event Lessor fails to notify lessee that it will cause the Disapproved Exceptions to be removed from the Title Commitment, or cause the Title Company to commit to insure against loss or damage that may be occasioned by the Disapproved Exceptions, Lessee shall thereafter notify Lessor within ten (10) days whether Lessee elects to (i) waive the Disapproved Exceptions, (ii) terminate this Lease, or (iii) enter into good faith negotiations to modify this Lease to remedy the effect of the Disapproved Exceptions.~~

3.2 Environmental Site Assessment. Pursuant to the January 11, 2018 Letter of Understanding, Section 4(E), the City makes no representation regarding the condition of the Property and/or whether the Property is contaminated with any Hazardous Materials in violation of any Environmental Law(s), as defined herein. Within one hundred eighty (180) days of the Execution Date (the "**Contingency Deadline**"), Lessee may obtain at Lessee's sole cost and expense, an environmental site assessment of the Property, prepared by a licensed environmental engineer.

3.2.1 Other Inspections. Following the Execution Date and until the Contingency Deadline, Lessee shall be entitled to conduct an examination of the Property, including other tests and inspections which Lessee shall deem necessary or desirable for the purposes of determining whether, in Lessee's discretion, the Property is suitable for Lessee's purposes. Lessee agrees to indemnify and hold Lessor harmless for any loss, cost or expense resulting from damage to the Property, or injury to persons resulting from the work conducted pursuant to this ~~s~~Section 3.2.1, except and only to the extent such damage is caused by the negligence or intentional acts of the Lessor.

3.2.2 Inspection Notice. Lessee shall give Lessor five (5) days advance written notice of its intent to inspect the Property.

3.2.3 Post Inspection Notice. If Lessee reasonably determines the condition of the Property is unsuitable for the Lessee's intended use, Lessee shall provide written notice of the same to the Lessor prior to the Contingency Deadline. Upon receipt of written notice, the Parties shall meet and confer in order to review and address Lessee's notice. If the Parties are unable to resolve Lessee's concerns to Lessee's satisfaction, Lessee may terminate this Lease.

3.2.4 Definitions. For purposes of this Section 3.2, the term "Hazardous Materials" shall include, but not be limited to, substances defined as "Hazardous Substances," "Hazardous Materials," "Hazardous Waste," "Toxic Substances," in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Section 9601 et seq., the Model Toxic Control Act of the State of Washington and all

regulations adopted and publications promulgated pursuant to such laws, collectively "Environmental Law."

#### 4. Improvements and Permitted Use.

4.1 Lessee's Work. Lessee agrees to develop and construct the Improvements on the Property, install all necessary utilities, above and below ground improvements, and landscaping to include performing all other reasonable site work, and constructing pedestrian access in accordance with plans and specifications prepared and approved by Lessee and Lessor as set forth in the Interlocal Cooperation Agreement.

4.1.1 Plans and Specifications. Prior to construction of the Improvements, Lessee shall submit to Lessor initial plans and specifications for the Improvements (or portion thereof). ~~Lessee-Lessor~~ shall have fourteen (3014) days following receipt of the plans and specifications (or any modification thereof) to provide ~~Lessor-Lessee~~ with Lessor's comments, which shall be reasonably considered by Lessee pursuant to Section 3.2 of the Interlocal Agreement.

4.2 Lessor's Work. Lessor is not required to modify the Property or construct site improvements.

4.3 Title to Improvements. The Improvements constructed on the Property shall be the property of Lessee during the term of this Lease. Upon the expiration or sooner termination of this Lease, Lessee shall (i) transfer title to the Improvements to Lessor at no cost or expense to Lessor; (ii) demolish the Improvements and leave the site in a finished "at grade" condition at no cost or expense to Lessor; or (iii) enter into a mutually acceptable agreement with Lessor to provide for the continued use of the Property.

4.4 Surrender of Property and Improvements. Upon expiration or earlier termination of this Lease, Lessee shall surrender the Property and all Improvements (as set forth in Section 4.3). Upon such termination, Lessee may remove all of Lessee's furniture, fixtures, equipment, trade fixtures, signs, inventory and other personal property. Any of Lessee's personal property left on the Property ninety (90) days after termination of this Lease shall conclusively be considered abandoned and Lessor will be entitled to use or dispose of it free of any interest of Lessee.

4.4.1 Consolidated Property. To develop~~ment~~ the Sportsplex Lessee was required to consolidate real property owned by Lessee into real property owned by Lessor ("**Consolidated Properties**"). Prior to exercising rights under this section 4.4, the parties shall cooperate to divide the Consolidated Properties back to the configuration and square footages that existed as of the Execution Date, unless otherwise agreed.

4.5 Permitted Use. The Property may be used and occupied by Lessee for all activities reasonably related to the Improvements, to include exercising all authority available under RCW Chapter 36.100, and the policies and procedures of the District.

~~4.6 Lessor's Use. Lessor shall be permitted to use the Sportsplex as set forth in Section 4 of the Interlocal Agreement and any subsequent agreement(s) between the Parties.~~

4.67 Lessee's-Lessor's Use. Through an "Interlocal Agreement Between Public Facilities District And City Of Spokane Parks And Recreation Division Regarding Joint Use Of The Sportsplex Facility" the parties have agreed to terms and conditions relating to the right of City Parks and Recreation Department's use of the Sportsplex.

## **5. Rent, Utility Charges and other Consideration.**

5.1 Ground Rent. Lessee shall on the Commencement Date and each anniversary date thereafter pay rent in the amount of One Dollar (\$1.00) per year.

5.2 Lessor's Use. In lieu of fair market rent charged to Lessee, Lessor shall be permitted to use the Sportsplex as set forth in the Joint Use Agreement and any subsequent agreement(s) between the Parties. ~~A material breach of the Joint Use Agreement by Lessee shall constitute a default of this Ground Lease under Section 11.~~

5.23 Utility Charges. Lessee shall be responsible for ~~all~~ obtaining all utilities and services provided to the Property and agrees to pay, prior to delinquency, all charges for electricity, gas, water, sewage, and/or all other public and private services or charges used by or through Lessee at the Property, excluding any charges or services provided to or incurred by Lessor or its affiliates under the Joint Use Agreement.

5.34 Other Consideration. In furtherance of development of the Sportsplex, the District has requested that a portion of Cataldo Street be vacated by the City of Spokane. Pursuant to the street vacation, adjacent property owners have entered into a "Declaration of Reciprocal Easements and Covenants and Restrictions Affecting Land" ("**Declaration**"). See Exhibit C. The Declaration provides, in part, that the vacated portion of Cataldo shall be maintained as a private street with each abutting owner responsible for its proportionate share of the cost of operation, repair, maintenance and improvement of the street that is common to the Parties. Lessor owns property adjacent to the private street that is subject to the Declaration. The Declaration contains a formula for assessing an owner's proportionate share of the costs identified above, collectively known as "Common Maintenance."

Lessee hereby agrees to assume, during the Initial Term and the Lease Extension, the rights, responsibilities and obligations on behalf of the Park Board (Lessor) to include paying the Common Maintenance expense as set forth in the Declaration. Upon termination of this Ground Lease, the Parties shall meet and confer to reach an agreement upon any continuing responsibility and obligation(s) set forth in the Declaration. Mediation and arbitration, as set forth herein, shall be available to resolve future obligations set forth in the Declaration.

## **6. Use.**

6.1 Compliance with Laws. Lessee shall comply with all local, state or federal laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force with respect to the Lessee's use and occupancy of the Property.

6.2 Hazardous Materials. "**Hazardous Material**" shall mean any matter (whether gaseous, liquid or solid) which is now or hereafter designated as a hazardous or toxic waste or substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601, et seq., all as now or hereafter amended, or which may now or hereafter be regulated under any other federal, state, or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment, including, without limitation, (i) any asbestos and/or asbestos containing materials (collectively "**ACMs**") regardless of whether such ACMs are in a friable or non-friable state, or (ii) any matter designated as a hazardous substance pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC 1317), or (iii) any matter defined as a hazardous waste pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 USC 6901 et seq) pertaining to health or the environment. "Hazardous Material" shall not include ordinary cleaning and maintenance products which are used with due care and in accordance with applicable law and the instructions of the manufacturer of such products in the reasonable and prudent conduct of the business conducted on the Property.

6.2.1 Lessee shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on or about the Property without the prior written consent of Lessor.

6.2.2 Responsibility for environmental remediation costs is covered in Section 3.2.2 of the Interlocal Agreement.

7. **Alterations and Improvements; Fixtures and Equipment.** Except as otherwise provided in this Lease, any alterations, additions or improvements to the Property or the Improvements thereon shall be made at Lessee's sole cost and expense unless otherwise mutually agreed in writing between the Parties. Lessee shall secure all governmental permits, approvals or authorizations required in connection with any such work. All alterations, additions and Improvements shall immediately become the property of Lessee. Lessee's trade fixtures, furnishings, appliances and equipment shall remain the property of Lessee and shall not be considered a part of the Property.

7.1 Permission of Lessor. Lessee shall have the right, but not the obligation, at its sole cost and discretion and without obtaining the prior consent from Lessor, to make any additions, alterations, and/or changes to the Improvements ("**Lessee Improvements**"), provided, the Improvements and all work is consistent with the matters set forth in this Lease and the Interlocal Agreement or other mutually agreed terms and conditions.

## 8. **Maintenance of Premises.**

8.1 Maintenance and Repair by Lessee. Lessee shall maintain the Property, including the Improvements, in good operational condition for Lessee's use of the Property in a manner consistent with Lessee's other facilities and improvements. All repair work shall be done in a good and workmanlike manner according to applicable codes, standards and regulations. Lessee shall not commit waste with respect to the Improvements or the Property.

8.2 Repairs by Lessor. Lessor shall not be responsible for maintaining, repairing or restoring any part of the Property or Improvements, unless Lessor is the cause of damage to the Property or Improvements.

9. **Assignment and Subletting.** The Lessee may not assign this Lease in whole or in part by operation of law or otherwise, and sublet all or any part of the Property, without prior written consent of the Lessor in each instance. Any unpermitted assignment by Lessee shall be null and void. Notwithstanding the above, Lessee is authorized to enter into use (or license) agreements with persons or entities desiring to use the Sportsplex, including its Property for the intended purposes described herein and as may be determined from time to time by the District.

10. **Insurance and Indemnity.**

10.1 **Lessee's Insurance.** During the Initial Term of this Lease and any extensions hereof, Lessee, at its sole cost and expense, shall obtain and maintain the insurance policies described in Exhibit D hereto and shall name Lessor as an additional insured on such policies.

10.2 **General Requirements.** All insurance (and renewals thereof) required by this Section shall be issued by responsible insurance carriers authorized to do business in the State of Washington with an A. M. Best Rating of A-/VII or better. Each policy shall expressly provide that it shall not be cancelled or changed without at least thirty (30) days' prior written notice to all parties insured or named therein. The insurance described in Section 11.1.110 shall include Lessor as an additional insured. All of the insurance required by this Section shall be primary and noncontributing with any insurance which may be carried by the other party, shall afford coverage for all claims based on any act, omission, event or condition which occurs or arises during the policy period, and may be obtained by endorsement on blanket policy(ies) of insurance carried and maintained by Lessee. Beginning five (5) years after the Commencement Date, and every five (5) years thereafter, the amount (limit) of insurance coverage shall be adjusted by the Parties to equal the insurance coverage Lessee carries on similar properties and use.

10.3 **Mutual Waiver of Subrogation.** Notwithstanding any other provision of this Lease, Lessor and Lessee each hereby waives, releases and discharges the other, its agents and employees from all claims whatsoever arising out of loss, claim, expense, damage or destruction covered or required to be covered by insurance or covered by other casualty insurance it may carry (a "Loss"), notwithstanding that such Loss may have been caused by the other, its agents or employees. Lessor and Lessee each hereby agrees to look to its insurance coverage only upon such Loss. Lessor's policy or policies of insurance shall contain a waiver of subrogation clause as to Lessee. Lessee's policy or policies of insurance shall contain a waiver of subrogation clause as to Lessor.

10.4 **Indemnification.**

10.4.1 Lessee shall defend, indemnify and hold Lessor, and its officers, directors, employees, agents and contractors including successors and assigns of each of the foregoing (collectively, the "Indemnitees") harmless against and from any and all claims, costs, damages or expenses arising from or caused by the acts and omissions associated with the construction, management and operation of the Sportsplex and Sportsplex Property, including, without limitation, any and all claims arising from: (a) any breach or default on the part of Lessee of any covenant or agreement on its part to be performed pursuant to the terms of this Agreement; and (b) any act of negligence or willful misconduct of Lessee, or its officers, directors, employees, agents and contractors including successors and assigns.



10.4.2 Lessor shall defend, indemnify and hold Lessee, and its Indemnitees harmless against and from any and all claims, costs, damages or expenses arising from or caused by acts or omissions of ~~Lessee~~Lessor, including, without limitation, any and all claims arising from: (a) any breach or default on the part Lessor, its officers, agents, employees and contractors including successors and assigns in performance of any covenant or agreement on its part to be performed pursuant to the terms of this Agreement; and (b) any act of negligence or willful misconduct of Lessor, or its officers, directors, employees, agents and contractors.

10.4.3 The indemnity in Section 10.4.1 and 10.4.2 shall include any and all costs, attorney fees, expenses, and liabilities incurred in or about any such claim, action, or proceeding brought thereon, and if any action or proceeding be brought against any Indemnitees by reason of any such claim. Each of the parties hereto shall defend against such action or proceeding, unless such action or proceeding is defended by counsel for any carrier of public liability insurance provided herein. Nothing in this Section shall require: (i) Lessee to indemnify or defend Lessor from or against Lessor's own negligent acts or omissions and (ii) Lessor to indemnify or defend Lessee from or against Lessee's own negligent acts or omissions.

10.4.4 If and to the extent this Agreement is a contract or agreement subject to Revised Code of Washington ("RCW") Section 4.24.115 as in effect on the date of this Agreement, all provisions of this Agreement pursuant to which a party hereto agrees to indemnify Indemnitees against liability for damages arising out of bodily injury to persons or damage to property in connection with the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of any improvement hereunder will be limited by the provisions of this section. None of such Indemnities will apply to Damages caused by or resulting from the sole negligence of the indemnitee, its agents or employees. To the extent that any such Damages are caused or result from the concurrent negligence of (a) the indemnitee or its agents or employees and (b) the indemnitor or its agents or employees, the Indemnities will apply only to the extent of the indemnitor's negligence. If RCW 4.24.115 is hereafter amended to eliminate or modify the limitations on indemnities set forth therein, this section will automatically and without further act by either Party be deemed amended to remove any of the limitations contained in this section that are no longer required by then-applicable law. The Parties have specifically negotiated the waiver of and hereby specifically waive any provisions of any industrial insurance act, including Title 51 of the RCW, or any other employee benefit act which might otherwise operate to release or immunize either party from its obligations hereunder.

## **11. Lessee's Default.**

11.1 Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee.

11.1.1 Failure to Pay Rent. The failure by Lessee to pay Rent when due, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee.

11.1.2 Nuisance or Waste. After written notice thereof by Lessor, the use, neglect or waste of the Property (including Improvements) for a continuous period of thirty (30) days by Lessee, its agents, employees, guests, or licensees in a manner which creates a nuisance (as such term is defined by state and local law) that unreasonably interferes with the use and enjoyment of the Property, adjacent property or Improvements under which Lessor can demonstrate a material or financial interest therein.

11.1.3 Failure to Perform. The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Lessee, other than described in Section 11.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee.

~~11.1.4 Breach of Joint Use Agreement. A material breach of the Joint Use Agreement that remains uncured for thirty (30) or more days, or is not otherwise excused by a written resolution approved by a majority vote of the Joint Use Committee.~~

11.2 Lessee's Right to Cure. If Lessee fails to cure the default within the above number of calendar days after written notice thereof is given by Lessor, provided that, if the nature of the default is such that it cannot reasonably be cured within said calendar day period, and/or if Lessee commences an action to cure such default during such calendar day period, and thereafter diligently continues to prosecute such cure, Lessee's time to cure such default shall be reasonably extended for such additional period as may be necessary for that purpose. If Lessee fails to cure such failure of performance, then Lessor may elect to terminate this Lease and take possession of the Property.

### 11.3 Lessor's Remedies in Default.

11.3.1 Upon the occurrence of an event of default under Section 11.1, Lessor shall have the following rights and remedies, subject to the provisions of Section 11.2:

11.3.1.1 To terminate this Lease and Lessee's right of possession of the Property by giving notice of such election to Lessee, in which event the Parties shall exercise their rights under Section 4.3, Lessee shall immediately surrender possession thereof to Lessor; or to enter upon the Property and Improvements and perform acts or work as necessary to restore the Property and Improvements to the condition which is required under the terms of this Lease. Thereafter, Lessor may make a demand upon Lessee to pay all reasonable costs and expenses incurred by Lessor to affect a cure allowed under this Section, plus interest at the maximum rate allowed by law. Lessee shall pay the amount demanded by Lessor or may otherwise commence upon written notice the dispute resolution process set forth in Section 15.8 herein.

11.3.1.2 To terminate Lessee's right of possession of the Property without terminating this Lease by giving notice of such election to Lessee, in which event (A) Lessee shall immediately surrender possession thereof to Lessor, failing which Lessor may exercise the right of reentry, and (B) Lessor shall have the right to



occupy the Property for and on account of Lessee and to collect any unpaid Rent and other charges which have or may thereafter become due and payable; or

11.3.1.3 If Lessor reenters the Property such reentry or any action, in unlawful detainer or otherwise, to obtain possession of the Property shall be deemed to be an election by Lessor to terminate this Lease, ~~and Lessee's liability to pay Rent or other charges thereafter accruing.~~

11.4 **Remedies Cumulative - Waiver.** It is understood and agreed that the Lessor's remedies hereunder are cumulative and the Lessor's exercise of any right or remedy due to a default or breach by Lessee shall not be deemed a waiver of, or to alter, affect or prejudice any right or remedy which Lessor may have under this Lease or by law.

11.5 **Termination for Cause.** Notwithstanding anything set forth in this Lease, Lessee may, upon thirty (30) days advance written notice to Lessor terminate this agreement in whole or in part based upon the following conditions: (a) Lessee is unable to obtain adequate financing in order to construct the Improvements as reasonably determined by the District through its Board of Directors; (b) all or any portion of the Property is deemed to be unsuitable for purposes of constructing, maintaining and operating the Improvements; or (c) the District, pursuant to an exercise of reasonable discretion and diligence, determines that the Property is not of adequate size or has physical limitations which render the development, use and enjoyment to include, but not be limited to, operational expectations, unfeasible or impractical according to the reasonable discretion of the Board of Directors. Prior to making any decision under this Section 11.5 by the District Board of Directors, there shall be written notice delivered to the City to include stating any proposed action by the District pursuant to this section.

12. **Reconstruction.** In the event the Improvements on the Property are damaged by fire or other perils, Lessee shall, using reasonable efforts as soon as is reasonably possible repair, restore and rebuild the same (or other structures more suitable to Lessee's then-intended use of the Property), and this Lease shall remain in full force and effect.

13. **Holding Over.** Unless otherwise agreed to by Lessor in writing, any holding over by Lessee after the expiration of the lease term hereof, with or without Lessor's consent, shall be construed to be a tenancy from month-to-month. Such holdover tenancy shall be subject to all of the terms and conditions set forth herein, to the extent not inconsistent with a month-to-month tenancy.

14. **Quiet Enjoyment.** Lessee, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease, and upon the payment of all sums due hereunder, shall have and quietly enjoy the Property for the lease term set forth herein.

15. **Miscellaneous.**

15.1 **Successors or Assigns.** All the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon the Lessor, Lessee and their respective heirs, administrators, executors, successors and assigns, and upon any person or persons coming into ownership or possession of any interest in the Property by operation of law or otherwise, subject at all times, however, to all provisions and restrictions elsewhere contained in this Lease. This Lease

may not be assigned by either party without the prior written consent of the non-assigning party, which may be withheld pursuant to such party's sole discretion.

15.2 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

15.3 Recording. Lessee may record this Lease or a Notice thereof without the prior written consent of the Lessor. If Lessee records a memorandum or "short form" of this Lease, it shall be in a form customarily used for such purposes. Said memorandum or short form of this Lease shall describe the parties, the Property, the lease term and any other provisions reasonably required, shall incorporate this Lease by reference and shall specify that any inconsistency between the memorandum of lease and this Lease shall be resolved in favor of this Lease.

15.4 Notices. Any notices required in accordance with any of the provisions herein shall be delivered or mailed by registered or certified mail, postage prepaid and return receipt requested, to the addresses set forth below or at such other place as either party may in writing from time to time specify. Any such notice shall be deemed effective on the date of delivery or two (2) business days after mailing. If there is more than one Lessee or Lessor, any notice required or permitted hereunder may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof.

