

AMENDMENT TO CONCESSION AGREEMENT
Between
THE CITY OF SEATTLE
and
TENNIS CENTER AT SAND POINT, LLC

This Amendment to the August 2, 2010 Amended and Restated Concession Agreement (“Concession Agreement”) by and between **THE CITY OF SEATTLE** (“City”), a Washington municipal corporation, and **TENNIS CENTER AT SAND POINT, LLC** (“Concessionaire”), a Washington Limited Liability Company organized under the laws of the State of Washington, is effective as of _____, _____, 2020 (the “**Effective Date**”). City and Concessionaire are together referenced in this Amendment as “Parties” and individually as a “Party.”

RECITALS

- A. Whereas, City and Concessionaire entered into a 20-year Concession Agreement (“Concession Agreement”), Ordinance #123331 on August 2, 2010, for Concessionaire to build, operate, and manage a tennis facility on a portion of Magnuson Park for the use and benefit of the public; and
- B. Whereas, Concessionaire invested \$6.2 million to build the facility which opened for business in September 2013; and
- C. Whereas, City and Concessionaire have established a mutually beneficial and positive working relationship since the commencement of the Concession Agreement; and
- D. Whereas, Concessionaire has participated and continues to support City’s Race and Social Justice Initiative by providing Public Benefits to underrepresented communities, the public, seniors, and children in the city; and
- E. Whereas, City and Concessionaire desire to clarify expectations and definitions of Public Benefits to be provided by Concessionaire in the Concession Agreement to better align with updated public benefit expectations and requirements; and
- F. Whereas, the Concessionaire initially intended to renovate or the building commonly known as Magnuson Park Building 41 (“Building 41”), the former Naval gas station, and build a new structure to use as a pro-shop and welcome center. Subsequently, the City and Concessionaire agreed to an amended Concession Agreement allowing Concessionaire to demolish the building and addressing certain costs associated with environmental hazards; and
- G. Whereas, after commencement of the Concession Agreement, Concessionaire discovered conditions, present in and around Building 41, making demolition or renovation of the building cost prohibitive for Concessionaire; and

H. Whereas, Concessionaire has no future plans to renovate Building 41 and City does not require tennis-related activities to be conducted in and around Building 41; and

I. Whereas, the public and Magnuson Park community stakeholder groups have expressed interest in renovating and activating Building 41 to be utilized for parks and public access purposes; and

J. Whereas, City and Concessionaire mutually desire to remove Building 41 from Premises of the Concession Agreement, in exchange for an additional five (5)-year extension option to the Concession Agreement Term, allowing opportunities for additional stakeholder groups to renovate and activate Building 41 for parks and public access purposes, which is a benefit to Seattle Parks and Recreation (SPR); and

K. Whereas, City is satisfied that the removal of Building 41 from the Concession Agreement, and the provision of these additional facilities at Magnuson Park is in City's and public's best interests; and

L. Whereas, the Concessionaire has provided public benefits required by the Concession Agreement while also providing additional public benefits as a responsible member of the Magnuson Park community; and

M. Whereas, the Parties wish to clarify requirements for Concessionaire to deliver public benefits and further document the mutual benefits the Concession Agreement provides to Concessionaire and City.

NOW, by the mutual covenants and conditions of Agreement, both parties hereby agree to the following:

AGREEMENT

In consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt of which are hereby acknowledged, City and Concessionaire hereby agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment shall have the meanings given to them in the Concession Agreement.
2. Superintendent. All references to "Superintendent" in this Amendment and the Concession Agreement are understood and agreed to include any Seattle Parks and Recreation staff person delegated authority by the Superintendent to administer this Concession Agreement.
3. Modification Section 1.1 Premises. The Parties agree to remove Building 41 from the Concession Premises. In exchange for Concessionaire releasing and disclaiming all rights to use or occupy Building 41, City releases Concessionaire from all obligations

to improve or otherwise operate the Building 41 area. Section 1.1 of the Concession Agreement is hereby deleted and replaced with the following:

1.1 Premises. Premises means the building currently used as a tennis center situated on a portion of the land depicted on Exhibit A hereto with a footprint of approximately 79,581 square feet. The street address of the Premises is 7135 Sportsfield Dr. NE, Seattle, WA 98115.

