

DONATION AGREEMENT
between
THE CITY OF PORT TOWNSEND, WASHINGTON
and
PORT TOWNSEND PICKLEBALL CLUB

THIS DONATION AGREEMENT (“Agreement”) is made and entered into as of the last date signed below, by and between the City of Port Townsend, Washington, (the “City”) and the Port Townsend Pickleball Club (“Donor”).

RECITALS:

1. The City encourages community investment and volunteer efforts in City parks consistent with the City’s Parks, Recreation, and Open Space Plan (“PROS Plan”). Additional pickleball facilities are a PROS Plan priority.

2. The Donor desires to increase public participation in pickleball by assisting the city in organizing public play, sponsoring tournaments and offering public lessons; pickleball is a growing sport that supports an active and healthy lifestyle. Therefore, the Donor seeks the installation of long-term and year-round pickleball courts within Port Townsend. The anticipated life span of the donor improvements is approximately ten years.

3. The Donor coordinated with the City Parks, Recreation, Tree, and Trails Advisory Board, Port Townsend Dog Park advocates, and the Olympic Peninsula YMCA to develop a plan to increase the use of the underutilized concrete slab at the Mountain View campus.

4. The Donor has proposed to create and donate two permanent pickleball courts and one multi-use court (collectively, “courts”) on an existing hard slab at the Mountain View campus.

5. The City Parks, Recreation, Tree, and Trails Advisory Board recommended approval of these courts on August 24, 2021.

6. The Parties acknowledge that the Mountain View Campus will be undergoing a master planning process to develop a long-term strategy for the property. This strategy may or may not include expanded pickleball facilities depending on the outcome of the public planning process.

NOW, THEREFORE, the Donor and City agree as follows:

1. The Donor, by and through the donated services, materials, and finances of its members will construct and install two pickleball courts and one multi-use

court at the Mountain View campus as shown in Exhibit A attached to this Agreement and incorporated herein.

2. The parties agree and understand that the value of such structures, together with all labor and materials for the construction and installation thereof, is estimated at \$35,000. Upon completion of installation, Donor hereby gives, grants, conveys and donates the construction, installation and courts to the City, for public purposes, including but not limited to use by the City to facilitate outdoor recreation.

3. Upon completion of installation, such courts shall become and be deemed the sole property of the City, and shall be owned, operated and maintained by the City. City reserves the right to use, maintain, relocate, remove, or further convey the courts in any manner deemed appropriate by the City in its sole discretion. If, during the first ten years following the signing of this Agreement, the City removes the Courts from their current location, the City will endeavor to offer an alternate location and will endeavor to find funding for replacement. The City does not commit to any financial or in-kind contribution to relocating the courts. This paragraph will survive the termination of this Agreement.

4. Upon completion of installation by the Donor and assumption of ownership by City, the Donor, together with its contractors, members, volunteers, and insurers, shall have no further right, title, interest, or claim to the courts, and shall have no obligation or liability to maintain the courts. However, the City will encourage PTPC's continuing maintenance through the adopt-a-park program. Long-term maintenance by the City is subject to available funding. The parties acknowledge that the City currently does not have enough funding to adequately maintain park facilities and is seeking sustainable funding sources for park facilities.

5. The parties agree and understand that the construction, installation and conveyance of the courts, together with all costs of construction, installation, and conveyance, are all donated by the Donor to promote the public welfare and are likewise received by the City from the Donor as a gift and donation to promote the public health, safety, and welfare.

6. Priority of use for scheduling of the courts is established as follows:

- First: City
- Second: Port Townsend Pickleball Club
- Third: Other non-profit organizations
- Fourth: Individuals/private parties

All scheduling of use of the facilities shall be made through the City at least 60 days in advance of the event.

The City and PTPC shall have a Memo of Understanding that describes the cooperative use of the courts between the City and the Club for a defined number of hours per week attached herein as Exhibit B and incorporated by this reference. Exhibit B will survive the termination of this Agreement. Courts shall remain open to the public following City developed guidelines during non-Club scheduled hours. The Club, when scheduling times of use, shall consider and plan for use by the public.