Notices to ~~Lessee~~Lessor: \_\_\_\_\_Director, Parks Department  
City of Spokane  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

With a copy to: Office of the City Attorney  
City of Spokane  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Notices to Lessee: Stephanie Curran, CEOChief Executive Officer  
Spokane Public Facilities District  
720 W. Mallon Avenue  
Spokane, WA 99201

With a copy to: Stanley M. Schwartz  
Witherspoon Kelley  
422 W. Riverside Ave., Suite 1100  
Spokane, WA 99201

15.5 Amendments. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

15.6 Force Majeure. This Lease and the obligations of either party hereunder, other than obligations to pay Rent or other sums of money, shall be excused if such party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the obligated party; provided, however, such excused performance shall only be for that period of time that the cause of such inability or delay shall exist. This Lease and the obligations of either party hereunder shall not be affected or impaired because the other party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the obligated party.

15.7 Choice of Law. This Lease shall be governed by the laws of the state of Washington.

15.8 Mediation and Arbitration. If either party has a claim or dispute under this Agreement, written notice shall be sent to the other party ("**Notice of Dispute**"). The notice shall provide a brief description of the dispute.

15.8.1 Meet and Confer. Within five (5) days of the delivery of the Notice of Dispute, the parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable period of time, not exceeding thirty (30) days, either party may give notice of mediation.

15.8.2 Mediation. The mediator shall be chosen through mutual agreement of the Parties. If a mediator is not engaged within ten (10) days of the notice of mediation the matter may proceed to arbitration. The mediator's fees and costs shall be equally shared by the parties.

15.8.3 Arbitration. If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding arbitration in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that can be mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the Parties and enforceable pursuant to RCW Chapter 7.04A.

The pendency of mediation or arbitration shall not suspend or terminate any payment or performance obligation under this Agreement. This section shall survive termination of this Agreement.

15.9 Legal Expenses. If either party is required to bring or maintain any action (not including mediation) to enforce any of the covenants, terms or conditions of this Lease, the prevailing party in such action shall be entitled to all the costs incurred by the prevailing party, including reasonable attorneys' fees awarded by a court with jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above set forth.

**LESSORLESSEE:**

**SPOKANE PUBLIC FACILITIES DISTRICT, a**  
Washington municipal corporation

By: \_\_\_\_\_  
Stephanie Curran, Chief Executive Officer

**LESSEELESSOR:**

**CITY OF SPOKANE**

By: \_\_\_\_\_  
Mayor **Nadine Woodward**

Attest:

By: \_\_\_\_\_  
City Clerk, Terri Pfister

**CITY OF SPOKANE, PARK BOARD**

By \_\_\_\_\_  
Its: President~~Chair~~

Approved as to Form:

By: \_\_\_\_\_  
Assistant City Attorney

COUNTY OF )

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

COUNTY OF SPOKANE )

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

[illegible]

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**EXHIBIT C**  
**DECLARATION OF RECIPROCAL EASEMENTS AND COVENANTS AND**  
**RESTRICTIONS AFFECTING LAND**



**EXHIBIT D**  
**MINIMUM INSURANCE REQUIREMENTS**  
**SPOKANE SPORTSPLEX**

I. Property.

- a. Blanket Real and Person Property, Special Form:
  - 100% Replacement Value.
  - Business Income, Extra Expense and Rental Value (Business Interruption).
  - Earthquake-Minimum \$5,000,000; Additional Limits at District discretion subject to availability and reasonable price.
  - Flood-Minimum \$5,000,000; Additional Limits at District discretion subject to availability and reasonable price.
- b. Builder's Risk:
  - Sportsplex Construction Contract Price.

II. Liability.

- a. Commercial General and Business Auto Liability:
  - Bodily Injury and Property Damage.
  - Premises and Operations including X, C and U.
  - Independent Contractor's Protective.
  - Personal Injury with Employment Exclusion Deleted.
  - Products and Completed Operations.
  - Broad Form Property Damage and Completed Operations.
  - Contractual including Contractor's Indemnity Obligations.
  - Personal and Advertising Injury.
  - Premises Medical Expense.
  - Fire Damage.
  - Employer's Liability (Washington Stop Gap Liability) to supplement Washington workers' compensation program in which District shall participate as required by law.
  - Owned, Non-owned and Hired Vehicles.
- b. With Combined Single Limits of:
  - General Aggregate, \$2,000,000.
  - Products/Completed Operations Aggregate, \$2,000,000.
  - Personal Injury, \$1,000,000.
  - Each Occurrence, \$1,000,000.
  - Fire Damage, \$100,000.
  - Medical Expense, Any One Person, \$5,000.

- c. Umbrella:
- Each Occurrence, \$10,000,000.
  - Aggregate, \$10,000,000.
  - Self-Insured Retention, \$10,000.

## GROUND LEASE WITH CITY OF SPOKANE PARK BOARD

This lease agreement ("**Lease**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 ("**Execution Date**"), by and between the Spokane Public Facilities District, a Washington municipal corporation ("**District**" or "**Lessee**") and the City of Spokane, a municipal corporation of the State of Washington acting through its Park Board ("**Park Board**" or "**Lessor**"), jointly referred to as "**Parties**."

### I. BACKGROUND

A. The District, pursuant to RCW Chapter 36.100 is authorized to acquire, develop, construct and operate multi-purpose sports facilities within the City of Spokane, to include the project known as the "**Sportsplex**."

B. The Sportsplex will be located on property owned by the Park Board as "Lessor" which is legally described in Section 1, below.

C. The Parties have entered into an "Interlocal Cooperation Agreement for Development of the Sportsplex" on January 15, 2019 ("**Interlocal Agreement**"), which provides, among other things, for the lease and acquisition of Sportsplex property through agreement between the Park Board and the District.

D. The Interlocal Agreement further requires: (1) coordination between the District and the City of design work for the Sportsplex to include pedestrian connection(s) from the Sportsplex property to Riverfront Park; (2) execution of a Joint Use Agreement; and (3) other matters set forth in a letter of understanding between the District and the Park Board dated January 11, 2018.

E. The Interlocal Agreement, Section 4 provides the Parties shall establish "scheduling of use and events, including use by Parks for recreational programming and large tournament style events" at the Sportsplex ("**Joint Use Agreement**"). The Joint Use Agreement is a material consideration of the Spokane Park Board in executing this Ground Lease. See Interlocal Agreement, Section 4.2.

F. The Parties desire to enter into this agreement to lease the Property.

NOW, THEREFORE, for and in consideration of the following terms, conditions and covenants, Lessor does hereby lease to the Lessee as follows:

1. **Property.** The real property which is the subject of this Lease is legally described on Exhibit A, which is attached hereto and incorporated herein by this reference and depicted on Exhibit B, attached hereto (the "**Property**").

A. **Improvements.** Pursuant to the Interlocal Agreement, the District intends to construct the Sportsplex, which is generally defined as a facility consisting of a field house to generate sports tourism through use by the general public that will host basketball, volleyball, indoor track and other court sports with associated meeting rooms, locker rooms, rest rooms, public areas, office space,

concession areas and possibly an ice house ("**Improvements**"). The District is presently proceeding with preliminary work to develop and prepare for the construction of the Sportsplex pursuant to the "Alternative Public Works Contracting Procedures," RCW Chapter 39.10, to include entering into an agreement with a design-build team, Lydig Construction.

## **2. Term.**

2.1 Lease Term. The initial term of this Lease is thirty (30) years (the "**Initial Term**") commencing on the date of the Lease Notice (defined below). Thereafter, Lessee is granted the right to extend this Lease as set forth in Section 2.2. The date this Lease commences shall be known as the "**Commencement Date**."

2.2 Lease Option. Unless, at least six (6) months prior to the expiration of the Initial Term, Lessee notifies Lessor of its intention to terminate this Lease, this Lease shall be automatically extended for an additional thirty (30) year period upon the same terms ("**Lease Extension**") unless agreed otherwise by the Parties.

2.3 Lease Commencement. The Lease will commence by the District delivering to Lessor written notice stating the date that the District intends to commence development and construction of the Improvements and thereafter use and occupy the Property for its intended purpose (the "**Lease Notice**"). The Lease Notice shall be delivered to the Mayor with a copy to the Director of the Parks Department according to section 15.4.

## **3. Representation and Inspection.**

Environmental Site Assessment. Pursuant to the January 11, 2018 Letter of Understanding, Section 4(E), the City makes no representation regarding the condition of the Property and/or whether the Property is contaminated with any Hazardous Materials in violation of any Environmental Law(s), as defined herein. Within one hundred eighty (180) days of the Execution Date (the "**Contingency Deadline**"), Lessee may obtain at Lessee's sole cost and expense, an environmental site assessment of the Property, prepared by a licensed environmental engineer.

3.1 Other Inspections. Following the Execution Date and until the Contingency Deadline, Lessee shall be entitled to conduct an examination of the Property, including other tests and inspections which Lessee shall deem necessary or desirable for the purposes of determining whether, in Lessee's discretion, the Property is suitable for Lessee's purposes. Lessee agrees to indemnify and hold Lessor harmless for any loss, cost or expense resulting from damage to the Property, or injury to persons resulting from the work conducted pursuant to this Section 3.1, except and only to the extent such damage is caused by the negligence or intentional acts of the Lessor.

3.2 Inspection Notice. Lessee shall give Lessor five (5) days advance written notice of its intent to inspect the Property.

3.3 Post Inspection Notice. If Lessee reasonably determines the condition of the Property is unsuitable for the Lessee's intended use, Lessee shall provide written notice of the same to the Lessor prior to the Contingency Deadline. Upon receipt of written notice, the

Parties shall meet and confer in order to review and address Lessee's notice. If the Parties are unable to resolve Lessee's concerns to Lessee's satisfaction, Lessee may terminate this Lease.

3.4 Definitions. For purposes of this Section 3, the term "Hazardous Materials" shall include, but not be limited to, substances defined as "Hazardous Substances," "Hazardous Materials," "Hazardous Waste," "Toxic Substances," in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Section 9601 et seq., the Model Toxic Control Act of the State of Washington and all regulations adopted and publications promulgated pursuant to such laws, collectively "Environmental Law."

#### **4. Improvements and Permitted Use.**

4.1 Lessee's Work. Lessee agrees to develop and construct the Improvements on the Property, install all necessary utilities, above and below ground improvements, and landscaping to include performing all other reasonable site work, and constructing pedestrian access in accordance with plans and specifications prepared and approved by Lessee and Lessor as set forth in the Interlocal Cooperation Agreement.

4.1.1 Plans and Specifications. Prior to construction of the Improvements, Lessee shall submit to Lessor initial plans and specifications for the Improvements (or portion thereof). Lessor shall have fourteen (14) days following receipt of the plans and specifications (or any modification thereof) to provide Lessee with Lessor's comments, which shall be reasonably considered by Lessee pursuant to Section 3.2 of the Interlocal Agreement.

4.2 Lessor's Work. Lessor is not required to modify the Property or construct site improvements.

4.3 Title to Improvements. The Improvements constructed on the Property shall be the property of Lessee during the term of this Lease. Upon the expiration or sooner termination of this Lease, Lessee shall (i) transfer title to the Improvements to Lessor at no cost or expense to Lessor; (ii) demolish the Improvements and leave the site in a finished "at grade" condition at no cost or expense to Lessor; or (iii) enter into a mutually acceptable agreement with Lessor to provide for the continued use of the Property.

4.4 Surrender of Property and Improvements. Upon expiration or earlier termination of this Lease, Lessee shall surrender the Property and all Improvements (as set forth in Section 4.3). Upon such termination, Lessee may remove all of Lessee's furniture, fixtures, equipment, trade fixtures, signs, inventory and other personal property. Any of Lessee's personal property left on the Property ninety (90) days after termination of this Lease shall conclusively be considered abandoned and Lessor will be entitled to use or dispose of it free of any interest of Lessee.

4.4.1 Consolidated Property. To develop the Sportsplex Lessee was required to consolidate real property owned by Lessee into real property owned by Lessor ("**Consolidated Properties**"). Prior to exercising rights under this section 4.4, the parties

shall cooperate to divide the Consolidated Properties back to the configuration and square footages that existed as of the Execution Date, unless otherwise agreed.

4.5 Permitted Use. The Property may be used and occupied by Lessee for all activities reasonably related to the Improvements, to include exercising all authority available under RCW Chapter 36.100, and the policies and procedures of the District.

4.6 Lessor's Use. Through an "Interlocal Agreement Between Public Facilities District And City Of Spokane Parks And Recreation Division Regarding Joint Use Of The Sportsplex Facility" the parties have agreed to terms and conditions relating to the right of City Parks and Recreation Department's use of the Sportsplex.

## **5. Rent, Utility Charges and other Consideration.**

5.1 Ground Rent. Lessee shall on the Commencement Date and each anniversary date thereafter pay rent in the amount of One Dollar (\$1.00) per year.

5.2 Lessor's Use. In lieu of fair market rent charged to Lessee, Lessor shall be permitted to use the Sportsplex as set forth in the Joint Use Agreement and any subsequent agreement(s) between the Parties.

5.3 Utility Charges. Lessee shall be responsible for obtaining all utilities and services provided to the Property and agrees to pay, prior to delinquency, all charges for electricity, gas, water, sewage, and/or all other public and private services or charges used by or through Lessee at the Property, excluding any charges or services provided to or incurred by Lessor or its affiliates under the Joint Use Agreement.

5.4 Other Consideration. In furtherance of development of the Sportsplex, the District has requested that a portion of Cataldo Street be vacated by the City of Spokane. Pursuant to the street vacation, adjacent property owners have entered into a "Declaration of Reciprocal Easements and Covenants and Restrictions Affecting Land" ("**Declaration**"). See Exhibit C. The Declaration provides, in part, that the vacated portion of Cataldo shall be maintained as a private street with each abutting owner responsible for its proportionate share of the cost of operation, repair, maintenance and improvement of the street that is common to the Parties. Lessor owns property adjacent to the private street that is subject to the Declaration. The Declaration contains a formula for assessing an owner's proportionate share of the costs identified above, collectively known as "Common Maintenance."

Lessee hereby agrees to assume, during the Initial Term and the Lease Extension, the rights, responsibilities and obligations on behalf of the Park Board (Lessor) to include paying the Common Maintenance expense as set forth in the Declaration. Upon termination of this Ground Lease, the Parties shall meet and confer to reach an agreement upon any continuing responsibility and obligation(s) set forth in the Declaration. Mediation and arbitration, as set forth herein, shall be available to resolve future obligations set forth in the Declaration.

## **6. Use.**

6.1 Compliance with Laws. Lessee shall comply with all local, state or federal laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force with respect to the Lessee's use and occupancy of the Property.

6.2 Hazardous Materials. "**Hazardous Material**" shall mean any matter (whether gaseous, liquid or solid) which is now or hereafter designated as a hazardous or toxic waste or substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601, et seq., all as now or hereafter amended, or which may now or hereafter be regulated under any other federal, state, or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment, including, without limitation, (i) any asbestos and/or asbestos containing materials (collectively "**ACMs**") regardless of whether such ACMs are in a friable or non-friable state, or (ii) any matter designated as a hazardous substance pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC 1317), or (iii) any matter defined as a hazardous waste pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 USC 6901 et seq) pertaining to health or the environment. "Hazardous Material" shall not include ordinary cleaning and maintenance products which are used with due care and in accordance with applicable law and the instructions of the manufacturer of such products in the reasonable and prudent conduct of the business conducted on the Property.

6.2.1 Lessee shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on or about the Property without the prior written consent of Lessor.

6.2.2 Responsibility for environmental remediation costs is covered in Section 3.2.2 of the Interlocal Agreement.

7. **Alterations and Improvements; Fixtures and Equipment.** Except as otherwise provided in this Lease, any alterations, additions or improvements to the Property or the Improvements thereon shall be made at Lessee's sole cost and expense unless otherwise mutually agreed in writing between the Parties. Lessee shall secure all governmental permits, approvals or authorizations required in connection with any such work. All alterations, additions and Improvements shall immediately become the property of Lessee. Lessee's trade fixtures, furnishings, appliances and equipment shall remain the property of Lessee and shall not be considered a part of the Property.

7.1 Permission of Lessor. Lessee shall have the right, but not the obligation, at its sole cost and discretion and without obtaining the prior consent from Lessor, to make any additions, alterations, and/or changes to the Improvements ("**Lessee Improvements**"), provided, the Improvements and all work is consistent with the matters set forth in this Lease and the Interlocal Agreement or other mutually agreed terms and conditions.

## 8. **Maintenance of Premises.**

8.1 Maintenance and Repair by Lessee. Lessee shall maintain the Property, including the Improvements, in good operational condition for Lessee's use of the Property in a manner consistent with Lessee's other facilities and improvements. All repair work shall be done in a good and

workmanlike manner according to applicable codes, standards and regulations. Lessee shall not commit waste with respect to the Improvements or the Property.

8.2 Repairs by Lessor. Lessor shall not be responsible for maintaining, repairing or restoring any part of the Property or Improvements, unless Lessor is the cause of damage to the Property or Improvements.

9. Assignment and Subletting. The Lessee may not assign this Lease in whole or in part by operation of law or otherwise, and sublet all or any part of the Property, without prior written consent of the Lessor in each instance. Any unpermitted assignment by Lessee shall be null and void. Notwithstanding the above, Lessee is authorized to enter into use (or license) agreements with persons or entities desiring to use the Sportsplex, including its Property for the intended purposes described herein and as may be determined from time to time by the District.

## 10. Insurance and Indemnity.

10.1 Lessee's Insurance. During the Initial Term of this Lease and any extensions hereof, Lessee, at its sole cost and expense, shall obtain and maintain the insurance policies described in Exhibit D hereto and shall name Lessor as an additional insured on such policies.

10.2 General Requirements. All insurance (and renewals thereof) required by this Section shall be issued by responsible insurance carriers authorized to do business in the State of Washington with an A. M. Best Rating of A-/VII or better. Each policy shall expressly provide that it shall not be cancelled or changed without at least thirty (30) days' prior written notice to all parties insured or named therein. The insurance described in Section 10 shall include Lessor as an additional insured. All of the insurance required by this Section shall be primary and noncontributing with any insurance which may be carried by the other party, shall afford coverage for all claims based on any act, omission, event or condition which occurs or arises during the policy period, and may be obtained by endorsement on blanket policy(ies) of insurance carried and maintained by Lessee. Beginning five (5) years after the Commencement Date, and every five (5) years thereafter, the amount (limit) of insurance coverage shall be adjusted by the Parties to equal the insurance coverage Lessee carries on similar properties and use.

10.3 Mutual Waiver of Subrogation. Notwithstanding any other provision of this Lease, Lessor and Lessee each hereby waives, releases and discharges the other, its agents and employees from all claims whatsoever arising out of loss, claim, expense, damage or destruction covered or required to be covered by insurance or covered by other casualty insurance it may carry (a "**Loss**"), notwithstanding that such Loss may have been caused by the other, its agents or employees. Lessor and Lessee each hereby agrees to look to its insurance coverage only upon such Loss. Lessor's policy or policies of insurance shall contain a waiver of subrogation clause as to Lessee. Lessee's policy or policies of insurance shall contain a waiver of subrogation clause as to Lessor.

### 10.4 Indemnification.

10.4.1 Lessee shall defend, indemnify and hold Lessor, and its officers, directors, employees, agents and contractors including successors and assigns of each of the foregoing (collectively, the "Indemnitees") harmless against and from any and all claims,



costs, damages or expenses arising from or caused by the acts and omissions associated with the construction, management and operation of the Sportsplex and Sportsplex Property, including, without limitation, any and all claims arising from: (a) any breach or default on the part of Lessee of any covenant or agreement on its part to be performed pursuant to the terms of this Agreement; and (b) any act of negligence or willful misconduct of Lessee, or its officers, directors, employees, agents and contractors including successors and assigns.

10.4.2 Lessor shall defend, indemnify and hold Lessee, and its Indemnitees harmless against and from any and all claims, costs, damages or expenses arising from or caused by acts or omissions of Lessor, including, without limitation, any and all claims arising from: (a) any breach or default on the part Lessor, its officers, agents, employees and contractors including successors and assigns in performance of any covenant or agreement on its part to be performed pursuant to the terms of this Agreement; and (b) any act of negligence or willful misconduct of Lessor, or its officers, directors, employees, agents and contractors.

10.4.3 The indemnity in Section 10.4.1 and 10.4.2 shall include any and all costs, attorney fees, expenses, and liabilities incurred in or about any such claim, action, or proceeding brought thereon, and if any action or proceeding be brought against any Indemnitees by reason of any such claim. Each of the parties hereto shall defend against such action or proceeding, unless such action or proceeding is defended by counsel for any carrier of public liability insurance provided herein. Nothing in this Section shall require: (i) Lessee to indemnify or defend Lessor from or against Lessor's own negligent acts or omissions and (ii) Lessor to indemnify or defend Lessee from or against Lessee's own negligent acts or omissions.