The Premises are situated on a portion of the real property legally described in Exhibit B (“Property”). The Premises do not include the buildings commonly known as Magnuson Park Building 18, Magnuson Park Building 41 or any other portion of the Property except the building used as a tennis center and depicted in Exhibit A

4. Modification of Section 1.7.1 Base Concession Fee.

a. The Parties agree to remove Building 41 from the Base Concession Fee. Section 1.7.1 of the Concession Agreement is hereby deleted and replaced with the following:

1.7.1 Base Concession Fee. \$1.00 per square foot, annually, for a total initial annual Base Concession Fee of \$79,581.00.

b. The modification to Section 1.7.1 set out in this section does not modify, delete or replace Section 4.2 of the Concession Agreement (“Adjustments to Base Concession Fee”). For avoidance of doubt, the Concession Fee will continue to be subject to annual increases measured by reference to the Consumer Price Index (CPI).

5. Modification of Section 1.8 Notice and Delivery Addresses. The Parties agree to update the Notice and Delivery Addresses in the Concession Agreement. Section 1.8 is hereby deleted and replaced with the following:

To City: The City of Seattle
Seattle Parks and Recreation
Attention: Manager, Magnuson Park,
6310 NE 74th St.
Seattle, WA 98115

To Concessionaire:
Tennis Center at Sand Point, LLC
Attention: Scott Marshall, Managing Director
7135 Sportsfield Dr. NE

Seattle, WA 98115

6. Modification of Section 2.1 Grant. The Parties agree to redefine the description of the facility in the Concession Agreement from an indoor and outdoor tennis facility to an indoor facility only, including a pro-shop. Section 2.1 is hereby deleted and replaced with the following:

2.1 Grant. Subject to all of the terms and conditions contained herein, City hereby grants to Concessionaire and Concessionaire hereby accepts from City, the exclusive right throughout the Term to use the Premises to operate an indoor public tennis facility containing ten (10) regulation-sized indoor tennis courts and a supporting retail pro-shop, for a fee.

7. Modification of Section 2.3 Condition. The Parties agree to remove Building 41 and any references thereof from the Concession Agreement. Section 2.3 is hereby deleted and replaced with the following:

2.3 Condition. Concessionaire accepts the Premises in their “as is” condition; Concessionaire agrees that all construction on or improvements to the Premises shall comply with all applicable laws relating to the abatement and disposal of Hazardous Substances and shall be subject to all of the requirements of Section 8.

8. Modification of Section 2.5 Permitted Use. The Parties agree to update the facility description in the Concession Agreement from an indoor and outdoor tennis facility to an indoor facility only, including a pro-shop, and to remove references to the Management and Operations Report to be replaced with Public Benefit Plan references. Section 2.5 is hereby deleted and replaced with the following:

2.5 Permitted Use. Commencing on the Possession Date, Concessionaire shall use the Premises to construct and, upon receipt of a certificate of occupancy therefor, to operate upon the Premises a tennis facility containing ten (10) regulation-sized indoor tennis courts. In addition, Concessionaire may construct a pro-shop inside the Premises for purposes incidental to the operation of the tennis facility, including storage, offices, locker rooms and meeting rooms. Concessionaire may sell food and beverages at the Premises; provided, however, that in no event shall Concessionaire conduct any food service operation that, if open to the public, has any interior seating area with twenty (20) or

more seats dedicated exclusively for use by food and beverage customers.

With the Superintendent’s prior approval, Concessionaire may engage in Third-Party Rentals of all or part of the Premises on an intermittent basis involving not more than five (5) consecutive days for any one event or, collectively, for not more than thirty (30) days in any one calendar year, provided such use is consistent with the Permitted Use of the Premises. Concessionaire shall include the process for selection of individuals or groups to use the Premises in the annual Public Benefit Plan required pursuant to Exhibit F attached hereto, together with the standard terms and conditions of any proposed use agreements.