7. In constructing the courts, the Donor will coordinate its activities with the City to ensure the least disruption to the Mountain View campus. The City reserves the right to limit access to the site during the construction and set the days and hours for the construction. The City reserves the right to have a representative observe the construction at any time and to approve of any contractors, designs, and specifications. The construction of the court will comply with all state laws, including, but not limited to, any limitations on noise, zoning, and permitting. Work must be completed between 7:00 a.m. and 7:00 p.m. on weekdays in compliance with the noise ordinance. Construction activity must also be coordinated with other tenants of the Mountain View facilities for safety.

8. Prior to beginning any work, the Donor or the Donor's contractor must apply for and receive any necessary permits. The City may assist in the acquisition of permits and may consider waiving fees consistent with City policy. This Agreement does not imply approval for any permits.

9. During construction, the Donor and the Donor's contractor agree to comply with all applicable federal, state, and local laws and regulations regarding construction, including prevailing wage requirements, and to cooperate with any necessary inspections. For the purpose of determining prevailing wage requirements, the work proposed to be donated does not include the use of any City funds. The work to be performed is on property owned by the Port Townsend School District and under the control of the City through a long-term lease. The work shall be considered owned by the Donor until dedicated to the City through a notice of acceptance by the City.

10. The Donor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. In the case of concurrent negligence of the Donor and the City, its officers, employees, volunteers, the Donor's liability hereunder shall be only to the extent of the Donor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Donor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by

the parties. The provisions of this section 10 shall survive the expiration or termination of this Agreement.

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11. Insurance

A. Insurance Term

The Donor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Donor's work through the term of the Agreement and for thirty (30) days after acceptance by the City, unless otherwise indicated herein. The Donor may delegate the responsibility of procuring and maintaining insurance to the contractors performing the work. If the Donor participates in performing any work, then insurance shall be required for the Donor as well as contractors.

B. Minimum Scope of Insurance

The Donor's or the Donor's contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations for a period of three years following substantial completion of the work for the benefit of the City, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Donor's or Donor's contractor Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Builders Risk insurance covering interests of the City, the Donor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Donor or the Donor's contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Donor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Donor or the contractor. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project. An installation floater may be acceptable in lieu of Builders Risk for renovation projects only if approved in writing by the City. The City will grant acceptance of the project upon completion and final inspection of the work

C. Minimum Amounts of Insurance

The Donor or the Donor's contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

D. City Full Availability of Donor Limits

If the Donor or the Donor's contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Donor or the Donor's contractor, irrespective of whether such limits maintained by the Donor or the Donor's contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Donor or the Donor's contractor.

E. Other Insurance Provision

The Donor's or the Donor's contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be in excess of the Donor's or the Donor's contractor's insurance and shall not contribute with it.

F. Donor's or Donor's Contractor's Insurance for Other Losses

The Donor or the Donor's contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Donor's or contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Donor or the Donor's contractor, or the Donor's or the Donor's contractor's agents, suppliers, contractors or subcontractors as well as to any temporary structures, scaffolding and protective fences.

G. Waiver of Subrogation

The Donor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Agreement or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

H. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

I. Verification of Coverage

The Donor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of the Donor or Donor's contractor before commencement of the work. Before any exposure to loss may occur, the Donor shall file with the City a copy of the Contractor's Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and

endorsements related to this project. Upon request by the City, the Donor shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.

J. Contractors and Subcontractors

The Donor shall ensure that the City is an additional insured on each Contractor or Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

K. Notice of Cancellation

The Donor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

L. Failure to Maintain Insurance

Failure on the part of the Donor or the Donor's contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Donor to correct the breach, immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Donor from the City.

12. The City and the Donor agree that the courts will be available to the general public without regard to age, disability, race, gender, national origin, sexual orientation, veteran status, religion, or genetic information. The City will allow the Donor priority for reserving, free of charge, the courts sixty days in advance and will then make them available to other users.

13. The City agrees that the Donor may install a plaque, no larger than 5" X 7" at the project location, acknowledging the donation. The City reserves the right to remove the plaque for any reason at any time after March, 31 2023.

By: 
John Mauro, City Manager

4/1/22
Date

DONOR:

By: Lynn Piere, President
Port Townsend Pickleball Club, Donor

4/1/22
Date

Exhibit A
[Location of courts and scope of work]

The scope of work includes the following improvements on the existing concrete surface (former basketball courts) at Mountain View Commons. resurfacing the existing concrete surface consistent with industry standards with a slip resistant surface.