10.4.4 If and to the extent this Agreement is a contract or agreement subject to Revised Code of Washington ("RCW") Section 4.24.115 as in effect on the date of this Agreement, all provisions of this Agreement pursuant to which a party hereto agrees to indemnify Indemnitees against liability for damages arising out of bodily injury to persons or damage to property in connection with the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of any improvement hereunder will be limited by the provisions of this section. None of such Indemnities will apply to Damages caused by or resulting from the sole negligence of the indemnitee, its agents or employees. To the extent that any such Damages are caused or result from the concurrent negligence of (a) the indemnitee or its agents or employees and (b) the indemnitor or its agents or employees, the Indemnities will apply only to the extent of the indemnitor's negligence. If RCW 4.24.115 is hereafter amended to eliminate or modify the limitations on indemnities set forth therein, this section will automatically and without further act by either Party be deemed amended to remove any of the limitations contained in this section that are no longer required by then-applicable law. The Parties have specifically negotiated the waiver of and hereby specifically waive any provisions of any industrial insurance act, including Title 51 of the RCW, or any other employee benefit act which might otherwise operate to release or immunize either party from its obligations hereunder.

## **11. Lessee's Default.**

11.1 Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee.

11.1.1 Failure to Pay Rent. The failure by Lessee to pay Rent when due, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee.

11.1.2 Nuisance or Waste. After written notice thereof by Lessor, the use, neglect or waste of the Property (including Improvements) for a continuous period of thirty (30) days by Lessee, its agents, employees, guests, or licensees in a manner which creates a nuisance (as such term is defined by state and local law) that unreasonably interferes with the use and enjoyment of the Property, adjacent property or Improvements under which Lessor can demonstrate a material or financial interest therein.

11.1.3 Failure to Perform. The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Lessee, other than described in Section 11.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee.

11.2 Lessee's Right to Cure. If Lessee fails to cure the default within the above number of calendar days after written notice thereof is given by Lessor, provided that, if the nature of the default is such that it cannot reasonably be cured within said calendar day period, and/or if Lessee commences an action to cure such default during such calendar day period, and thereafter diligently continues to prosecute such cure, Lessee's time to cure such default shall be reasonably extended for such additional period as may be necessary for that purpose. If Lessee fails to cure such failure of performance, then Lessor may elect to terminate this Lease and take possession of the Property.

### **11.3 Lessor's Remedies in Default.**

11.3.1 Upon the occurrence of an event of default under Section 11.1, Lessor shall have the following rights and remedies, subject to the provisions of Section 11.2:

11.3.1.1 To terminate this Lease and Lessee's right of possession of the Property by giving notice of such election to Lessee, in which event the Parties shall exercise their rights under Section 4.3, Lessee shall immediately surrender possession thereof to Lessor; or to enter upon the Property and Improvements and perform acts or work as necessary to restore the Property and Improvements to the condition which is required under the terms of this Lease. Thereafter, Lessor may make a demand upon Lessee to pay all reasonable costs and expenses incurred by Lessor to affect a cure allowed under this Section, plus interest at the maximum rate allowed by law. Lessee shall pay the amount demanded by Lessor or may otherwise commence upon written notice the dispute resolution process set forth in Section 15.8 herein.

11.3.1.2 To terminate Lessee's right of possession of the Property without terminating this Lease by giving notice of such election to Lessee, in which event (A) Lessee shall immediately surrender possession thereof to Lessor, failing which Lessor may exercise the right of reentry, and (B) Lessor shall have the right to occupy the Property for and on account of Lessee and to collect any unpaid Rent and other charges which have or may thereafter become due and payable; or

11.3.1.3 If Lessor reenters the Property such reentry or any action, in unlawful detainer or otherwise, to obtain possession of the Property shall be deemed to be an election by Lessor to terminate this Lease.

11.4 **Remedies Cumulative - Waiver.** It is understood and agreed that the Lessor's remedies hereunder are cumulative and the Lessor's exercise of any right or remedy due to a default or breach by Lessee shall not be deemed a waiver of, or to alter, affect or prejudice any right or remedy which Lessor may have under this Lease or by law.

11.5 **Termination for Cause.** Notwithstanding anything set forth in this Lease, Lessee may, upon thirty (30) days advance written notice to Lessor terminate this agreement in whole or in part based upon the following conditions: (a) Lessee is unable to obtain adequate financing in order to construct the Improvements as reasonably determined by the District through its Board of Directors; (b) all or any portion of the Property is deemed to be unsuitable for purposes of constructing, maintaining and operating the Improvements; or (c) the District, pursuant to an exercise of reasonable discretion and diligence, determines that the Property is not of adequate size or has physical limitations which render the development, use and enjoyment to include, but not be limited to, operational expectations, unfeasible or impractical according to the reasonable discretion of the Board of Directors. Prior to making any decision under this Section 11.5 by the District Board of Directors, there shall be written notice delivered to the City to include stating any proposed action by the District pursuant to this section.

12. **Reconstruction.** In the event the Improvements on the Property are damaged by fire or other perils, Lessee shall, using reasonable efforts as soon as is reasonably possible repair, restore and rebuild the same (or other structures more suitable to Lessee's then-intended use of the Property), and this Lease shall remain in full force and effect.

13. **Holding Over.** Unless otherwise agreed to by Lessor in writing, any holding over by Lessee after the expiration of the lease term hereof, with or without Lessor's consent, shall be construed to be a tenancy from month-to-month. Such holdover tenancy shall be subject to all of the terms and conditions set forth herein, to the extent not inconsistent with a month-to-month tenancy.

14. **Quiet Enjoyment.** Lessee, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease, and upon the payment of all sums due hereunder, shall have and quietly enjoy the Property for the lease term set forth herein.

15. **Miscellaneous.**

15.1 **Successors or Assigns.** All the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon the Lessor, Lessee and their respective heirs,

administrators, executors, successors and assigns, and upon any person or persons coming into ownership or possession of any interest in the Property by operation of law or otherwise, subject at all times, however, to all provisions and restrictions elsewhere contained in this Lease. This Lease may not be assigned by either party without the prior written consent of the non-assigning party, which may be withheld pursuant to such party's sole discretion.

15.2 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

15.3 Recording. Lessee may record this Lease or a Notice thereof without the prior written consent of the Lessor. If Lessee records a memorandum or "short form" of this Lease, it shall be in a form customarily used for such purposes. Said memorandum or short form of this Lease shall describe the parties, the Property, the lease term and any other provisions reasonably required, shall incorporate this Lease by reference and shall specify that any inconsistency between the memorandum of lease and this Lease shall be resolved in favor of this Lease.

15.4 Notices. Any notices required in accordance with any of the provisions herein shall be delivered or mailed by registered or certified mail, postage prepaid and return receipt requested, to the addresses set forth below or at such other place as either party may in writing from time to time specify. Any such notice shall be deemed effective on the date of delivery or two (2) business days after mailing. If there is more than one Lessee or Lessor, any notice required or permitted hereunder may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof.

Notices to Lessor:     Director, Parks Department  
                                 City of Spokane  
                                 808 W. Spokane Falls Blvd.  
                                 Spokane, WA 99201

With a copy to:        Office of the City Attorney  
                                 City of Spokane  
                                 808 W. Spokane Falls Blvd.  
                                 Spokane, WA 99201

Notices to Lessee:     Chief Executive Officer  
                                 Spokane Public Facilities District  
                                 720 W. Mallon Avenue  
                                 Spokane, WA 99201

With a copy to:

Stanley M. Schwartz  
Witherspoon Kelley  
422 W. Riverside Ave., Suite 1100  
Spokane, WA 99201

15.5 Amendments. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

15.6 Force Majeure. This Lease and the obligations of either party hereunder, other than obligations to pay Rent or other sums of money, shall be excused if such party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the obligated party; provided, however, such excused performance shall only be for that period of time that the cause of such inability or delay shall exist. This Lease and the obligations of either party hereunder shall not be affected or impaired because the other party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the obligated party.

15.7 Choice of Law. This Lease shall be governed by the laws of the state of Washington.

15.8 Mediation and Arbitration. If either party has a claim or dispute under this Agreement, written notice shall be sent to the other party ("**Notice of Dispute**"). The notice shall provide a brief description of the dispute.

15.8.1 Meet and Confer. Within five (5) days of the delivery of the Notice of Dispute, the parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable period of time, not exceeding thirty (30) days, either party may give notice of mediation.

15.8.2 Mediation. The mediator shall be chosen through mutual agreement of the Parties. If a mediator is not engaged within ten (10) days of the notice of mediation the matter may proceed to arbitration. The mediator's fees and costs shall be equally shared by the parties.

15.8.3 Arbitration. If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding arbitration in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that can be mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the Parties and enforceable pursuant to RCW Chapter 7.04A.

The pendency of mediation or arbitration shall not suspend or terminate any payment or performance obligation under this Agreement. This section shall survive termination of this Agreement.

15.9 Legal Expenses. If either party is required to bring or maintain any action (not including mediation) to enforce any of the covenants, terms or conditions of this Lease, the

prevailing party in such action shall be entitled to all the costs incurred by the prevailing party, including reasonable attorneys' fees awarded by a court with jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above set forth.

**LESSEE:**

**SPOKANE PUBLIC FACILITIES DISTRICT**, a  
Washington municipal corporation

By: \_\_\_\_\_  
Stephanie Curran, Chief Executive Officer

**LESSOR:**

**CITY OF SPOKANE**

By: \_\_\_\_\_  
Mayor Nadine Woodward

Attest:

By: \_\_\_\_\_  
City Clerk, Terri Pfister

**CITY OF SPOKANE, PARK BOARD**

By \_\_\_\_\_  
Its: President

Approved as to Form:

By: \_\_\_\_\_  
Assistant City Attorney

STATE OF WASHINGTON     )  
  ) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, known to me to be the Chief Executive Officer of the Spokane Public Facilities District, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said banking corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

STATE OF WASHINGTON     )  
  ) ss.

COUNTY OF SPOKANE     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_ known to me to be the Chair of the CITY OF SPOKANE, PARK BOARD, known to me to be the City Clerk of the City of Spokane, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that they was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**





# Boundary Line Adjustment Application

Rev.20180112

**Applicant Information:** *(this is where the approval certificate will be mailed)*

Name: Monte Koch, Director of Facilities & Operations - Spokane Public Facilities District

Address: 720 West Mallon Avenue

City/State/Zip: Spokane, WA 99201

Phone Number: 509-951-6969

**Parcel Numbers:** *(include all parcels involved in this adjustment)*

Multiple parcels - refer to exhibit

**Legal Description of each parcel BEFORE adjustment:** *(attach additional sheet if necessary)*

Refer to attached description and associated exhibit

**Legal Description of each parcel AFTER adjustment:** *(attach additional sheet if necessary)*

Refer to attached description and associated exhibit

**Current address of each parcel:**

Multiple addresses

**Present Use of each parcel:** *(vacant, house, commercial, etc.) \*If not vacant, see survey requirements)*

Mix of vacant and parking

**Signature of Owner:** *(all owners of properties involved need to sign or provide an authorization letter for a designated representative to sign on their behalf)*

***Signatures of the below mentioned City departments must be obtained before application packet can be submitted to the Development Services Center.***

City Treasurer (4<sup>th</sup> Floor): \_\_\_\_\_ Engineering Plan Review (3<sup>rd</sup> Floor): \_\_\_\_\_

Permit Clerk (3<sup>rd</sup> Floor): \_\_\_\_\_ Building Plan Review (3<sup>rd</sup> Floor): \_\_\_\_\_

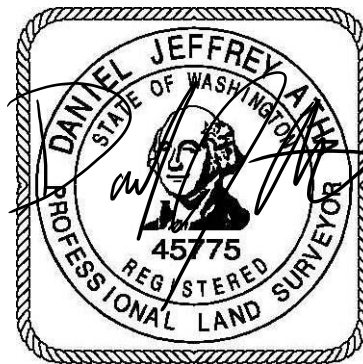
Addresses:

## LEASE AGREEMENT DESCRIPTION

A portion of Blocks 6 and 8 of Keystone Addition as recorded in Volume "A" of plats at page 16 in the Northeast Quarter of Section 18, Township 25 North, Range 43 East, W.M., Spokane County, State of Washington and being more particularly described as follows:

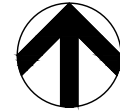
**Commencing** at the Northeast corner of Lot 1 in said Block 8 also being on the South right of way line of vacated Cataldo Avenue, Thence Westerly with said South right of way line a distance of 166.00 feet to a point on the North line of Lot 7 of said Block 8, Thence continuing along the Northerly line of said Lot 7 to the Northwest corner of said Lot 7 being the **Point of Beginning**;

Thence Southerly with the West line of said Lot 7 to the Southwest corner of said Lot 7 also being the South line of said Block 8, Thence Westerly with the South line of said Block 8 to the Southwest corner of Lot 27 of said Block 8, Thence Northerly with the West line of said Lot 27 to the centerline of said vacated Cataldo Avenue, Thence with the centerline of said vacated Cataldo Avenue to a point on the West line extended of lot 50 of said Block 6 of said Keystone Addition, Thence Northerly to the Southwest corner of said Lot 50, Thence Northerly with the West line of said Lot 50 and lot 29 to the Northwest corner of said Lot 29 of said Keystone Addition also being the South right of way line of Dean Avenue, Thence Easterly with said South right of way line a distance of 21.00 feet, Thence Northerly parallel to the west line of said lot 29 a distance of 10.00 feet, Thence Easterly parallel to and 10.00 feet North of said South right of way line to a point 7.00 feet West of the East line extended of Lot 20 of said Block 6, Thence Southerly parallel to and 7.00 feet West of the East line of said Lot 20 to a point on the South right of way line of said Dean Avenue, Thence Easterly with said South right of way line to a point on the North line of Lot 12 of said Block 6 being 0.36 feet East of the Northwest corner of said Lot 12, Thence Southerly parallel to and 0.36 feet East of the West line of said Lot 12 and lot 67 to a point on the centerline of vacated Cataldo Avenue, Thence Westerly with said centerline to a point on the Northerly extension of the West line of said Lot 7 of Block 8, Thence Southerly with the extension of said Lot 7 to the **Point of Beginning**.

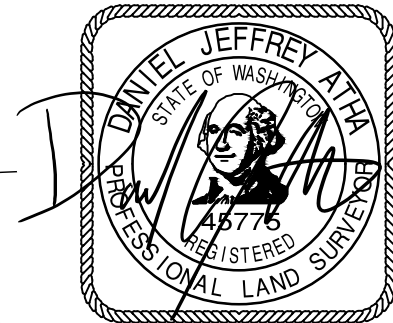
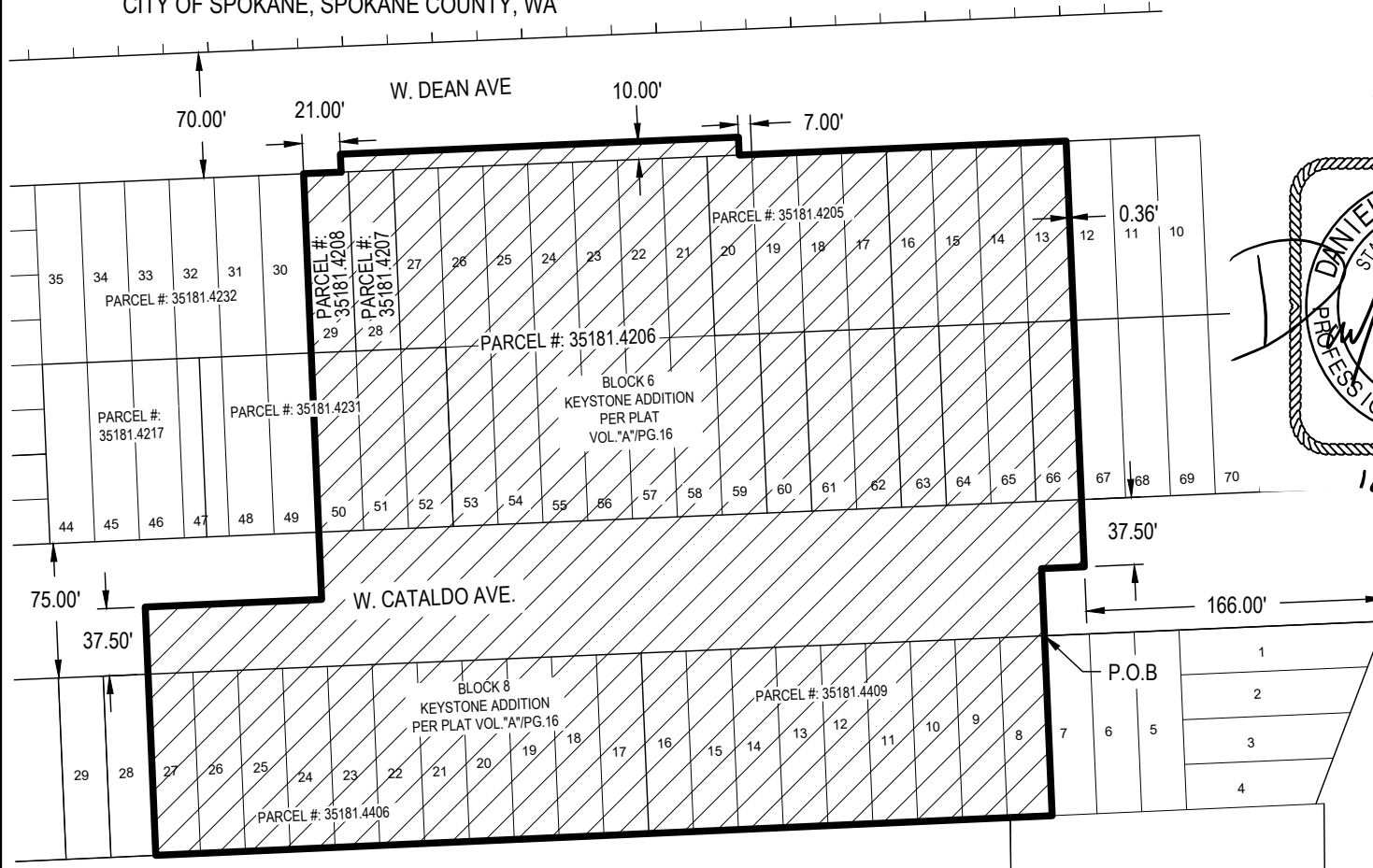


12/4/2019

**LEASE AGREEMENT EXHIBIT**  
NE 1/4 SECTION 18, T. 25 N., R. 43 E.  
CITY OF SPOKANE, SPOKANE COUNTY, WA



SCALE: 1"=100'