9. Modification of Section 2.7 Public Program Requirement. The Parties agree to change the title of this Section 2.7 to “Public Benefit Offsets, Process, and Description of Eligible Programming and Services” and to remove the definition of the Public Benefit requirements from this Section 2.7 and to include descriptions of the types of programs and services eligible for Public Benefit Offset in Exhibit G of the Concession Agreement. Section 2.7 is hereby deleted and replaced with the following:

2.7 Public Benefit Offsets, Process, and Description of Eligible Programming and Services. Public Benefit Offsets and Process are as described in Exhibit F. Descriptions of Eligible Programming and Services for Public Benefit Offset are included in Exhibit G. Throughout the Term, Concessionaire shall provide 8.75 hours per week of open court time, free-of-charge, to youth (defined as children ages 10 and 18) and seniors (defined as adults 65 years or older). Concessionaire shall propose for the Superintendent’s approval the schedule and terms and conditions for open court time with the Public Benefit Plan. As in the original Concession Agreement, this open court time is a baseline contract requirement and not eligible for any offset.

10. Modification of Section 3.2 Extended Term. The Parties agree to add a third five (5)-year extension option to the Concession Agreement. Section 3.2 is hereby deleted and replaced with the following:

3.2 Extended Term.

Provided Concessionaire is not in default under this Agreement and has continuously used and occupied the Premises for the Permitted Use, Concessionaire shall have the option to extend the Term of this Agreement for three (3) additional terms of five (5)

years, each, on the same terms and conditions as are set forth herein. Concessionaire shall exercise its option(s) to extend the Term by giving the City written notice of its intention to do so at the address specified in Section 1.8 at least ninety (90) days prior to the expiration of the then-current Term.

11. Modification of Section 4.1 Concession Fee Payment. The Parties agree to change the payment schedule for Percentage Concession Fee's from monthly to annual payments in the Concession Agreement. Section 4.1 is hereby deleted and replaced with the following:

4.1 Concession Fee Payment. Beginning on the Concession Fee Commencement Date and thereafter, in advance, on the twentieth (20th) day of each month, Concessionaire covenants to pay the City at the address and to the account the City specifies, without notice or demand, in lawful money of the United States, the monthly amount of the Base Concession Fee. Annually on the anniversary of the Concession Fee Commencement Date Concessionaire shall pay the Percentage Concession Fee due from Third-Party Rentals that occurred during the immediately preceding year.

Concessionaire shall pay the Percentage Concession Fee due for the last year of the Term within thirty (30) days from the date this Agreement expires or is terminated. The Concession Fee and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial month during the Concession Agreement Term.

12. Deletion of Section 4.4 Public Program Concession Fee Offsets. Section 4.4 is hereby deleted and replaced with modifications to Section 2.7 and the addition of Exhibits F and G.
13. Deletion of Section 8.5 Management and Operations Plan. Parties agree to delete Section 8.5. Section 8.5 is hereby deleted:
14. Modification of Exhibit A. Exhibit A to the Concession Agreement is hereby deleted and replaced with Exhibit A to this Amendment, which is incorporated by reference into this Amendment and the modified Agreement.
15. Modification of Exhibit B. Exhibit B to the Concession Agreement is hereby deleted and replaced with Exhibit B to this Amendment, which is incorporated by reference into this Amendment and the modified Agreement.

- 16. Addition of Exhibit F Public Benefit Offsets and Process. Exhibit F to the Concession Agreement is hereby attached to this Amendment, which is incorporated by reference into this Amendment and the modified Agreement.
- 17. Addition of Exhibit G [Description of Eligible Public Benefits](#). Exhibit G to the Concession Agreement is hereby attached to this Amendment, which is incorporated by reference into this Amendment and the modified Agreement.
- 18. Reaffirmation of Concession Agreement. The Concession Agreement, as modified by this Amendment, shall remain in full force and effect and is hereby ratified and reaffirmed.
- 19. Entire Agreement. The Concession Agreement, together with this Amendment, embodies the entire agreement of City and Concessionaire with respect to the subject matter thereof and hereof and supersedes or incorporates all prior negotiations and agreements, written or oral.
- 20. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be one document.
- 21. Governing Law. This Amendment shall be governed in all respects by the laws of the State of Washington.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the day and year first set forth above.

IN WITNESS WHEREOF, the parties hereto have affixed or caused to be affixed their respective signatures with the intent to be bound by the terms hereof as of the Effective Date.

City:
THE CITY OF SEATTLE
By its Seattle Parks and Recreation

Concessionaire:
Tennis Center at Sand Point, LLC.