12/4/2019

**COFFMAN  
ENGINEERS**  
10 N. Post Street, Suite 500  
Spokane, WA 99201  
ph 509.328.2994  
www.coffman.com

LOCATION:  
W. CATALDO AVENUE, SPOKANE, WA

CLIENT:  
SPFD

DATE:  
11/26/2019

PROJECT NO.  
181606

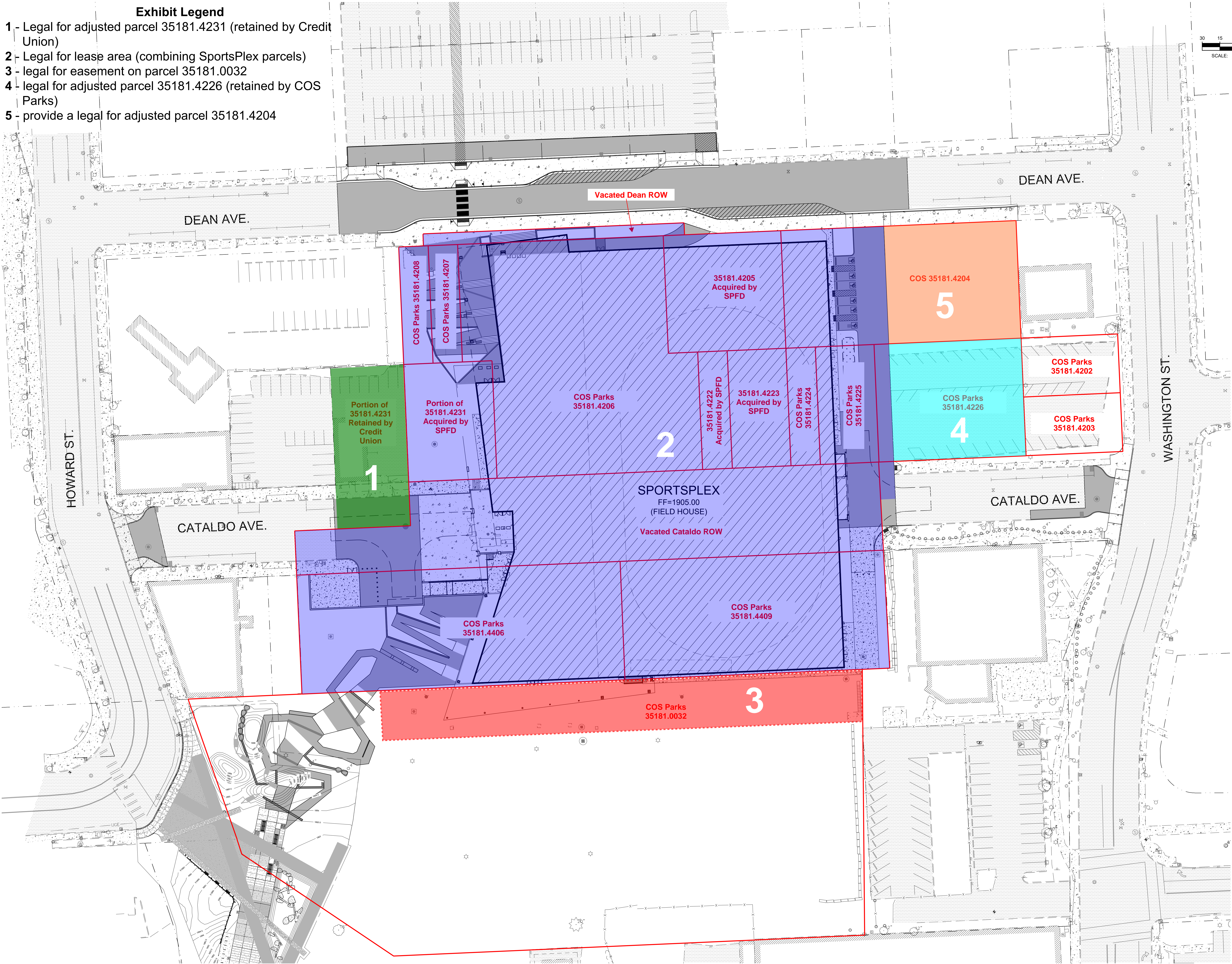
SHEET NO:  
1 OF 1

**EXHIBIT B**  
**DEPICTION OF PROPERTY**



Exhibit Legend

- 1 - Legal for adjusted parcel 35181.4231 (retained by Credit Union)
- 2 - Legal for lease area (combining SportsPlex parcels)
- 3 - legal for easement on parcel 35181.0032
- 4 - legal for adjusted parcel 35181.4226 (retained by COS Parks)
- 5 - provide a legal for adjusted parcel 35181.4204



SPOKANE PUBLIC FACILITIES DISTRICT  
SPORTSPLEX

720 W MALLON AVE  
SPOKANE, WA 99201



Date:	October 1, 2019
Job No.:	Proj #21834
Drawn By:	DLS
Checked by:	CJH
Revisions	
#	Date
Description	

OVERALL SITE  
PLAN

Parcel  
Consolidation  
Exhibit



**EXHIBIT C**  
**DECLARATION OF RECIPROCAL EASEMENTS AND COVENANTS AND**  
**RESTRICTIONS AFFECTING LAND**

Recorded document should be sent to:  
Spokane Public Facilities District  
Attn: Stephanie Huff  
720 W. Mallon Ave.  
Spokane, WA 99201

## **DECLARATION OF RECIPROCAL EASEMENTS AND COVENANTS AND RESTRICTIONS AFFECTING LAND**

**THIS DECLARATION OF CROSS-EASEMENTS AND COVENANTS AND RESTRICTIONS AFFECTING LAND** (this "**Declaration**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Spokane Public Facilities District, whose address is 720 W. Mallon Avenue, Spokane, WA 99201 as "**SPFD**," the City of Spokane ("**City**"), Papillon Building, LLC, 1516 W. Riverside, Suite 200, Spokane, Washington 99201 as "Papillon" Canopy Federal Credit Union, whose address is 601 W. Mallon Avenue, Spokane, WA 99201 as "**CFCU**," and Future Vision Properties, LLC whose address is 540 West Cataldo Ave, Spokane, WA 99201, each individually referred to as "**Party**" and jointly referred to as "**Parties**."

**WHEREAS**, the Parties are owners of certain real estate located in the city of Spokane, Spokane County, Washington, described on **EXHIBIT "1"** appended hereto ("**Affected Land**"); and

**WHEREAS**, Cataldo Avenue is adjacent to the Affected Land and is the subject of a street vacation by the City of Spokane pursuant to RCW Chapter 35.79 ("**Street Vacation**"); and

**WHEREAS**, the Parties have entered into a "Memorandum of Understanding – Vacation of Cataldo Street" wherein the Parties have agreed to cooperate in the Street Vacation to secure approval and satisfaction of conditions established by the City of Spokane which include signing this Declaration with an Effective Date as set forth herein; and

**WHEREAS**, the Parties intend to develop a portion of the Affected Land as a private road, which is described on **EXHIBIT "2"** attached hereto (the "**Private Street**"); and

**WHEREAS**, the parties hereto desire to develop and utilize the Affected Land and the Private Street (hereinafter collectively referred to as the "**Cataldo Block**") in a complimentary and mutually beneficial manner; and

**WHEREAS**, the parties hereto desire to submit the Private Street to those covenants, restrictions, and reciprocal easements set forth below in, over, upon, across and through the Private Street and such other areas as are hereinafter provided.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00), the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

## **ARTICLE I** **Definitions**

In addition to terms defined elsewhere in this Declaration, as used herein the following terms shall have the meanings ascribed to such terms as set forth below:

1.01. Benefited Site. With respect to the particular easements and rights hereinafter set forth, the term **"Benefited Site"** shall mean and refer to those portions of the Cataldo Block which are benefited by such easements and rights and constitute the dominant estate.

1.02. Burdened Site. With respect to the particular easements and rights hereinafter set forth, the term **"Burdened Site"** shall mean and refer to those portions of the Cataldo Block which are burdened by such easements and rights and constitute the servient estate.

1.03. Private Street. **"Private Street"** shall mean and include all parts of the Cataldo Block which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas. The Private Street shall be no less than thirty-eight (38) feet wide, generally located on each side of the centerline of vacated Cataldo Avenue, subject to the easements described in Article II.

1.04. Effective Date. **"Effective Date"** shall mean the date that the City of Spokane City Council approves the Street Vacation of Cataldo Street (identified in the Memorandum of Understanding).

1.05. Environmental Laws. **"Environmental Laws"** shall mean all present and future federal, state, or local laws, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to the environment or to any Hazardous Material, including the following federal laws: the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and any amendments enacted or regulations adopted, published and/or promulgated pursuant thereto.



1.06. Street Frontage. “**Street Frontage**” shall mean the linear front footage along the Private Street based on ownership of adjacent real property.

1.07 Hazardous Material. “**Hazardous Material**” shall mean materials and substances defined as “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” including asbestos, polychlorinated biphenyls, petroleum (or Petroleum products), hydrocarbonic substances and constituents of any of the foregoing, or other similar designations under any Environmental Laws, and further, any substance or material which because of toxicity, corrosivity, reactivity, ignitability, carcinogenicity, magnification or concentration within biologic chains, presents a demonstrated threat to biologic processes when discharged into the environment.

1.08. Occupant. “**Occupant**” shall mean and include each of the parties hereto, their respective heirs, successors and assigns (including mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Cataldo Block under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.09. Outlots. “**Outlot**” or “**Outlots**” shall mean and refer to those portions of the Cataldo Block, the approximate size and location of which are designated and depicted on the Site Plan, which have been or may be divided or subdivided from the Affected Land so that such Outlots are legally distinct parcels that may be conveyed to a third party but which shall remain subject to the easements, covenants, restrictions and other provisions of this Declaration.

1.10. Owner. “**Owner**” shall refer to and mean any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental agency or other entity now or hereafter holding an ownership interest in fee simple in any part of the Cataldo Block.

1.11. Permittees. “**Permittees**” shall mean and refer to all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.12. Site. “**Site**” shall mean and refer to the Affected Land and any Outlot.

1.13. Site Plan. “**Site Plan**” shall mean and refer to the site plan of the Cataldo Block attached hereto as **EXHIBIT “3.”**

## **ARTICLE II** **Easements**

2.01. Grant of Easements. The Party hereby each grants to each other Party and to the Owners the following easements for use by the Owners, Occupants and their respective

Permittees, without payment of any fee or charge, except as otherwise provided herein or agreed in writing between the Owners:

2.01.1. Pedestrian Easements. Nonexclusive six foot (6') wide easements on both sides of the Private Street for the purpose of pedestrian traffic over the sidewalk(s) or trail(s) built within the Private Street, and in the alignment selected by the Owner, so long as connection is made to (i) each other Site which is contiguous thereto; (ii) the public streets and alleys now or hereafter abutting or located on any portion of the Cataldo Block; (iii) the parking areas now and hereafter located on the Cataldo Block; and (iv) over, upon, across and through the Private Street; limited, however, to those portions of each Site which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use by the Permittees in conformity with this Declaration and the Site Plan.

2.01.2. Vehicular Easements. Nonexclusive easements for the purpose of vehicular traffic over, upon, and across the Private Street to reach each Site and any public streets and alleys now and hereafter abutting or located on any portion of the Cataldo Block; limited, however, to those portions of the Cataldo Block which are improved by the Owner thereof from time to time for vehicular access ways in conformity with this Declaration and the Site Plan, provided the improved area for vehicles shall be no less than twenty six feet (26') in width.

2.01.3. Utility Easements.

(a) Nonexclusive easements for the installation, use, testing, connection to, operation, maintenance, repair, replacement and removal of: water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve one or more of the Sites; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment (hereafter called "**Utility Facilities**") will be installed within the boundaries of the Private Street and underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Private Street or improvements on any Site.

(b) An Owner may from time to time, relocate any Utility Facilities then located within the Private Street on the conditions that: (i) such right of relocation will be exercisable only after thirty (30) days prior written notice of the intention to relocate has been given to all Owners using the Utility Facilities to be relocated; (ii) such relocation will not unreasonably interrupt any utility service to the improvements then located on the Benefited Site(s); (iii) such relocation will not reduce or unreasonably impair the usefulness or

function of the Utility Facilities to be relocated; (iv) all costs of such relocation will be borne by the Owner relocating the Utility Facilities; and (v) all permits or authorizations of any government agency or utility provider shall be obtained by the Owner relocating the Utility Facilities.

(c) The Utility Facilities shall be connected to public utilities supplied by the City or its franchisees. It is anticipated the City will retain an easement for public utilities and services, as authorized by RCW 35.79.030, which shall be expressed in a separate document.

2.01.4. Access Easements. Nonexclusive easements in accordance with the access points and driving lanes existing from time to time between each Site and the Private Street or public streets and ways abutting or crossing any portion of the Cataldo Block for the purpose of providing ingress, egress and access to the easements hereby created and to the Private Street.

2.01.5. Construction Easements.

(a) Nonexclusive easements over the Private Street for the purpose of constructing, renovating, repairing or remodeling the building and improvements ("**Construction Easement**") on any Site, including grading, balancing and compaction of soils and other site work materials, reconstruction, storage of supplies and materials, installation, replacement, modification, care and maintenance, provided such use of the Private Street is reasonably necessary, will be diligently prosecuted in accordance with sound construction practices and will not unreasonably interfere with the use of the Private Street or the improvements thereon. The Owner of any Site taking advantage of the Construction Easement granted herein shall pay all costs associated therewith, including without limitation restoration of the Private Street to the condition existing prior to such exercise, and shall indemnify and hold the other Owners harmless from all loss, cost and expense in connection with the use of such easement.

(b) The Construction Easement shall allow construction of a building over the Easement that is: (1) joined with a building on adjacent property and (2) elevated above the Private Street no less than sixteen and one-half feet (16.5) feet from the surface of the street to the bottom of the structure.

2.01.6. Surface Water Drainage. Non-exclusive easements for the flow of a reasonable volume of surface water to the nearest drainage catch basins or waterways through the Private Street; provided, however, that (a) the easement for surface water drainage shall be consistent with an overall surface water drainage plan for the Cataldo Block; and (b) following the initial construction of Private Streets and buildings on a

Site in accordance with the Site Plan, no Owner shall alter the flow of surface water onto or through the Private Street in a manner that would materially increase the volume, or materially decrease the purity or quality, of surface water flowing onto the Private Street.

2.02. Unimpeded Access. No barricade or other divider will be constructed between the Sites and the Owners will do nothing to prohibit or discourage the free and uninterrupted flow of vehicular or pedestrian traffic throughout the Site in the areas designated for such purpose by the Owner of each Site; provided, however, that each Owner shall have the right to temporarily erect barriers to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

2.03. Prohibition Against Granting Easement. No Owner shall grant or otherwise convey an easement or easements of the nature or type set forth in this Article II for the benefit of any parcel of real estate not within the Cataldo Block or an adjoining Outlot(s).

### **ARTICLE III** **Nature of Easements and Rights Granted**

3.01. Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Cataldo Block and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions.

3.02. Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

(a) Are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Sites;

(b) Create mutual equitable servitudes upon each parcel in favor of the other Sites;

(c) Constitute covenants running with the land; and

(d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Cataldo Block at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

3.03. Transfer of Title. The acceptance of any transfer or conveyance of title from any party hereto or its respective heirs, representatives, successors or assigns of all or any part of

its interest in its Site or any portion thereof, including any Outlot, shall be deemed to require the prospective grantee to agree not to use, occupy or allow any lessee or occupant of such Site to use or occupy the Site in any manner which would constitute a violation or breach of any of the easements, covenants or restrictions contained herein.

#### **ARTICLE IV** **Maintenance Private Street**

4.01. Owner Maintenance of Private Street. Each Owner shall maintain, or cause to be maintained, the Private Street from time to time located on its Site in good order, sound structural and operating condition. Such maintenance shall include, but shall not be limited to:

(a) Maintenance, repair and replacement of the surface and subsurface of parking lot and driveways adjoining the Private Street and to maintain it level, smooth and evenly covered with the type of materials originally constructed thereon or such substitutes as will in all respects be equal to such materials in quality, appearance and durability;

(b) Maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, watering, mowing and trimming thereof and maintaining, repairing and replacing (when necessary) automatic sprinkler systems and water lines;

(c) Removal from the Private Street of papers, debris, ice, snow, refuse and other hazards to persons using the Private Street, and washing or thoroughly sweeping paved areas as required;

(d) Maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as will be reasonably required from time to time; and

(e) Such painting and repainting as may be required to maintain parking area and equipment installed thereon in high quality condition.

4.02. Common Maintenance of Private Street. Each Owner shall be responsible for its proportionate share of the cost of operation, repair, and maintenance and improvement of the Private Street that is common to the Parties, including street sweeping, snow removal, overlay, crack sealing and reconstructing (collectively “**Common Maintenance**”).

(a) An Owner’s Proportionate Share shall be calculated as follows:

Owner’s Street Frontage / (linear feet of Cataldo Block) x Estimated Cost of Annual Maintenance = Proportionate Share. An Owner's Proportionate Share shall be calculated based upon the Owner's street frontage on one or both sides of the Cataldo Block.

(b) The Owners, within sixty (60) days of the Effective Date shall meet to provide for matters set forth in this Article IV. At this meeting, the Owners, through vote or other agreed method, shall elect an individual to serve as the **Common Maintenance Administrator** to perform the duties and responsibilities set forth in this Article IV.

(c) The Common Maintenance Administrator shall within sixty (60) days of election/appointment prepare a maintenance budget and allocate the Owner's Proportionate Share which shall be paid to the Common Maintenance Administrator on or before January 1<sup>st</sup> each year. Common Maintenance Administrator shall provide an accounting of the actual cost of annual maintenance on or before April 1<sup>st</sup> of the year following the expenditure. If the actual cost is less than the estimated cost, the difference may be retained by Common Maintenance Administrator in a segregated reserve account. If the actual cost exceeds the estimated cost Common Maintenance Administrator may apply funds from the reserve account to balance the accounting; or if the reserve funds are not sufficient to balance the accounting the Common Maintenance Administrator may invoice each owner for its share of the excess, based on the Owner's Proportionate Share calculation, which each owner shall pay on or before June 1<sup>st</sup> of each year.

(d) In addition, the Common Maintenance Administrator: (i) shall be responsible for contracting for and ensuring performance of the Common Maintenance; (ii) may be replaced by the mutual agreement of the Owners of the majority of the Street Frontage of the Cataldo Block; (iii) shall be reimbursed by each Owner, based on the Proportionate Share calculation, for the actual costs and expenses incurred in carrying out its duties as Common Maintenance Administrator, which may be invoiced annually for those costs and expenses incurred in a calendar year.

(e) The necessity for and adequacy of maintenance and improvement shall be measured by the standard that exists or is required for improvements of similar construction and use in the vicinity of the Properties. No less than every twenty-four (24) months, the Common Maintenance Administrator shall perform a study to determine the Common Maintenance costs and expenses that are projected for the ensuing calendar year. If the study shows that there are adequate funds in the Common Maintenance Account to provide for twenty-four (24) months of costs and expenses, the annual payment shall be suspended until such time as the Joint Maintenance Fund decreases below \$40,000 (adjusted annually for inflation). Payments are suspended until the Common Maintenance Administrator provides sixty (60) days written notice to the Parties stating the balance of the Joint Maintenance Fund and that their annual payment under this section is required. In addition, the Common Maintenance Administrator shall, no less than every three (3) years, perform a study of the Private Street improvements and make a recommendations concerning the costs and expenses necessary to repair and replace the Private Street and related

improvements. Thereafter, following sixty (60) days written notice from the Common Maintenance Administrator, the Parties shall commence to fund the capital reserve account as agreed by the Parties.

(f) Notwithstanding anything set forth in this Declaration, an Owner who constructs building or improvements pursuant to Section 2.01.5 shall be solely responsible for repair, replacement, maintenance, and improvement of such building and improvements. A failure to perform repair maintenance and other obligations set forth herein shall be cause for relief pursuant to Article V.

4.03. Failure to Properly Maintain. In the event that any Owner or the Common Maintenance Administrator fails to properly maintain that portion of the Private Street (such party being herein referred to as the “**Defaulting Party**”), any other Owner (hereinafter referred to as the “**Nondefaulting Party**”) may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the “**Deficiencies**”) in the Defaulting Party’s performance of the Private Street maintenance to be performed by it. Notwithstanding anything to the contrary in Section 5.02, the Defaulting Party shall have ten (10) days after receipt of the said notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten (10) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. In the event that the Defaulting Party shall unreasonably fail or refuse to timely correct or to begin to correct the Deficiencies, as the case may be, the Nondefaulting Party may, at its option, correct the Deficiencies. In the event that the Nondefaulting Party shall exercise the said option and shall correct the Deficiencies, the Defaulting Party shall, immediately upon receipt from the Nondefaulting Party of an itemized invoice for the costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay all costs to the Nondefaulting Party plus interest thereon from the date of receipt of such invoice at a rate equal to the lesser of fifteen percent (15%) or the maximum rate allowed by applicable law.

4.04. Taxes. The Owners of each Site shall pay or cause to be paid all taxes and special assessments levied against their respective Site, including any portion of the Private Street on its Site, prior to delinquency of such taxes or special assessments.

**ARTICLE V**  
**Enforcement - Injunctive Relief**

5.01. Remedies. In the event of any violation by any party hereto or by any Permittee or Occupant of any part of the Cataldo Block of any of the terms, restrictions, covenants and conditions provided herein, any of the parties, or their respective successors or assigns, as the case may be, shall have in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days' written notice of the violation will be given to all other Owners and to the persons or entity guilty of such violation or threatened violation.

5.02. Notice. Except as provided in Section 4.03, a party will not be in default under this Declaration unless such party shall have been served with a written notice specifying the default and shall fail to cure such default within thirty (30) days after receipt of such notice, or shall fail to commence to cure the default within such period of time if the default cannot be cured within the said thirty (30) day period, and thereafter, to proceed diligently to complete the curing of the default.

5.03. Breach Does Not Affect Declaration. It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but this limitation shall not affect, in any manner, any other rights or remedies which the parties may have by reason of any breach of this Declaration.

**ARTICLE VI**  
**Mutual Indemnification**

6.01. Indemnification. Each Owner, with respect to its portion of the Cataldo Block, shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold each other Owner harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and reasonable attorneys' fees) arising out of or in any way related to the failure by such Owner to maintain its portion of the Cataldo Block in a safe and proper condition. Each Owner shall give each other Owner prompt and timely notice of any claim made or suit or action commenced which, in any way, could result in indemnification hereunder.

**ARTICLE VII**  
**Duration and Termination**

7.01. Duration. The easements, covenants, restrictions and other provisions of this Declaration shall be of perpetual duration and shall run with the land.



7.02. Amendment. This Declaration may not be modified, terminated, or rescinded except by written instrument executed by all the Owners as of the date of such instrument and recorded in the Office of the Register of Deeds of the County in which the Cataldo Block is located; provided, however, that no such amendments shall impose any materially greater obligation on, or materially impair any right of, the Owner of a Site, without the consent of the Owner of such Site. Any amendments or modifications of this Declaration shall be superior to any and all liens, to the same extent as this Declaration, and to the same extent as if such amendment or modification had been executed and recorded concurrently herewith. In the event that a condominium or like development is constructed on the Cataldo Block, the governing owners' association shall be deemed the Owner for purposes of consenting to any amendment, and it shall not be required that each owner of a condominium unit consent to an amendment.

#### **ARTICLE VIII** **Not a Public Dedication**

8.01. Nothing contained in this Declaration shall, or shall be deemed to, constitute a gift or dedication of any portion of the Cataldo Block to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration will be strictly limited to and for the purposes expressed herein.

#### **ARTICLE IX** **Reasonableness of Consent**

9.01. Unless otherwise provided herein, whenever an Owner's agreement or approval is required hereunder, such Owner shall not unreasonably withhold or delay such agreement or approval. If an Owner shall not agree, or shall disapprove, the reasons therefor shall be stated in writing and in reasonable detail within thirty (30) days after receipt of the request seeking agreement or approval. If an Owner fails to provide such reasons within the required time period, such Owner shall be deemed to have agreed or approved provided that the notice seeking agreement or approval stated that such Owner's failure to provide written objections within thirty (30) days shall be deemed approval of such request.

9.02. Notwithstanding anything to the contrary in this Declaration, no consent, agreement or approval shall ever be required of any Occupant or other Permittee other than the Owners of any Site.

**ARTICLE X**  
**Miscellaneous**

10.01. Recording. A fully executed counterpart of this Declaration shall be recorded in the Office of the Register of Deeds of the County in which the Cataldo Block indicated.

10.02. Benefit. This Declaration shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

10.03. Waiver. No waiver of any breach of any of the easements, covenants, restrictions or agreements herein contained shall be construed as, or constitute, a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other easement, covenant, restriction or agreement.

10.04. Severability. If any term or provision of this Declaration shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Declaration shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

10.05. Applicable Law. This Declaration shall be construed and enforced in accordance with the laws of the State in which the Cataldo Block is located.

10.06. Counterparts. This Declaration may be executed in several counterparts, all of which together shall be deemed an original single document.

10.07. Notice. All notices given or permitted under this Declaration shall be in writing and shall be sent by: (a) U.S. Mail, postage prepaid, certified or registered mail, return receipt requested or (b) for delivery on the next business day with a nationally-recognized express courier. All such notices shall be sent to the following addresses, until such addresses are changed by thirty (30) days' notice, and to any subsequent Owners at such address, such party sending such notice has received:

To SPFD:  
Stephanie Curran  
720 W. Mallon Ave.  
Spokane, WA 99201  
scurran@spokanepfd.org

With copy to:  
Stanley Schwartz  
Witherspoon Kelley  
422 W Riverside Ave, Ste. 1100  
Spokane, WA 99201

To Future Vision Properties, LLC:  
I.L.F. Media, LLC  
Attn: Daro Walker and James  
Swoboda  
540 W. Cataldo Avenue, Suite 300  
Spokane, WA 99201

To City:  
Garrett Jones  
Parks Planning and Development Manager  
808 W Spokane Falls Blvd # 5  
Spokane, WA 99201

With copy to:  
Robbi Magnuson  
2224 S. Rockwood Blvd.  
Spokane, WA 99203

With copy to:  
Spokane City Attorney  
808 W Spokane Falls Blvd #3324  
Spokane, WA 99201

To Papillon Building, LLC:  
Attn: Sheldon Jackson  
1516 W. Riverside, Suite 200  
Spokane, Washington 99201

With copy to:  
Elizabeth A. Tellessen  
Winston & Cashatt, Lawyers  
601 W. Riverside Ave., Suite 1900  
Spokane, WA 99201

To CFCU:  
Canopy Federal Credit Union  
Attn: Charlotte Nemec  
601 W. Mallon Avenue  
Spokane, WA 99201

With copy to:  
Elizabeth A. Tellessen  
Winston & Cashatt, Lawyers  
601 W. Riverside Ave., Suite 1900  
Spokane, WA 99201

10.08. Entire Agreement. This Declaration and the Exhibits hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations, understandings or agreements are superseded. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any party. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Declaration and shall not negate or invalidate any provision of this Declaration.

10.09 Attorney Fees. In any action brought under this Declaration, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, its reasonable attorney fees and costs as determined by a court with jurisdiction over the subject matter of the dispute.

This Declaration shall be binding upon the Parties as of the Effective Date.

**IN WITNESS WHEREOF**, the parties hereto have executed this Declaration as of the day and year first above written.

SPOKANE PUBLIC FACILITIES  
DISTRICT

By: [Signature]  
Larry Soehren, Board President  
Date: 9/16/19

City of Spokane

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

Future Vision Properties, LLC

By: [Signature]  
Its: Jim Swoboda  
Date: 10.9.19

Attest: \_\_\_\_\_  
City Clerk

CANOPY FEDERAL CREDIT UNION

[Signature]  
By: Charlotte Nemec  
Its: President/CEO  
Date: 10/2/19

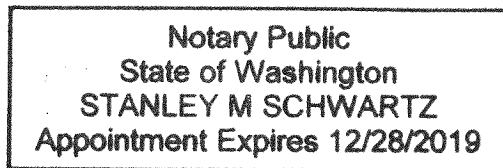
PAPILLON BUILDING, LLC

[Signature]  
By: Sheldon G. Jackson  
Its: Manager  
Date: 10.2.19

STATE OF Washington     )  
  ) ss.  
COUNTY OF Spokane     )

On this 16<sup>th</sup> day of September, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Larry Soehren, to me known to be the Board Chair of SPOKANE PUBLIC FACILITIES DISTRICT and acknowledged the foregoing instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]  
Notary Public for the State of Washington  
Residing at: Spokane  
My Commission expires: 12-28-19

STATE OF Washington     )  
  ) ss.  
COUNTY OF Spokane     )

On this 2<sup>nd</sup> day of October, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of CITY OF SPOKANE and acknowledged the foregoing instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

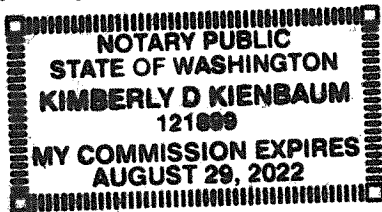
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public for the State of Washington  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF Washington       )  
  ) ss.  
COUNTY OF Spokane       )

On this 02 day of October, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Charlotte Nemeo, to me known to be the President/CEO of CANOPY FEDERAL CREDIT UNION and acknowledged the foregoing instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

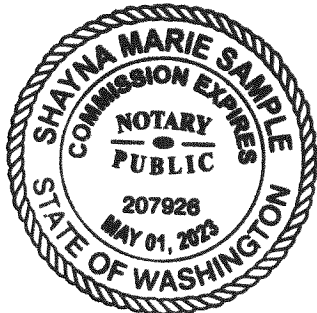


Kimberly D Kienbaum  
Notary Public for the State of Washington  
Residing at: Spokane  
My Commission expires: Aug 29, 2022

STATE OF Washington       )  
  ) ss.  
COUNTY OF Spokane       )

On this 9th day of October, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Jim Swoboda, to me known to be the Vice president of FUTURE VISION PROPERTIES, LLC and acknowledged the foregoing instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

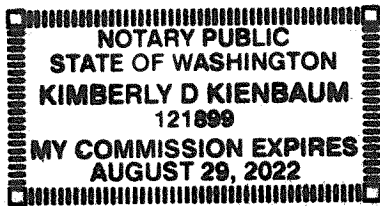


Shayna Sample  
Notary Public for the State of Washington  
Residing at: Spokane  
My Commission expires: May 01, 2023

STATE OF Washington       )  
  ) ss.  
COUNTY OF Spokane       )

On this 02 day of October, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Sheldon Jackson, to me known to be the Manager of PAPILLON BUILDING, LLC and acknowledged the foregoing instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Kimberly D Kienbaum  
Notary Public for the State of Washington  
Residing at: Spokane  
My Commission expires: Aug 29, 2022

**EXHIBIT “1”**  
**CATALDO BLOCK**



NE 1/4, SEC. 18, T.25N., R.42E., W.M.



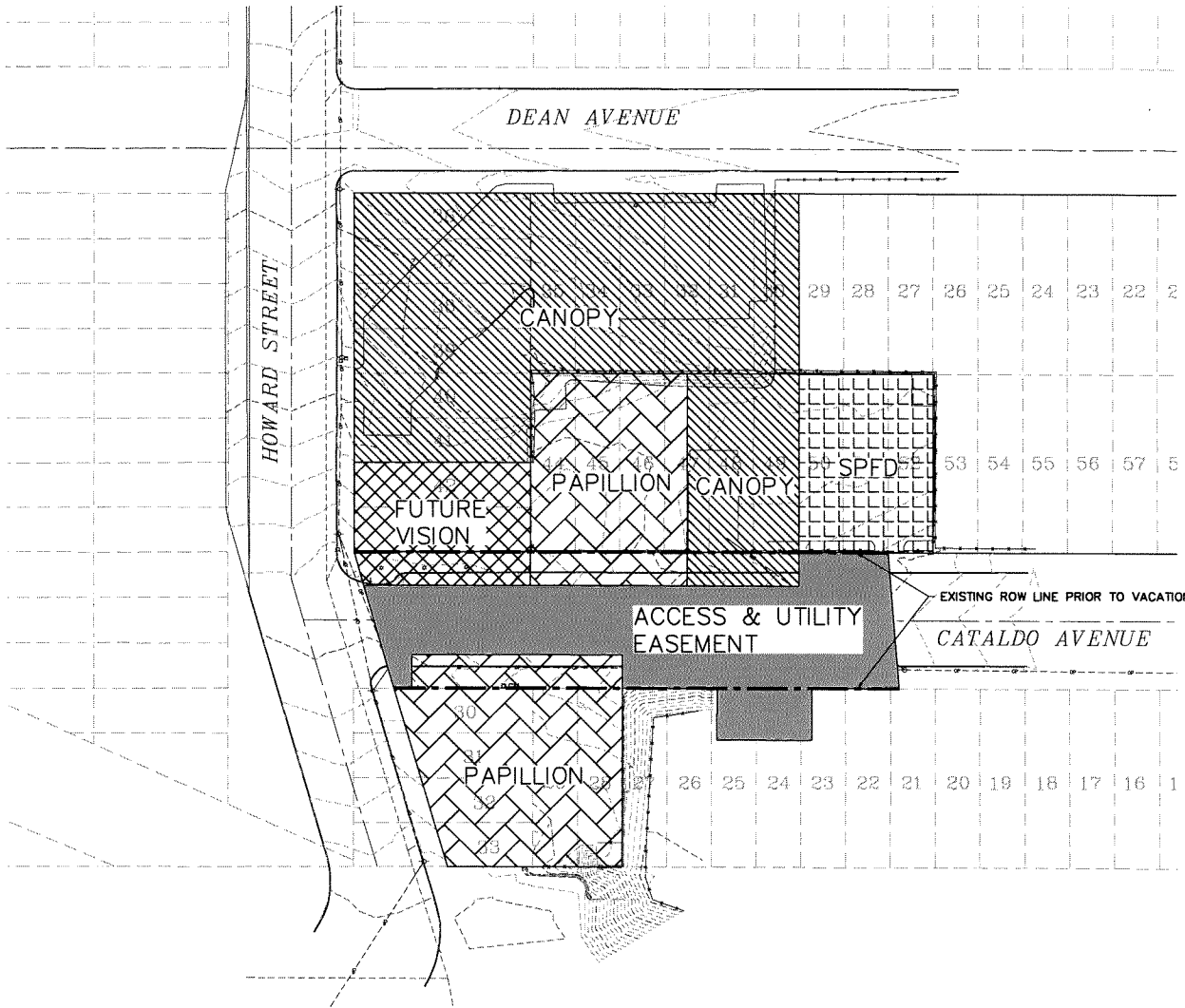
## LEGEND

- WATER**
- FIRE HYDRANT
  - WATER METER
  - WATER VALVE
  - WATER VALVE MARKER
  - WELL
  - WATER MANHOLE
- SEWER**
- SANITARY SEWER MANHOLE
  - SANITARY SEWER CLEANOUT
- GAS**
- GAS METER
  - GAS MANHOLE
  - GAS VALVE
- IRRIGATION**
- IRRIGATION CATCH BASIN
  - IRRIGATION BOX
  - IRRIGATION VALVE
- STORM**
- CATCH BASIN
  - DRAINAGE MANHOLE
  - DRYWELL
  - CATCH BASIN
- POWER**
- ELECTRIC METER
  - GUY WIRE
  - POWER POLE
  - POWER MANHOLE
  - POWER VAULT
  - POWER TRANSFORMER
- TELEPHONE/MISC. UTILITIES**
- TELE POLE
  - TEL CABLE RISER
  - TEL-BOX
  - TEL MANHOLE
  - UTILITY MANHOLE
  - UTILITY VAULT
- MISCELLANEOUS**
- JUNCTION BOX
  - JUNCTION BOX
  - SIGN
  - STREET LIGHT ASSEMBLY
  - LIGHT POLE
  - MAIL BOX
  - ROCK
  - RIPRAP
  - SHRUB
  - ★ TREE (CONIFER)
  - TREE (DECIDUOUS)
  - RUMBLE BARS
  - TEST WELL
  - WETLAND FLAG
  - RR CROSSING SIGNAL
  - GATE POST
  - BOLLARD

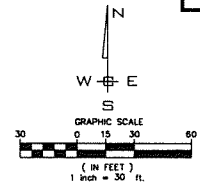
## HATCH LEGEND

- CANOPY PROPERTY AREA
- PAPILLION PROPERTY AREA
- FUTURE VISION PROPERTY AREA
- SPOKANE PFD PROPERTY AREA
- ACCESS & UTILITY EASEMENT AREA

EXHIBIT 1 -- AFFECTED LAND



PROPERTY AREA/EASEMENT EXHIBIT  
SCALE: 1" = 30'



PLANS  
NOT APPROVED  
BY AGENCY

JACKSON - CATALDO  
CATALDO AVE EASEMENT EXHIBIT  
930 N HOWARD  
SPOKANE, WA 99201

SHEET  
1 OF 1  
JOB NUMBER  
19-2387

NO.	DATE	BY	REVISIONS

SCALE:  
HORIZONTAL:  
1" = 30'  
VERTICAL:  
N/A

PROJ #: 19-2387  
DATE: 10/03/16  
DRAWN: RMA  
REVIEWED: TRW

CONSTRUCTION  
X SURVEYING  
TRAFFIC  
PLANNING  
LANDSCAPE  
OTHER

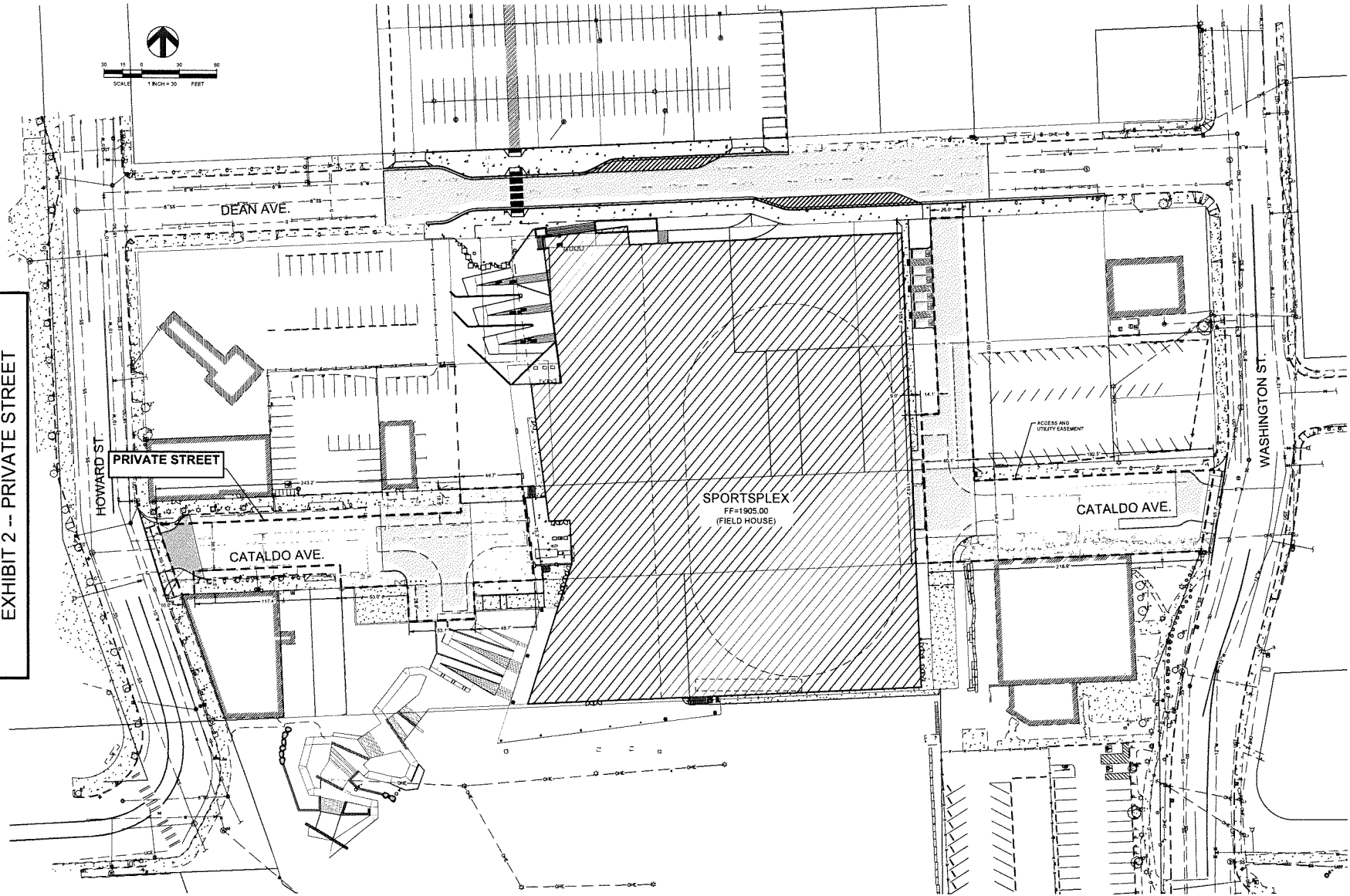


NAVD - 88  
NAD83

**EXHIBIT “2”**

**PRIVATE STREET**

# EXHIBIT 2 -- PRIVATE STREET



## SPOKANE PUBLIC FACILITIES DISTRICT SPORTSPLEX

720 W MALLON AVE  
SPOKANE, WA 99201

Date:	September 27, 2018	
Job No.:	Proj #21834	
Drawn By:	DL5	
Checked by:	CJH	
Revisions		
#	Date	Description