By: _____
Name: _____
Its Superintendent

By: _____
Name: _____
Its: _____

- Attachments: Updated Exhibit A: Map of the Premises with Dimensions
Updated Exhibit B: Legal Description
Exhibit F: Public Benefit Offsets and Process
Exhibit G: [Description of Eligible Public Benefits](#)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ___ day of _____, 2020, before me personally appeared _____, to me known to be the Superintendent of The City of Seattle, Seattle Parks and Recreation, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said party.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Signature
Notary Public in and for the State of Washington,
residing at _____
My commission expires _____

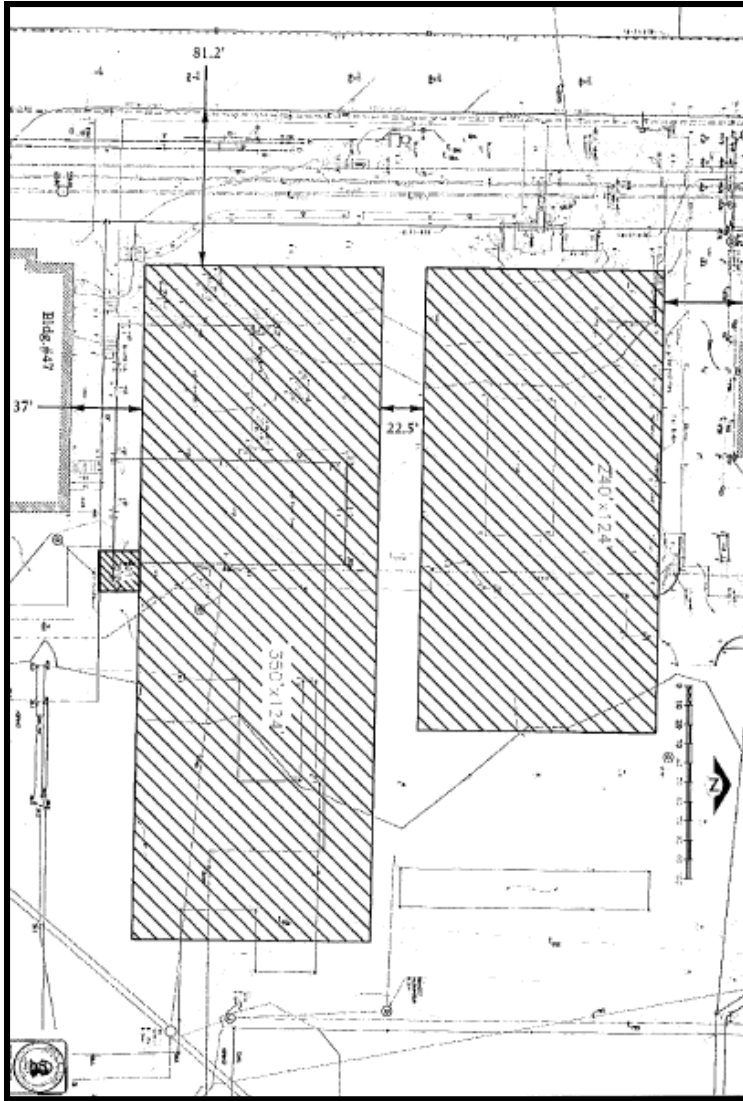
STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2020, before me personally appeared _____, to me known to be the _____ of _____, the Washington corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Signature
Notary Public in and for the State of Washington,
residing at _____
My commission expires _____

Updated Exhibit A
Map of the Premises with Dimensions



Updated Exhibit B

LEGAL DESCRIPTION OF PARCEL CONTAINING TENNIS CENTER PREMISES

PARCEL 6, LOT B, CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION SURVEY RECORDED IN THE RECORDS OF KING COUNTY, WASHINGTON UNDER RECORDING NO. 20000906900018, BEING ACQUIRED BY THE CITY OF SEATTLE BY DEED RECORDED IN THE RECORDS OF KING COUNTY, WASHINGTON UNDER RECORDING NO. 9905041194.

PARCEL 6

Lot B

That portion of the east one-half of the southwest quarter (SW⁴) of Section 2, TWP 25N, RNG 04E, W.M., said east one-half being acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the west one-sixteenth corner common to Sections 2 and 11, TWP 25N, RNG 04E, W.M., accepted as being the same as the center-line intersection of NE 65th Street and Sand Point Way NE, thence N 00° 48' 49" W on the centerline of Sand point Way NE a distance of 60.01 feet, thence leaving said centerline S 89° 35' 06" E a distance of 40.01 feet to a point on the east margin of said Sand Point Way NE, said point being 60.00 feet north of the south line of said Section 2 as measured at right angles thereto, thence continuing S 89° 35' 06" E parallel with the south line of said Section 2 a distance of 489.94 feet, thence N 00° 19' 00" W a distance of 331.50 feet, thence N 23° 24' 06" W a distance of 323.73 feet, thence N 00° 01' 23" W a distance of 1211.94 feet to the **True Point Of Beginning** of this description, thence continuing N 00° 01' 23" W a distance of 410.18 feet, thence N 89° 42' 47" E a distance of 796.53 feet to the west boundary of a tract of land under the jurisdiction of the National Oceanic & Atmospheric Administration (NOAA), thence S 00° 02' 51" W on said NOAA boundary a distance of 276.81 feet to a concrete monument marking a boundary corner of Warren G Magnuson Park as established in 1975, thence continuing S 00° 02' 51" W on said Park boundary a distance of 159.18 feet, thence leaving said Park boundary S 89° 44' 09" W a distance of 546.98 feet, N 00° 15' 51" W a distance of 25.49 feet, thence S 89° 44' 09" W a distance of 248.90 feet to the **True Point Of Beginning**.

Exhibit F

Public Benefit Offsets and Process

City's willingness to enter into this Concession Agreement was conditioned, in part, on Concessionaire's commitment to provide Public Benefits through recreation-related public programming at Magnuson Park (the "Public Benefits"). Concessionaire agrees to the following.

1. Public Benefit Offsets.

Concessionaire may offset up to ~~46~~20.00% of the annual Concession Fee through the "Public Benefit Offset." As used in this Agreement, "Public Benefit Offset" means the value of Concessionaire's delivery of programming and services to City or the public, as approved by the Superintendent according to the process in this Exhibit F. Examples of programming and services eligible for the Public Benefit Offset, are as described in Exhibit G ("Description of Eligible Public Benefits").

2. Annual Public Benefit Plan.

In order to obtain the Public Benefit Offset, within thirty (30) days after the Commencement Date of this Amendment, and thereafter on or before November 1st of each year during the Initial Term and any Extended Terms, Concessionaire shall submit to the Superintendent (or designee) a proposal of public programming with measurable performance objectives it intends to provide during the coming calendar year. The proposal shall include an estimate of the value based on factors such as the estimated cost to Concessionaire of the labor and materials provided, the value of the public services to be provided, or other reasonable factors demonstrating the dollar value. In addition, the annual plan shall include details regarding the communities to be served by the proposed activities or services. The Superintendent will respond to the proposal within sixty (60) calendar days, approving or disapproving in whole or in part. If the Superintendent disallows any proposed public benefit or the estimated value, the Superintendent will provide the reasons. After receiving the Superintendent's approval of the proposal for the coming year, Concessionaire may apply the offset in twelve (12) equal installments against the monthly amount of the Concession Fee for the applicable year.

3. Annual Public Benefit Report.

Within thirty (30) days after the end of each calendar year, Concessionaire shall submit to the Superintendent a Public Benefit Offset report outlining the pre-approved programs, benefits and

services actually delivered in the prior year and including an itemized statement of time, labor rates, materials and other information supporting the dollar value of Concessionaire's Public Benefit Offset applied to the Concession Fee in the prior year. The Superintendent will respond within sixty (60) days, and may request more information, deny the request, or approve the request. If the Superintendent determines that the value of Public Benefit Offset actually provided is less than the amount applied against the Concession Fee in the prior calendar year, Concessionaire shall pay the deficiency in cash within thirty (30) days. Concessionaire shall not be entitled to a Public Benefit Offset that exceeds percent (20.00%) of the Concession Fee, even if the actual value of Public Benefit programming exceeds that amount. Concessionaire shall not be entitled to carry forward any excess public benefits provided, nor shall Concessionaire be entitled to any refund. Final approval of Public Benefit Offsets is at the sole discretion of the Superintendent.