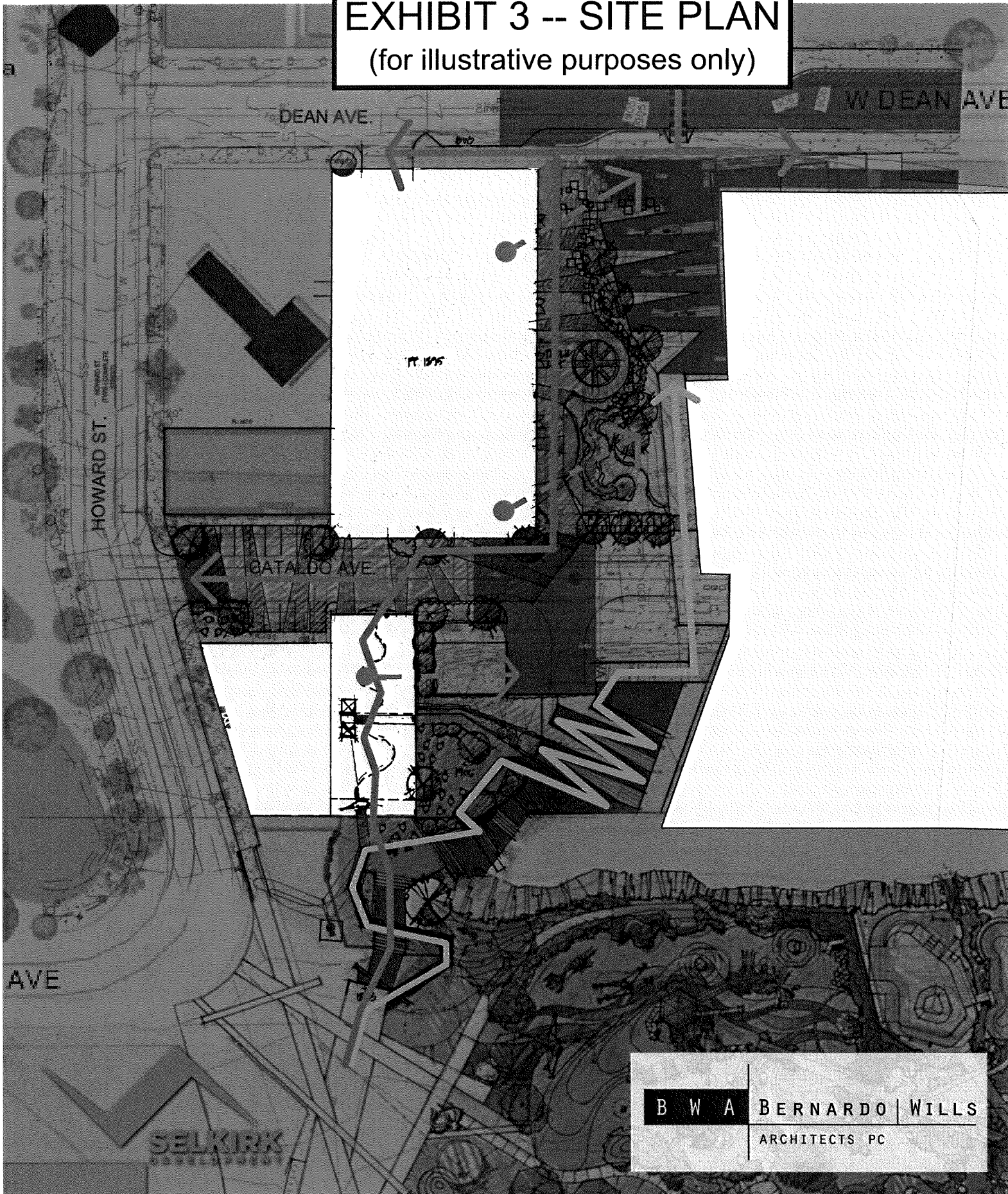
EASEMENT  
EXHIBIT

**EXHIBIT “3”**

**SITE PLAN**

# EXHIBIT 3 -- SITE PLAN

(for illustrative purposes only)



**EXHIBIT D**  
**MINIMUM INSURANCE REQUIREMENTS**  
**SPOKANE SPORTSPLEX**

I. Property.

- a. Blanket Real and Person Property, Special Form:
  - 100% Replacement Value.
  - Business Income, Extra Expense and Rental Value (Business Interruption).
  - Earthquake-Minimum \$5,000,000; Additional Limits at District discretion subject to availability and reasonable price.
  - Flood-Minimum \$5,000,000; Additional Limits at District discretion subject to availability and reasonable price.
- b. Builder's Risk:
  - Sportsplex Construction Contract Price.

II. Liability.

- a. Commercial General and Business Auto Liability:
  - Bodily Injury and Property Damage.
  - Premises and Operations including X, C and U.
  - Independent Contractor's Protective.
  - Personal Injury with Employment Exclusion Deleted.
  - Products and Completed Operations.
  - Broad Form Property Damage and Completed Operations.
  - Contractual including Contractor's Indemnity Obligations.
  - Personal and Advertising Injury.
  - Premises Medical Expense.
  - Fire Damage.
  - Employer's Liability (Washington Stop Gap Liability) to supplement Washington workers' compensation program in which District shall participate as required by law.
  - Owned, Non-owned and Hired Vehicles.
- b. With Combined Single Limits of:
  - General Aggregate, \$2,000,000.
  - Products/Completed Operations Aggregate, \$2,000,000.
  - Personal Injury, \$1,000,000.
  - Each Occurrence, \$1,000,000.
  - Fire Damage, \$100,000.
  - Medical Expense, Any One Person, \$5,000.

- c. Umbrella:
- Each Occurrence, \$10,000,000.
  - Aggregate, \$10,000,000.
  - Self-Insured Retention, \$10,000.

# Spokane Park Board

## Briefing Paper

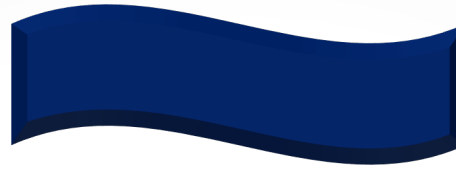


<b>Committee</b>	Finance		
<b>Committee meeting date</b>	Jan. 7, 2020		
<b>Requester</b>	Jennifer Papich	<b>Phone number:</b> 509-363-5420	
<b>Type of agenda item</b>	<input type="radio"/> Consent <input type="radio"/> Discussion <input type="radio"/> Information <input checked="" type="radio"/> Action		
<b>Type of contract/agreement</b>	<input checked="" type="radio"/> New <input type="radio"/> Renewal/extension <input type="radio"/> Amendment/change order <input type="radio"/> Other		
<b>City Clerks file</b> (OPR or policy #)	New OPR; Cross ref: OPR 2018-0855		
<b>Item title:</b> (Use exact language noted on the agenda)	SportsPlex Joint Use Agreement/Spokane Public Facilities District		
<b>Begin/end dates</b>	Begins: 01/10/2020	Ends:	<input checked="" type="checkbox"/> Open ended
<b>Background/history:</b> The intent of this Joint Use Agreement (JUA) is to promote maximum public utilization of the SportsPlex for residents and visitors alike, offering a place for public sports, recreation, education and celebration. Under this agreement SPRD is given priority use and access to the SportsPlex every Monday through Thursday of each week of the year, except as needed for the District's preplanned events (4 months or greater). The parties acknowledge that regular ongoing communication is vital to the success of the collaboration and administration of this agreement, District and city staff will meet a minimum of two times per year, in person, to address issues regarding delivery of services under this agreement. For the past few months, Parks and Recreation staff, Public Facilities staff, Park Board and SPRD board members, and the Sports Commission have been meeting regularly to finalizing the language in this agreement.			
<b>Motion wording:</b> Motion to Approve the Joint Use Agreement between the Spokane Public Facilities District and the City of Spokane Parks and Recreation Division relating to the use of the SportsPlex facility.			
<b>Approvals/signatures outside Parks:</b> <input checked="" type="radio"/> Yes <input type="radio"/> No If so, who/what department, agency or company: Public Facilities District Name: Stephanie Curran    Email address: scurran@spokanepfd.org    Phone: 509-279-7000			
<b>Distribution:</b> Parks – Accounting Parks – Pamela Clarke Requester: Jennifer Papich Grant Management Department/Name:			
<b>Fiscal impact:</b> <input type="radio"/> Expenditure <input type="radio"/> Revenue Amount: n/a    Budget code:			
<b>Vendor:</b> <input checked="" type="radio"/> Existing vendor <input type="radio"/> New vendor <b>Supporting documents:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Quotes/solicitation (RFP, RFQ, RFB)  <input type="checkbox"/> Contractor is on the City's A&amp;E Roster - City of Spokane  <input type="checkbox"/> UBI:    Business license expiration date:         </div> <div> <input type="checkbox"/> W-9 (for new contractors/consultants/vendors)  <input type="checkbox"/> ACH Forms (for new contractors/consultants/vendors)  <input type="checkbox"/> Insurance Certificate (min. \$1 million in General Liability)         </div> </div>			





SPOKANE  
PUBLIC FACILITIES  
DISTRICT



# *SportsPlex Joint Use Agreement*

The intent of this Agreement is to:

- Promote maximum public utilization of the SportsPlex for residents and visitors alike.
- SportsPlex will have operational expenses that must be met through programming of paid events which must be a first priority.
- Public use and access is a material consideration for the Ground Lease and for Park Board's commitments under the agreement for future programming growth by Parks.



S P O K A N E  
P U B L I C F A C I L I T I E S  
D I S T R I C T



## *Joint Use Agreement Update*

- The PFD, SPRD and the Sports Commission met and communicated regularly to collaborate and create this Joint Use Agreement.
  - **Garrett Jones**, Interim Director of Spokane Parks & Recreation
  - **Jennifer Papich**, Director of Recreation SPRD
  - **Sally Lodato**, Spokane Park Board, Recreation Chair
  - **Stephanie Curran**, Public Facilities District CEO
  - **Travis Tamp**, PFD Board Member
  - **Eric Sawyer**, President/CEO - Spokane Sports Commission
  - **Paul Christenson**, Director of Event Services - SSC
- All leadership recognizes that consistent communication and a strong working relationship is vital to the successful administration of this agreement.



S P O K A N E  
P U B L I C F A C I L I T I E S  
D I S T R I C T

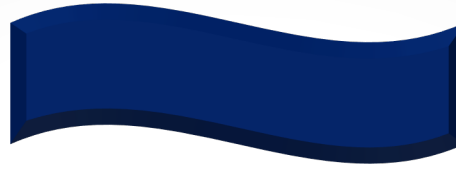


## *JUA Modifications since Dec. 5, 2019*

- References to The Ground Lease Agreement in the Joint Use Agreement.
- For consistency throughout documents all references to “Parks” have been replaced with “SPRD”.
- The term “The Entity” in **Section 5.4** has been changed to “The District”
- All references of “Property Owner” have been changed to “Facility Owner” or simply “The District”. (**Section 8.2.2, 8.3.4, 8.3.5 & 8.5.1**)
- **Fees, Maintenance & Custodial Services (Sections 8.3.1, 8.3.4 & 8.3.5)** have received additional clarifying language regarding who is responsible for utility, maintenance and custodial costs.
- ADA Requirement language has been revised in (**Section 8.9**)



S P O K A N E  
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## *JUA Modifications since Dec. 5, 2019*

- **Removing mention of Exhibit C:** A map of the SportsPlex with highlighted areas for parks usage - until a map is available to include.

The importance of the highlighted facility map is to highlight entrances to utilize and to identify facility space that should not be accessed during most SPRD events (office spaces/concession areas/ hallways etc.)

Primarily for security and supervision purposes.



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## *JUA Modifications since Dec. 5, 2019*

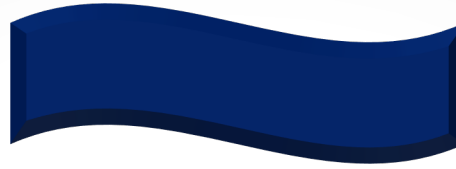
- The addition of **Mediation and Arbitration language (Section 12)** replacing Termination/Written Notice language, to be in line with the Interlocal Cooperation Agreement.

### **Language from Section 4.1.3 of the Interlocal Cooperation Agreement:**

The Joint Use Agreement shall contain a dispute resolution clause to be invoked by the Joint Committee in the event the District and Park Board representatives are unable to agree upon the reasonable and necessary scheduling, cost allocation and other matters that arise during the term of the Lease Agreement. The dispute resolution process shall set forth the process to select a neutral third party for expedited and efficient mediation and, if necessary, arbitration using one arbitrator under the JAMS streamlined arbitration rules and procedures with no right of appeal to Superior Court.



SPOKANE  
PUBLIC FACILITIES  
DISTRICT



## *JUA Modifications since Dec. 5, 2019*

- **The addition of Section 2.2 Joint Committee:**
  - A Joint Committee, as defined in Section 4 of the Interlocal Cooperation Agreement for Development of SportsPlex, shall meet no less than annually throughout the term of the Ground Lease.
- **Section 4 from the Interlocal Cooperation Agreement:**
  - 4.1.2: The District and the Park Board shall each designate (2) individuals from their ranks to form a committee that, in consultation with the Sports Commission shall meet to less than annually throughout the term of the Lease Agreement and shall have sole authority to establish use, scheduling, occupancy and cost allocation for use of the SportsPlex so as to benefit the Parties and serve the best interest of the public (Joint Committee)



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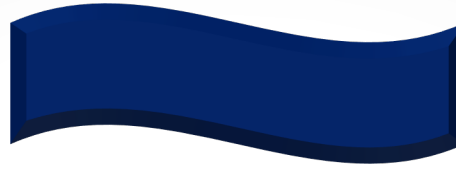
## *JUA Exhibit A Modifications since Dec. 5, 2019*

- Revised language to **Section II, Item d.**
  - “**d.** The SportsPlex Facility during the months of mid-December through March will be converted for Track and Field programming, during which time SPRD can schedule programs that have the ability to utilize the SportsPlex in this converted state, unless otherwise agreed upon by both parties, understanding conversion costs during this time will be paid for by SPRD for SPRD programs.”
- The addition of **Section II, Item e.**
  - “**e.** SPRD may request SportsPlex use Friday through Sunday however during these times PFD has first scheduling priority, SPRD weekend use will be assessed on a case by case basis depending on availability.





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## *JUA Exhibit A Modifications since Dec. 5, 2019*

- The addition of **Section II, Item f.**  
“f. SPRD will provide Park Board with a report of annual City usage of the SportsPlex for recreation programming.”
- **Section IV item d.** revision:  
“d. SPRD programs and events will be cancelled following SPRD policy; current policies can be found online at [spokaneparks.org](http://spokaneparks.org)”

## *Questions?*



**INTERLOCAL AGREEMENT  
BETWEEN PUBLIC FACILITIES  
DISTRICT AND  
CITY OF SPOKANE PARKS AND RECREATION  
DIVISION REGARDING JOINT USE OF THE  
SPORTSPLEX FACILITY**

This Agreement is entered into this \_\_\_\_\_ day of January 2020 by and between **Spokane Public Facilities District, whose address is 720 West Mallon Avenue, Spokane, WA 99201 ("District")**, and the City of Spokane Parks and Recreation Division ("**SPRD**" or "**Parks and Recreation Division**"), a municipal corporation of the State of Washington, whose address is 808 West Spokane Falls Boulevard, Spokane, WA 99201, jointly referred to as "**Parties**."

**WHEREAS**, on or about January 15, 2019, the District, the City of Spokane, and the City of Spokane Park Board entered into an "Interlocal Cooperation Agreement for Development of the SportsPlex" (the "SportsPlex Interlocal Agreement"), which included Section 4.2 entitled "City Parks and Recreation Division's Use of SportsPlex" which provided for a "Joint Use Agreement;" and

**WHEREAS**, the SportsPlex Interlocal Agreement is incorporated into this Agreement by reference; and

**WHEREAS**, the Parties thereafter entered into a lease agreement captioned "Ground Lease with City of Spokane Park Board" providing for the District's lease of land from the City to facilitate construction and operation of the SportsPlex (the "Ground Lease"); and

**WHEREAS**, this Interlocal Agreement is intended to establish rights and responsibilities contemplated in the SportsPlex Interlocal Agreement.

**NOW, THEREFORE**, upon mutual consideration exchanged by and between the Parties, it is hereby agreed:

**1. Authority and Purpose.** The Revised Code of Washington, Chapter 39.34, recognizes and authorizes local government units to make agreements for joint performance of functions and activities which they each have the authority to perform.

The intent of this Agreement is to promote maximum public utilization of the SportsPlex for residents and visitors alike, offering a place for public sports, recreation, education and celebration. The parties recognize and acknowledge that the SportsPlex can only be successful and meet its operational expenses through the programming of paid events, which must be a first priority. At the same time, the District acknowledges that public use and access is a material consideration for the Ground Lease and for the Park Board's commitments under this agreement for future programming growth by SPRD.

**2. Administration.** The parties acknowledge that regular ongoing communication is vital to the success of the collaboration and administration of this Agreement. This joint undertaking shall be conducted by the Parties according to the terms of this Agreement and jointly administered as set forth below:

**2.1 Meetings.** District and SPRD staff involved with the direct provision of services will meet a minimum of two times a year, in person, to address issues regarding delivery

of services under this Agreement.

**2.2 Joint Committee.** The Joint Committee referenced in Section 4.1.2 of the January 2019 Sportsplex Interlocal Cooperation Agreement shall meet no less than annually throughout the term of the Ground Lease and shall have sole authority to establish use, scheduling, occupancy and cost allocation for use of the SportsPlex so as to benefit the Parties and serve the best interest of the public.

**2.3 Coordinator of Services.** Each party hereby designates the following persons to be its Coordinator of Services:

District: Public Facilities District Chief Executive Officer (509-279-7000)

Parks: Director of Parks and Recreation (509-625-6204)

The parties agree that Coordinator of Staff duties can be delegated to staff as appropriate by notice in writing to the other party.

**3. Duration.** This Agreement shall commence on the Commencement Date of the Ground Lease and shall terminate on expiration or termination of the Ground Lease.

**4. Definitions.**

**4.1 “Direct Cost”** shall mean costs incurred solely as a result of the other party’s specific use of a facility or grounds such as labor, supervision or custodial costs, equipment maintenance costs.

**4.2 “SportsPlex Property”** Means the real property described in the Ground Lease.

**4.3 “SportsPlex”** means a facility which shall consist of a field house to generate sports tourism through use by the general public that will include, but not limited to, basketball, volleyball, indoor track and other court sports with associated meeting rooms, locker rooms, restrooms public area, office space, and concession areas.

**4.4 “Exhibits”** shall include the following:

A. Joint Use Scheduling Procedures (Notes: Outlining Seasonal Conversion, activities that are allowed and not allowed, etc.

B. SPRD/PFD Annual Meeting Agenda

**4.5 “Joint Use Partner”** shall mean any entity that has a reciprocal agreement with either party to this Agreement.

**5. Priority of Use.**

**5.1 First Priority Use.** The District has first priority for scheduling the use of the SportsPlex.

**5.2 Second Priority Use.** Second priority is given to the Parks and Recreation Division, joint use partner under this agreement.

**5.3 Limitations on Park's Use.** The Parks and Recreation Division shall not have the right under this Agreement to use the SportsPlex for (1) commercial purposes, that is to provide use of the facilities to a third party that otherwise would be obligated to compensate the District for such use, or (2) political purposes, that is, to promote a candidate for elective public office, or to campaign for or against an issue that is the subject of a public vote.

**5.4 Third and Lower Priority Use.** Shall be at the discretion of the District..

**6. Use of Facilities.**

**6.1 SportsPlex Priority Usage.** The Parks and Recreation Division is given priority use and access to the SportsPlex each Monday through Thursday of each week of the year, except as needed for the District's preplanned (4 months or greater) conversions or District scheduled events, with any conflicts (arising during the 4-month period) determined jointly by the Parks and Recreation Director or designee and the District CEO or designee that are reviewed by the Joint Use Committee.

**6.2 SportsPlex Non- Priority Usage.** The Parks and Recreation Division access to the SportsPlex Friday through Sunday of each week of the year subject to the discretion and approval of the District CEO or his/her designee.

**7. Scheduling.**

**7.1 Scheduling of the SportsPlex.** Scheduling shall be in accordance with the details identified in **Exhibit A: "Joint Use Scheduling Procedures"**

**7.2 Cancellation.** Either party will provide minimum notice of five (5) business days for cancellations.

**8. Rights and Responsibilities of Both Parties.**

**8.1 Compliance with Rules and Laws.** The parties shall comply with all applicable laws, ordinances and regulations as well as District policies and procedures. The District facilities are tobacco free, drug free, and a weapon free environment. Employees, patrons and agents of the parties who use or participate in activities pursuant to this Agreement shall conform to the policies applicable to the host party at all times.

**8.2 Supervision and Inspection.**

**8.2.1** With regard to any programs or activities engaged in under this Agreement, neither party shall have supervisory responsibility over the other party's programs, activities, employees, agents, representatives, volunteers, guests, licensees, invitees. Any party has the right to withhold use of facilities

under this Agreement until that party is provided a written statement to its satisfaction designating who is supervising a program or activity along with the details of supervision for a program or activity.

**8.2.2** SPRD is solely responsible for inspecting the SportsPlex facilities prior to use to identify any defects or hazards therein or thereupon which may render the facilities or property not reasonably safe for the intended use. Upon identifying any such unsafe defects or hazards, SPRD shall refrain from using the facilities or real property until the defects or hazards are brought to the District's attention and are removed, repaired, or otherwise made safe by the District.

**8.3 Fees, Maintenance and Custodial Service.**

**8.3.1** Use of the SportsPlex by SPRD shall be free of rent or other fees or assessment by the District, including, without limitation, utility costs.

**8.3.2** SPRD shall reimburse the District for any event-specific conversion costs or any event-specific security costs that are directly related to SPRD use of the SportsPlex.