Exhibit G

Description of Eligible Public Benefits

The following are examples of the activities and services eligible for the annual Public Benefit Offset throughout the Initial Term and all Extended Terms of this Concession Agreement.

Public Benefits Category	Description of Services	Applicable Metric (# served, # events, # scholarships, # programs offered, capital improvement description)	Value of Services*
Public Access	<p>The Tennis Center at Sand Point (TCSP) will provide public access to the facility for 343 days/year for 105 hours/week. Examples of public access include:</p> <ul style="list-style-type: none"> • <u>Public restrooms for park visitors (youth and adults) needing access. <u>The public will be informed of this benefit via signs indicating there is a public restroom.</u></u> • <u>In addition to the free court time requirement outlined in section 2.7, TCSP may receive an offset for providing up to 3.75 hours of additional free court time per week. Access to this court time shall be dedicated to members of underserved communities with outreach and priority provided to Magnuson Park residents, including seniors.</u> Concessionaire shall propose for the Superintendent 's approval, the schedule and terms and conditions for open court time with the Public Benefit Plan annually. 	Target: access for 10,000+ community members	<p><u>Restroom Access - \$12,000</u></p> <p><u>Free Court Time - \$35 hr -</u></p>
<u>Scholarships (Tennis Memberships)</u>	<p><u>Waiver of TCSP annual membership fees to allow access for up to 20 low-income youth. Priority provided to Magnuson Park residents.</u></p>	# served <u>Up to 20</u>	<u>Waiver of TCSP annual membership fees - \$55 per child</u>

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<p><u>Scholarships (Summer Camp)</u></p>	<p><u>TCSP will provide up to 20 scholarships to youth in grades K-12, and up to age 18, to the summer camps offered on the TCSP website. Outreach and priority sign-ups shall be provided to Magnuson Park residents.</u></p>	<p># served: <u>Up to 20</u></p>	<p><u>Summer camp fee \$250 per participant for full scholarships to TCSP summer camps.</u></p>
<p>Scholarships <u>(Tennis Programs)</u></p>	<p>TCSP will provide scholarships to low-income youth, adults and/or families, to pay for educational expenses, transportation, registration fees, emergency expenses. <u>Priority for these scholarships shall be provided to Magnuson Park residents.</u> Examples include:</p> <ul style="list-style-type: none"> • Free tennis programs for selected youth living in Solid Ground Housing <u>and Mercy Housing (residents located in Magnuson Park sites)</u> • Free tennis programs for selected youth in the Seattle Tennis Education Foundation nonprofit program • Free tennis programs for <u>low-income</u> youth 	<p># served: <u>Up to 20</u> students</p>	<p><u>\$1,000 per youth (1-Year program with 5 sessions @-\$200 per session.)</u></p>
<p>Programs</p>	<p>TCSP will provide K-12 students and youth up to age 18 access to the following subsidized and free programs. <u>Priority access will be provided to Magnuson Park residents:</u></p> <ul style="list-style-type: none"> • YMCA tennis camps • Wheelchair tennis programs • Tennis programs designed for youth with autism • Free clinics for low-income and special needs children • Special community fundraisers 	<p>Target: 100 youth served</p>	<p><u>\$35 per participant</u></p>

In addition to the public benefits described above, TCSP may, in partnership with the Seattle Tennis and Education Foundation (STEF), conduct outreach to at least 100 students through programs and activities presented at five (5) schools, targeting low-income students in underserved communities. Schools will include Sand Point Elementary, Dunlap Elementary and Emerson Elementary. TCSP may produce at least one community event annually that is free and open to the public and includes outreach to youth living in Magnuson Park. Examples of these include:

- 2-hour Adult Tennis Clinic

- Tennis Pro Exhibition where people in the community can enjoy free food and drink while watching high quality tennis and learning about the sport.

*The rates listed are the professional rates that Concessionaire values for the services outlined in the plan as of the Commencement Date of this Amendment. Concessionaire represents that it has acted in good faith to set these rates at the market value for said services. These rates may be modified by Concessionaire on an annual basis to reflect then-current market rates, subject to advanced approval by the Superintendent (or designee). The cost estimates in this exhibit reflect projected costs in 2019