**8.3.3** Unless agreed otherwise or such acts are contrary to District policy or third-party agreements for District facilities, SPRD shall supply its own resources and/or staff for conversion, event management, and security in lieu of paying the District. SPRD will provide the District a detailed list of staff assigned to work SportsPlex SPRD programs. SPRD staff will be required to receive documented facility training.

**8.3.4** Routine maintenance of personal property in the SportsPlex shall be the District's responsibility. Except as provided in Section 8.5 below, the District shall be responsible for making repairs or alterations to its equipment.

**8.3.5** Custodial services shall be provided by the District, except in instances where other specific arrangements are agreed to in writing. Maintenance and custodial costs shall be borne by SPRD only when such maintenance involves extra costs to the District directly attributable to use by SPRD.

**8.4 Utilities.** The District shall furnish all reasonable and necessary utilities.

**8.5 Equipment and Supplies.**

**8.5.1** The equipment used during and for all programs and activities conducted under the terms of this Agreement shall, for the most part, be furnished by the District, except consumable equipment and supplies shall be provided by the using party. The using party shall be responsible for any damage to the equipment (other than normal wear and tear) and shall repair or replace the equipment so that it is returned to a condition as good as or better than the condition prior to damage.

**8.5.2** Regardless of which party has furnished equipment or supplies, the

using party shall be solely responsible for inspecting all such equipment and supplies prior to usage and is solely responsible for assuring that the equipment and supplies are in reasonably safe condition and appropriate for intended use.

**8.5.3** The using party is solely responsible for inspecting the other party's facilities or real property to identify any defects or hazards therein or thereupon which may render the facilities or real property not reasonably safe for the using party's intended usage. Upon identifying any such unreasonably unsafe defects or hazards, the using party shall refrain from using the facilities or real property until the defects or hazards are brought to the attention of the owning party by the using party, and are removed, repaired, or otherwise made safe by the owning party.

**8.5.4** There will be no onsite storage available at the SportsPlex for SPRD and Recreation specific supplies and equipment.

**8.6 Manner of Financing, Budgeting, and Billing.** One objective of this Agreement is to minimize billings and rental agreements between the parties; however, if it is more convenient for the using party to pay incurred cost for specific events/use, that party may do so at its option. The annual cost of such events/use shall be based upon a general rule of 'Direct Cost'. This requires that each party maintain sufficient records to determine the Direct Cost that was incurred by and due to each party's use of facilities during the previous year. Direct Cost shall include direct incremental costs such as labor, supervision, custodial, maintenance, or a percentage of total use times the total costs. Items such as depreciation, debt retirement, normal wear and tear, and utilities that will occur regardless of use by the other party, may not be included as a cost to the using party. Usages which will create Direct Cost will be identified, costs estimated, and notification given to the user at the time of reservation.

**8.7 No Dual Employment.** Nothing contained in this Agreement, or related documents shall be construed as creating any form of an employment relationship between the parties, or the agents, officers, volunteers or employees of the parties. The officers, agents, employees or volunteers of each party shall not be entitled to any rights or privileges of employment with the other party. Each party assumes exclusive responsibility for any and all actions, rights and obligations of its respective officers, agents, employees or volunteers.

**8.8 Nondiscrimination.** No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

**8.9 ADA Requirements.** The District is responsible for ensuring that the Sportsplex complies with ADA requirements. If SPRD receives an accommodation request relating to the Sportsplex, it will notify the District. The parties will cooperate to respond to and resolve any accessibility complaints.

**8.10 Damage to Property.** When either party to this Agreement shall use, operate, occupy, or have the care, custody, or control of any real or personal property owned by the other party, the party using the real or personal property shall bear all risk, loss, or damage to the real or personal property being used up to the amount of damage.

**9. Assignment/Binding Effect.** Performance of any or all aspects of this Agreement may not be assigned without written authorization by the parties. Likewise, neither party may assign its respective rights to any claims or actions arising out of or relating to this Agreement without written authorization.

**10. Integration/Modification/Supersession.** This Agreement constitutes the entire and exclusive agreement between the parties regarding this matter and no deviations from its terms shall be allowed unless a formal, written, mutual amendment occurs between the parties. No modification of this Agreement shall be valid unless the written modification is first provided via certified mail or personal delivery to each of the parties listed in Section 2.3 of this Agreement. Actual receipt by either party constitutes compliance with the requirement to send by certified mail or personal delivery. This Agreement shall specifically supersede any other prior joint use agreements previously entered into between the District and the City for the SportsPlex.

**11. Financial Crisis.** In the event of a financial crisis, declared by resolution of the governing body of either party, the Parties shall meet and confer on how best to move forward under the Agreement and the Ground Lease.

**12. Mediation and Arbitration.** If either party has a claim or dispute under this Agreement and/or the Ground Lease Agreement, written notice of the same shall be sent to the other party. The notice shall provide a brief description of the dispute.

Meet and Confer. Within five (5) days of the delivery of the notice, the Parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable period of time, not exceeding thirty (30) days, either party may give notice of mediation.

Mediation. The mediator shall be chosen through mutual agreement of the Parties. If a mediator is not engaged within ten (10) days of the notice of mediation the matter may proceed to arbitration. The mediator's fees and costs shall be equally shared by the parties.

Arbitration. If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding arbitration in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that is mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the Parties and enforceable pursuant to RCW Chapter 7.04A.

The pendency of mediation or arbitration shall not suspend or terminate any payment or performance obligation under this Agreement.

**13. Governing Law/Venue.** The terms of this Agreement shall be governed by the laws of the State of Washington. In the event that legal action is commenced to resolve a dispute arising out of this Agreement, the venue of such action shall be in Spokane County, Washington.

**14. Exhibits.** Exhibits – as attached.

15. **Authority to Sign and Obligate.** The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the parties.

16. **RCW 39.34 Required Clauses.**

16.1 **Purpose.** See Section 1 above.

16.2 **Duration.** See Section 3 above.

16.3 **Organization of Separate Entity and Its Powers.** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.

16.4 **Responsibilities.** See provisions herein.

16.5 **Agreement to be Filed.** Parks shall file this Agreement with its City Clerk and file it with the Spokane County Auditor or place it on its web site or other electronically retrievable public source in accordance with state law. The District shall file this Agreement with the Spokane County Auditor or place it on its web site or other electronically retrievable public source.

16.6 **Financing.** Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.

16.7 **Termination.** See Section 3 above.

16.8 **Property Upon Termination.** Title to all property acquired by any party in the performance of this Agreement shall remain with the acquiring party upon termination of the Agreement. Jointly acquired property shall be divided in proportion to the percentage share of each party contributing to its acquisition.

**SPOKANE PUBLIC FACILITIES DISTRICT**

\_\_\_\_\_  
Stephanie Curran  
Chief Executive Officer

\_\_\_\_\_  
Date

**CITY OF SPOKANE PARKS AND RECREATION DIVISION**

\_\_\_\_\_  
Garrett Jones  
Director

\_\_\_\_\_  
Date

Attest:

Approved as to form:

---

City Clerk

---

Assistant City Attorney



## **EXHIBIT A**

### **Public Facilities District (PFD) Spokane Parks & Recreation Division (SPRD) Joint Use of Facilities Scheduling Procedures**

#### **I. PFD/SPRD Scheduling Procedures for Joint Use**

The PFD/SPRD Joint Use agreement is a partnership between PFD and SPRD resulting from the Interlocal Cooperation Agreement for Development of the SportsPlex to allow public use and access to the SportsPlex through organized SPRD Recreational Programs.

##### **Authorization Protocol**

- a. SPRD Director of Recreation or designated staff are authorized to make requests on behalf of SPRD or approve requests.
- b. PFD Chief Executive Officer or designated staff are authorized to approve requests from SPRD.

#### **II. PFD Facilities & Availability**

- a. The Public Facilities District has first priority for scheduling the SportsPlex under this agreement.
- b. Second priority is given to the Parks and Recreation Department, joint use partner under this agreement.
- c. City Parks and Recreation Division or “SPRD” is given priority use and access to the SportsPlex each Monday through Thursday of each week of the year, except as needed for the District’s preplanned (4 months or greater) conversions or District scheduled events, The latest that an activity at the SportsPlex can be scheduled to end is 11:00pm unless otherwise approved by PFD.
- d. The SportsPlex Facility during the months of mid-December through March will be converted for Track and Field programming, during which time SPRD can schedule programs that have the ability to utilize the SportsPlex in this converted state, unless otherwise agreed upon by both parties, understanding conversion costs during this time will be paid for by SPRD for SPRD programs.
- e. SPRD may request SportsPlex use Friday through Sunday however during these times PFD has first scheduling priority, SPRD weekend use will be assessed on a case by case basis depending on availability.
- f. SPRD will provide Park Board with a report of annual SPRD usage of the SportsPlex for recreation programming.

#### **III. Required Time Line**

There will be a required annual meeting no later than the first week of August to establish deadlines for the year. An agenda with required topics is included as **Exhibit B**.

#### **IV. Facility Use Cancellations or Changes**

- a. Cancellation and changes of scheduled events must be communicated to the facility owner at least five (5) working days prior to the event.
- b. In the event of a scheduling conflict, the facility owner must notify the user and reschedule the cancelled event. Cancellation for a conflict should be communicated at least five (5) days prior to an event.
- c. For PFD facilities changes to scheduled events shall be submitted through e-mail to the PFD designated contact person, established in the August meeting (See Section 3 above).

- d. SPRD programs and events will be cancelled following SPRD policy; current policies can be found online at [spokaneparks.org](http://spokaneparks.org).

**V. SportsPlex Use and General Rules and Regulations**

- a. The rules and regulations are in place to preserve the integrity of the SportsPlex for the best interests of all users. Failure to comply with these rules and regulations may jeopardize future use.
- b. Rules for use will be reviewed annually at the August meeting.

**VI. Fees.**

- a. There will be no rental fees between the parties.
- b. There will be charges for direct costs outside of regular custodial hours.
- c. Additional fees for equipment replacement, extraordinary maintenance costs, or other infrequently occurring costs will be funded as mutually agreed upon.

**VII. Sign-up Process to be Eligible to use the SportsPlex**

Rules for facility usage must be completed by the requestor prior to the scheduled start date. In order to gain access to facilities instructors/coaches are required to have a copy of their signed documents available while utilizing the facilities. Without these documents instructors/coaches may not be allowed access into the facility

**EXHIBIT B**  
**SPRD/PFD Annual August Meeting**  
**AGENDA**

Meetings to be held no later than the first week of August each year.

1. Update contact list
2. Review calendar of SportsPlex pre-scheduled events for the coming year
3. Discuss needs of each program and problem solve any challenges
4. Review deadlines for priority submission of schedules
5. Review scheduling details
6. Review rules for use and process for collection of signed rules
7. Review SPRD Staff training requirements
8. Review the JUA Agreement, discuss if any amendments are needed; if so, and establish a separate meeting time to begin that process.
9. SportsPlex Facility Maintenance projects that impact availability
10. Discuss any program changes that may impact scheduled use
11. Changes to SportsPlex facility processes
12. Facility equipment, maintenance and/or other needs
13. Discuss any operational changes or concerns
14. Other

**Agenda meeting notes will be distributed to all meeting participants by e-mail and retained as documentation of operating protocols.**

**INTERLOCAL AGREEMENT  
BETWEEN PUBLIC FACILITIES  
DISTRICT AND  
CITY OF SPOKANE PARKS AND RECREATION  
DIVISION REGARDING JOINT USE OF THE  
SPORTSPLEX FACILITY**

This Agreement is entered into this \_\_\_\_\_ day of ~~December~~ January 202019 by and between **Spokane Public Facilities District, whose address is 720 West Mallon Avenue, Spokane, WA 99201 ("District")**, and the City of Spokane Parks and Recreation Division ("**ParksSPRD**" or "**Parks and Recreation Department**"), a municipal corporation of the State of Washington, whose address is 808 West Spokane Falls Boulevard, Spokane, WA 99201, jointly referred to as "**Parties**."

**WHEREAS**, the City of Spokane, to include the Parks and Recreation Department, entered into an "Interlocal Cooperation Agreement for Development of the Sportsplex" on January 15, 2019, which included Section 4.2 entitled "City Parks and Recreation Department's Use of Sportsplex" which provided for a "Joint Use Agreement;" and

**WHEREAS**, the Parties thereafter entered into a lease agreement captioned "Ground Lease with City of Spokane Park Board" providing for the District's lease of land from the City to facilitate construction and operation of the Sportsplex (the "Ground Lease"); and

**WHEREAS**, this Interlocal Agreement is intended to establish rights and responsibilities contemplated in the Sportsplex Interlocal Agreement.

**NOW, THEREFORE**, upon mutual consideration exchanged by and between the Parties, it is hereby agreed:

**1. Authority and Purpose.** The Revised Code of Washington, Chapter 39.34, recognizes and authorizes local government units to make agreements for joint performance of functions and activities which they each have the authority to perform.

The intent of this Agreement is to promote maximum public utilization of the Sportsplex for residents and visitors alike, offering a place for public sports, recreation, education and celebration. The parties recognize and acknowledge that the Sportsplex can only be successful and meet its operational expenses through the programming of paid events, which must be a first priority. At the same time, the District acknowledges that public use and access is a material consideration for the Ground Lease and for the Park Board's commitments under this agreement for future programming growth by ParksSPRD.

**2. Administration.** The parties acknowledge that regular ongoing communication is vital to the success of the collaboration and administration of this Agreement. This joint undertaking shall be conducted by the Parties according to the terms of this Agreement and jointly administered as set forth below:

**2.1 Meetings.** District and Parks-SPRD staff involved with the direct provision of services will meet a minimum of two times a year, in person, to address issues regarding delivery of services under this Agreement.

**2.1.2 Joint Committee.** ~~The District and Parks shall each designate two (2)~~

~~individuals from their ranks to form a committee that, in consultation with the Sports Commission, A Joint Committee, as defined in Section 4 of the Interlocal Cooperation Agreement for Development of SportsPlex, shall meet no less than annually throughout the term of the Ground Lease, to review this Agreement.~~

**2.22.3 Coordinator of Services.** Each party hereby designates the following persons to be its Coordinator of Services:

District: Public Facilities District Chief Executive Officer 720 West Mallon Ave., Spokane, WA (509-279-7000)

Parks: Director of Parks and Recreation, 808 West Spokane Falls Boulevard, Spokane, WA 99201-3317 (509-625-6204)

The parties agree that Coordinator of Staff duties can be delegated to staff as appropriate by notice in writing to the other party.

3. **Duration.** This Agreement shall commence on the Commencement Date of the Ground Lease and shall terminate on expiration or termination of the Ground Lease.

4. **Definitions.**

4.1 **“Direct Cost”** shall mean costs incurred solely as a result of the other party’s specific use of a facility or grounds such as labor, supervision or custodial costs, equipment maintenance costs.

4.2 **“SportsPlex Property”** Means the real property described in the Ground Lease.

4.3 **“SportsPlex”** means a facility which shall consist of a field house to generate sports tourism through use by the general public that will include, but not limited to, basketball, volleyball, indoor track and other court sports with associated meeting rooms, locker rooms, restrooms public area, office space, and concession areas. ~~See Exhibit C.~~

4.4 **“Exhibits”** shall include the following:

A. Joint Use Scheduling Procedures (Notes: Outlining Seasonal Conversion, activities that are allowed and not allowed, etc.

B. SPRD/~~District~~PFD Annual Meeting Agenda

~~C. A map of the SportsPlex with highlighted areas for SPRD usage.~~

4.5 **“Joint Use Partner”** shall mean any entity that has a reciprocal agreement with either party to this Agreement.

5. **Priority of Use.**

**5.1 First Priority Use.** The District has first priority for scheduling the use of the Sportsplex.

**5.2 Second Priority Use.** Second priority is given to the Parks and Recreation Department, joint use partner under this agreement.

**5.3 Limitations on Park's Use.** The Parks and Recreation Department shall not have the right under this Agreement to use the Sportsplex for (1) commercial purposes, that is to provide use of the facilities to a third party that otherwise would be obligated to compensate the District for such use, or (2) political purposes, that is, to promote a candidate for elective public office, or to campaign for or against an issue that is the subject of a public vote.

**5.4 Third and Lower Priority Use.** Shall be at the discretion of ~~the District~~ the entity.

**6. Use of Facilities.**

**6.1 Sportsplex Priority Usage.** The Parks and Recreation Division is given priority use and access to the Sportsplex each Monday through Thursday of each week of the year, except as needed for the District's preplanned (4 months or greater) conversions or District scheduled events, with any conflicts (arising during the 4-month period) determined jointly by the Parks and Recreation Director or designee and the District CEO or designee that are reviewed by the Joint Use Committee.

**6.2 Sportsplex Non- Priority Usage.** The Parks and Recreation Division access to the Sportsplex Friday through Sunday of each week of the year subject to the discretion and approval of the District CEO or his/her designee.

**7. Scheduling.**

**7.1.1 Scheduling of the Sportsplex.** Scheduling shall be in accordance with the details identified in **Exhibit A: "Joint Use Scheduling Procedures"**

**7.1.2 Cancellation.** Either party will provide minimum notice of five (5) business days for cancellations.

**8. Rights and Responsibilities of Both Parties.**

**8.1 Compliance with Rules and Laws.** The parties shall comply with all applicable laws, ordinances and regulations as well as District policies and procedures. The District facilities are tobacco free, drug free, and a weapon free environment. Employees, patrons and agents of the parties who use or participate in activities pursuant to this Agreement

shall conform to the policies applicable to the host party at all times.

## **8.2 Supervision and Inspection.**

**8.2.1** With regard to any programs or activities engaged in under this Agreement, neither party shall have supervisory responsibility over the other party's programs, activities, employees, agents, representatives, volunteers, guests, licensees, invitees. Any party has the right to withhold use of facilities under this Agreement until that party is provided a written statement to its satisfaction designating who is supervising a program or activity along with the details of supervision for a program or activity.

**8.2.2** ~~Parks~~SPRD is solely responsible for inspecting the SportsPlex facilities prior to use to identify any defects or hazards therein or thereupon which may render the facilities or property not reasonably safe for the intended use. Upon identifying any such unsafe defects or hazards, ~~Parks~~SPRD shall refrain from using the facilities or real property until the defects or hazards are brought to the District's attention and are removed, repaired, or otherwise made safe by the District.

## **8.3 Fees, Maintenance and Custodial Service.**

**8.3.1** Use of the SportsPlex by ~~Parks~~SPRD shall be free of rent or other fees or assessment by the District, including, without limitation, utility costs.

**8.3.2** ~~Parks~~SPRD shall reimburse the District for any event-specific conversion costs or any event-specific security costs that are directly related to ~~SPRD~~Parks use of the SportsPlex.

**8.3.3** Unless agreed otherwise or such acts are contrary to District policy or third-party agreements for District facilities, ~~SPRD~~Parks shall supply its own resources and/or staff for conversion, event management, and security in lieu of paying the District. ~~SPRD~~Parks will provide the District a detailed list of staff assigned to work SportsPlex ~~SPRD~~Parks' programs. ~~SPRD~~Parks staff will be required to receive documented facility training.

**8.3.4** Routine maintenance of personal property in the SportsPlex shall be the District's responsibility. Except as provided in Section 8.5 below, the District shall be responsible for making repairs or alterations to its -equipment.

**8.3.5** Custodial services shall be provided by the District, except in instances where other specific arrangements are agreed to in writing. Maintenance and custodial costs shall be borne by ~~SPRD~~Parks only when such maintenance involves extra costs to the District directly attributable to use by ~~SPRD~~Parks.

## **8.4 Utilities.** The District shall furnish all reasonable and necessary utilities.

## **8.5 Equipment and Supplies.**

**8.5.1** The equipment used during and for all programs and activities

conducted under the terms of this Agreement shall, for the most part, be furnished by the District, except consumable equipment and supplies shall be provided by the using party. The using party shall be responsible for any damage to the equipment (other than normal wear and tear) and shall repair or replace the equipment so that it is returned to a condition as good as or better than the condition prior to damage.

**8.5.2** Regardless of which party has furnished equipment or supplies, the using party shall be solely responsible for inspecting all such equipment and supplies prior to usage and is solely responsible for assuring that the equipment and supplies are in reasonably safe condition and appropriate for intended use.

**8.5.3** The using party is solely responsible for inspecting the other party's facilities or real property to identify any defects or hazards therein or thereupon which may render the facilities or real property not reasonably safe for the using party's intended usage. Upon identifying any such unreasonably unsafe defects or hazards, the using party shall refrain from using the facilities or real property until the defects or hazards are brought to the attention of the owning party by the using party, and are removed, repaired, or otherwise made safe by the owning party.

**8.5.4** There will be no onsite storage available at the SportsPlex for SPRDParks and Recreation specific supplies and equipment.

**8.6 Manner of Financing, Budgeting, and Billing.** One objective of this Agreement is to minimize billings and rental agreements between the parties; however, if it is more convenient for the using party to pay incurred cost for specific events/use, that party may do so at its option. The annual cost of such events/use shall be based upon a general rule of 'Direct Cost'. This requires that each party maintain sufficient records to determine the Direct Cost that was incurred by and due to each party's use of facilities during the previous year. Direct Cost shall include direct incremental costs such as labor, supervision, custodial, maintenance, utilities, or a percentage of total use times the total costs. Items such as depreciation, debt retirement, normal wear and tear, and utilities that will occur regardless of use by the other party, may not be included as a cost to the using party. Usages which will create Direct Cost will be identified, costs estimated, and notification given to the user at the time of reservation.

**8.7 No Dual Employment.** Nothing contained in this Agreement, or related documents shall be construed as creating any form of an employment relationship between the parties, or the agents, officers, volunteers or employees of the parties. The officers, agents, employees or volunteers of each party shall not be entitled to any rights or privileges of employment with the other party. Each party assumes exclusive responsibility for any and all actions, rights and obligations of its respective officers, agents, employees or volunteers.

**8.8 Nondiscrimination.** No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or



physical disability, or use of a service animal by a person with disabilities.

**8.9 ADA Requirements.** The District is responsible for ensuring that the Sportsplex complies with ADA requirements. If ~~SPRDParks~~ receives an accommodation request relating to the Sportsplex, it will notify the District. The parties will cooperate to respond to and resolve any accessibility complaints.

**8.10 Damage to Property.** When either party to this Agreement shall use, operate, occupy, or have the care, custody, or control of any real or personal property owned by the other party, the party using the real or personal property shall bear all risk, loss, or damage to the real or personal property being used up to the amount of damage.

**9. Assignment/Binding Effect.** Performance of any or all aspects of this Agreement may not be assigned without written authorization by the parties. Likewise, neither party may assign its respective rights to any claims or actions arising out of or relating to this Agreement without written authorization.

**10. Integration/Modification/Supersession.** This Agreement constitutes the entire and exclusive agreement between the parties regarding this matter and no deviations from its terms shall be allowed unless a formal, written, mutual amendment occurs between the parties. No modification of this Agreement shall be valid unless the written modification is first provided via certified mail or personal delivery to each of the parties listed in Section 11.2 of this Agreement. Actual receipt by either party constitutes compliance with the requirement to send by certified mail or personal delivery. This Agreement shall specifically supersede any other prior joint use agreements previously entered into between the District and the City for the SportsPlex.

**11. Financial Crisis.** In the event of a financial crisis, declared by resolution of the governing body of either party, the Parties shall meet and confer on how best to move forward under the Agreement and the Ground Lease.

**12. Mediation and Arbitration.** If either party has a claim or dispute under this Agreement, written notice of the same shall be sent to the other party. The notice shall provide a brief description of the dispute.

**Meet and Confer.** Within five (5) days of the delivery of the notice, the Parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable period of time, not exceeding thirty (30) days, either party may give notice of mediation.

**Mediation.** The mediator shall be chosen through mutual agreement of the Parties. If a mediator is not engaged within ten (10) days of the notice of mediation the matter may proceed to arbitration. The mediator's fees and costs shall be equally shared by the parties.

**Arbitration.** If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding arbitration in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that is mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the Parties and enforceable pursuant to RCW Chapter 7.04A.

The pendency of mediation or arbitration shall not suspend or terminate any payment or performance obligation under this Agreement.

13. **Governing Law/Venue.** The terms of this Agreement shall be governed by the laws of the State of Washington. In the event that legal action is commenced to resolve a dispute arising out of this Agreement, the venue of such action shall be in Spokane County, Washington.

14. **Exhibits.** Exhibits – as attached.

15. **Authority to Sign and Obligate.** The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the parties.

16. **RCW 39.34 Required Clauses.**

16.1 **Purpose.** See Section 1 above.

16.2 **Duration.** See Section 3 above.

16.3 **Organization of Separate Entity and Its Powers.** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.

16.4 **Responsibilities.** See provisions herein.

16.5 **Agreement to be Filed.** Parks shall file this Agreement with its City Clerk and file it with the Spokane County Auditor or place it on its web site or other electronically retrievable public source in accordance with state law. The District shall file this Agreement with the Spokane County Auditor or place it on its web site or other electronically retrievable public source.

16.6 **Financing.** Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.

16.7 **Termination.** See Section ~~34~~ above.

16.8 **Property Upon Termination.** Title to all property acquired by any party in the performance of this Agreement shall remain with the acquiring party upon termination of the Agreement. Jointly acquired property shall be divided in proportion to the percentage share of each party contributing to its acquisition.

#### **SPOKANE PUBLIC FACILITIES DISTRICT**

---

Stephanie Curran  
Chief Executive Officer

---

Date

**CITY OF SPOKANE PARKS AND RECREATION DIVISION**

\_\_\_\_\_  
Garrett Jones, Director  
~~Director, interim~~

\_\_\_\_\_  
Date

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

## EXHIBIT A

### Public Facilities District (PFD) Spokane Parks & Recreation Division (SPRD) Joint Use of Facilities Scheduling Procedures

#### I. PFD/SPRD Scheduling Procedures for Joint Use

The PFD/SPRD Joint Use agreement is a partnership between PFD and SPRD resulting from the Interlocal Cooperation Agreement for Development of the SportsPlex to allow public use and access to the SportsPlex through organized SPRD Recreational Programs.

##### Authorization Protocol

- a. SPRD Director of Recreation or designated staff are authorized to make requests on behalf of SPRD or approve requests.
- b. PFD Chief Executive Officer or designated staff are authorized to approve requests from SPRD.

#### II. PFD Facilities & Availability

- a. ~~The Property owner~~Public Facilities District has first priority for scheduling ~~their facilities-the SportsPlex~~ under this agreement.
- a-b. ~~Second priority is given to the Parks and Recreation Department, joint use partner under this agreement.~~
- b-c. City Parks and Recreation Division or "SPRD" is given priority use and access to the SportsPlex each Monday through Thursday of each week of the year, except as needed for the District's preplanned (4 months or greater) conversions or District scheduled events, The latest that an activity at the SportsPlex can be scheduled to end is 11:00pm ~~-unless otherwise approved by PFD.~~
- e-d. The SportsPlex Facility during the months of mid-December through March will be ~~available-converted~~ for Track and Field programming, during which time SPRD can schedule programs that have the ability to utilize the SportsPlex in this converted state, - only, unless otherwise agreed upon by both parties, understanding conversion costs during this time will be paid for by SPRD for SPRD programs. specified by the PFD.
- e. SPRD may request SportsPlex use Friday through Sunday however during these times PFD has first scheduling priority, SPRD weekend use will be assessed on a case by case basis depending on availability.
- e-f. SPRD will provide Park Board with a report of annual City usage of the SportsPlex for recreation programming.

#### III. Required Time Line

There will be a required annual meeting no later than the first week of August to establish deadlines for the year. An agenda with required topics is included as **Exhibit B**.

#### IV. Facility Use Cancellations or Changes

- a. Cancellation and changes of scheduled events must be communicated to the facility owner at least five (5) working days prior to the event.
- b. In the event of a scheduling conflict, the facility owner must notify the user and reschedule the cancelled event. Cancellation for a conflict should be communicated at least five (5) days prior to an event.
- c. For PFD facilities changes to scheduled events shall be submitted through e-mail to the PFD designated contact person, established in the August meeting (See Section 3 above).

- d. ~~If Spokane Public Schools cancel classes due to weather, SPRD cancels programs and events as well.~~ SPRD programs and events will be cancelled following SPRD policy; current policies can be found online at [spokaneparks.org](http://spokaneparks.org).

**V. SportsPlex Use and General Rules and Regulations**

- a. The rules and regulations are in place to preserve the integrity of the SportsPlex for the best interests of all users. Failure to comply with these rules and regulations may jeopardize future use.
- b. Rules for use will be reviewed annually at the August meeting.

**VI. Fees.**

- a. There will be no rental fees between the parties.
- b. There will be charges for direct costs outside of regular custodial hours.
- c. Additional fees for equipment replacement, extraordinary maintenance costs, or other infrequently occurring costs will be funded as mutually agreed upon.

**VII. Sign-up Process to be Eligible to use the SportsPlex**

Rules for facility usage must be completed by the requestor prior to the scheduled start date. In order to gain access to facilities instructors/coaches are required to have a copy of their signed documents available while utilizing the facilities. Without these documents instructors/coaches may not be allowed access into the facility

**EXHIBIT B**  
**SPRD/PFD Annual August Meeting**  
**~~Agenda~~AGENDA**

Meetings to be held no later than the first week of August each year.

1. Update contact list
2. Review calendar of SportsPlex pre-scheduled events for the coming year
3. Discuss needs of each program and problems solve any challenges
4. Review deadlines for priority submission of schedules
5. Review scheduling details
- ~~6.~~ Review rules for use and process for collection of signed rules
- ~~6-7.~~ Review ~~and~~ SPRD Staff training requirements
- ~~7-8.~~ Review the JUA Agreement, discuss if any amendments are needed; if so, and establish a separate meeting time to begin that process.
- ~~8-9.~~ SportsPlex Facility Maintenance projects that impact availability
- ~~9-10.~~ Discuss any program changes that may impact scheduled use
- ~~10-11.~~ Changes to SportsPlex facility processes
- ~~11-12.~~ Facility ~~E~~quipment, maintenance and/or other needs
- ~~12-13.~~ Discuss any operational changes or concerns
- ~~13-14.~~ Other

Agenda meeting notes ~~to~~ will be distributed to all meeting participants by e-mail and retained as documentation of operating protocols.

**INTERLOCAL AGREEMENT  
BETWEEN PUBLIC FACILITIES  
DISTRICT AND  
CITY OF SPOKANE PARKS AND RECREATION  
DIVISION REGARDING JOINT USE OF THE  
SPORTSPLEX FACILITY**

This Agreement is entered into this \_\_\_\_\_ day of January 2020 by and between **Spokane Public Facilities District, whose address is 720 West Mallon Avenue, Spokane, WA 99201 ("District")**, and the City of Spokane Parks and Recreation Division ("**SPRD**" or "**Parks and Recreation Department**"), a municipal corporation of the State of Washington, whose address is 808 West Spokane Falls Boulevard, Spokane, WA 99201, jointly referred to as "**Parties**."

**WHEREAS**, the City of Spokane, to include the Parks and Recreation Department, entered into an "Interlocal Cooperation Agreement for Development of the Sportsplex" on January 15, 2019, which included Section 4.2 entitled "City Parks and Recreation Department's Use of Sportsplex" which provided for a "Joint Use Agreement;" and

**WHEREAS**, the Parties thereafter entered into a lease agreement captioned "Ground Lease with City of Spokane Park Board" providing for the District's lease of land from the City to facilitate construction and operation of the Sportsplex (the "Ground Lease"); and

**WHEREAS**, this Interlocal Agreement is intended to establish rights and responsibilities contemplated in the Sportsplex Interlocal Agreement.

**NOW, THEREFORE**, upon mutual consideration exchanged by and between the Parties, it is hereby agreed:

**1. Authority and Purpose.** The Revised Code of Washington, Chapter 39.34, recognizes and authorizes local government units to make agreements for joint performance of functions and activities which they each have the authority to perform.

The intent of this Agreement is to promote maximum public utilization of the Sportsplex for residents and visitors alike, offering a place for public sports, recreation, education and celebration. The parties recognize and acknowledge that the Sportsplex can only be successful and meet its operational expenses through the programming of paid events, which must be a first priority. At the same time, the District acknowledges that public use and access is a material consideration for the Ground Lease and for the Park Board's commitments under this agreement for future programming growth by SPRD.

**2. Administration.** The parties acknowledge that regular ongoing communication is vital to the success of the collaboration and administration of this Agreement. This joint undertaking shall be conducted by the Parties according to the terms of this Agreement and jointly administered as set forth below:

**2.1 Meetings.** District and SPRD staff involved with the direct provision of services will meet a minimum of two times a year, in person, to address issues regarding delivery of services under this Agreement.

**2.2 Joint Committee.** A Joint Committee, as defined in Section 4 of the Interlocal

Cooperation Agreement for Development of SportsPlex, shall meet no less than annually throughout the term of the Ground Lease.

**2.3 Coordinator of Services.** Each party hereby designates the following persons to be its Coordinator of Services:

District: Public Facilities District Chief Executive Officer 720 West Mallon Ave., Spokane, WA (509-279-7000)

Parks: Director of Parks and Recreation, 808 West Spokane Falls Boulevard, Spokane, WA 99201-3317 (509-625-6204)

The parties agree that Coordinator of Staff duties can be delegated to staff as appropriate by notice in writing to the other party.

**3. Duration.** This Agreement shall commence on the Commencement Date of the Ground Lease and shall terminate on expiration or termination of the Ground Lease.

**4. Definitions.**

**4.1 "Direct Cost"** shall mean costs incurred solely as a result of the other party's specific use of a facility or grounds such as labor, supervision or custodial costs, equipment maintenance costs.

**4.2 "Sportsplex Property"** Means the real property described in the Ground Lease.

**4.3 "Sportsplex"** means a facility which shall consist of a field house to generate sports tourism through use by the general public that will include, but not limited to, basketball, volleyball, indoor track and other court sports with associated meeting rooms, locker rooms, restrooms public area, office space, and concession areas.

**4.4 "Exhibits"** shall include the following:

- A. Joint Use Scheduling Procedures (Notes: Outlining Seasonal Conversion, activities that are allowed and not allowed, etc.
- B. SPRD/District Annual Meeting Agenda

**4.5 "Joint Use Partner"** shall mean any entity that has a reciprocal agreement with either party to this Agreement.

**5. Priority of Use.**

**5.1 First Priority Use.** The District has first priority for scheduling the use of the Sportsplex.



**5.2 Second Priority Use.** Second priority is given to the Parks and Recreation Department, joint use partner under this agreement.

**5.3 Limitations on Park's Use.** The Parks and Recreation Department shall not have the right under this Agreement to use the Sportsplex for (1) commercial purposes, that is to provide use of the facilities to a third party that otherwise would be obligated to compensate the District for such use, or (2) political purposes, that is, to promote a candidate for elective public office, or to campaign for or against an issue that is the subject of a public vote.

**5.4 Third and Lower Priority Use.** Shall be at the discretion of the District..

**6. Use of Facilities.**

**6.1 Sportsplex Priority Usage.** The Parks and Recreation Division is given priority use and access to the Sportsplex each Monday through Thursday of each week of the year, except as needed for the District's preplanned (4 months or greater) conversions or District scheduled events, with any conflicts (arising during the 4-month period) determined jointly by the Parks and Recreation Director or designee and the District CEO or designee that are reviewed by the Joint Use Committee.

**6.2 Sportsplex Non- Priority Usage.** The Parks and Recreation Division access to the Sportsplex Friday through Sunday of each week of the year subject to the discretion and approval of the District CEO or his/her designee.

**7. Scheduling.**

**7.1.1 Scheduling of the Sportsplex.** Scheduling shall be in accordance with the details identified in **Exhibit A: "Joint Use Scheduling Procedures"**

**7.1.2 Cancellation.** Either party will provide minimum notice of five (5) business days for cancellations.

**8. Rights and Responsibilities of Both Parties.**

**8.1 Compliance with Rules and Laws.** The parties shall comply with all applicable laws, ordinances and regulations as well as District policies and procedures. The District facilities are tobacco free, drug free, and a weapon free environment. Employees, patrons and agents of the parties who use or participate in activities pursuant to this Agreement shall conform to the policies applicable to the host party at all times.

**8.2 Supervision and Inspection.**

**8.2.1** With regard to any programs or activities engaged in under this Agreement, neither party shall have supervisory responsibility over the other party's programs, activities, employees, agents, representatives, volunteers, guests, licensees, invitees. Any party has the right to withhold use of facilities

under this Agreement until that party is provided a written statement to its satisfaction designating who is supervising a program or activity along with the details of supervision for a program or activity.

**8.2.2** SPRD is solely responsible for inspecting the SportsPlex facilities prior to use to identify any defects or hazards therein or thereupon which may render the facilities or property not reasonably safe for the intended use. Upon identifying any such unsafe defects or hazards, SPRD shall refrain from using the facilities or real property until the defects or hazards are brought to the District's attention and are removed, repaired, or otherwise made safe by the District.

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**8.3.1** Use of the SportsPlex by SPRD shall be free of rent or other fees or assessment by the District, including, without limitation, utility costs.

**8.3.2** SPRD shall reimburse the District for any event-specific conversion costs or any event-specific security costs that are directly related to SPRD use of the SportsPlex.

**8.3.3** Unless agreed otherwise or such acts are contrary to District policy or third-party agreements for District facilities, SPRD shall supply its own resources and/or staff for conversion, event management, and security in lieu of paying the District. SPRD will provide the District a detailed list of staff assigned to work SportsPlex SPRD programs. SPRD staff will be required to receive documented facility training.

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**SPOKANE PUBLIC FACILITIES DISTRICT**

\_\_\_\_\_  
Stephanie Curran  
Chief Executive Officer

\_\_\_\_\_  
Date

**CITY OF SPOKANE PARKS AND RECREATION DIVISION**

\_\_\_\_\_  
Garrett Jones, Director

\_\_\_\_\_  
Date

Attest:

Approved as to form:

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City Clerk

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Assistant City Attorney

## **EXHIBIT A**

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- b. Second priority is given to the Parks and Recreation Department, joint use partner under this agreement.
- c. City Parks and Recreation Division or “SPRD” is given priority use and access to the SportsPlex each Monday through Thursday of each week of the year, except as needed for the District’s preplanned (4 months or greater) conversions or District scheduled events, The latest that an activity at the SportsPlex can be scheduled to end is 11:00pm unless otherwise approved by PFD.
- d. The SportsPlex Facility during the months of mid-December through March will be converted for Track and Field programming, during which time SPRD can schedule programs that have the ability to utilize the SportsPlex in this converted state, unless otherwise agreed upon by both parties, understanding conversion costs during this time will be paid for by SPRD for SPRD programs.
- e. SPRD may request SportsPlex use Friday through Sunday however during these times PFD has first scheduling priority, SPRD weekend use will be assessed on a case by case basis depending on availability.
- f. SPRD will provide Park Board with a report of annual City usage of the SportsPlex for recreation programming.

#### **III. Required Time Line**

There will be a required annual meeting no later than the first week of August to establish deadlines for the year. An agenda with required topics is included as **Exhibit B**.

#### **IV. Facility Use Cancellations or Changes**

- a. Cancellation and changes of scheduled events must be communicated to the facility owner at least five (5) working days prior to the event.
- b. In the event of a scheduling conflict, the facility owner must notify the user and reschedule the cancelled event. Cancellation for a conflict should be communicated at least five (5) days prior to an event.
- c. For PFD facilities changes to scheduled events shall be submitted through e-mail to the PFD designated contact person, established in the August meeting (See Section 3 above).

- d. SPRD programs and events will be cancelled following SPRD policy; current policies can be found online at [spokaneparks.org](http://spokaneparks.org).

**V. SportsPlex Use and General Rules and Regulations**

- a. The rules and regulations are in place to preserve the integrity of the SportsPlex for the best interests of all users. Failure to comply with these rules and regulations may jeopardize future use.
- b. Rules for use will be reviewed annually at the August meeting.

**VI. Fees.**

- a. There will be no rental fees between the parties.
- b. There will be charges for direct costs outside of regular custodial hours.
- c. Additional fees for equipment replacement, extraordinary maintenance costs, or other infrequently occurring costs will be funded as mutually agreed upon.

**VII. Sign-up Process to be Eligible to use the SportsPlex**

Rules for facility usage must be completed by the requestor prior to the scheduled start date. In order to gain access to facilities instructors/coaches are required to have a copy of their signed documents available while utilizing the facilities. Without these documents instructors/coaches may not be allowed access into the facility



**EXHIBIT B**  
**SPRD/PFD Annual August Meeting**  
**AGENDA**

Meetings to be held no later than the first week of August each year.

1. Update contact list
2. Review calendar of SportsPlex pre-scheduled events for the coming year
3. Discuss needs of each program and problem solve any challenges
4. Review deadlines for priority submission of schedules
5. Review scheduling details
6. Review rules for use and process for collection of signed rules
7. Review SPRD Staff training requirements
8. Review the JUA Agreement, discuss if any amendments are needed; if so, and establish a separate meeting time to begin that process.
9. SportsPlex Facility Maintenance projects that impact availability
10. Discuss any program changes that may impact scheduled use
11. Changes to SportsPlex facility processes
12. Facility equipment, maintenance and/or other needs
13. Discuss any operational changes or concerns
14. Other

**Agenda meeting notes will be distributed to all meeting participants by e-mail and retained as documentation of operating protocols.**