

**FACILITY USE AGREEMENT 2021
CITY OF MITCHELL**

This agreement (“Agreement”) entered into this _____ day of January, 2021 between the City of Mitchell a municipal corporation, by and through its Park and Recreation Board, (the “City”) and the Tennis Association, a non-profit corporation (“Athletic Club”), as follows:

WITNESSETH

1. Subject to the terms, provisions and mutual obligations of the parties as provided in this agreement, the City shall allow the Athletic Club the use of the Tennis Courts (the “Facility”), including access to the Tennis Courts, restrooms and all pertinent property for parking purposes for the program purposes of the Athletic Club for the duration of the 2021 Seasonal Use Period (“Seasonal Use Period” shall be March 1, 2021 through February 28, 2021). This Agreement shall automatically renew on a year to year basis unless a party hereto intending to terminate this agreement gives notice to the other party, on or before thirty (30) days prior to the commencement of the next Seasonal Use Period, that it does not intend to renew the agreement. Each such renewal shall be upon the same terms and conditions as set forth in this agreement unless amended in writing by mutual agreement of the parties. Fees shall be subject to modification by the Parks and Recreation Board and/or Mitchell City Council during the Off Season at least thirty (30) days prior to the commencement of the next Seasonal Use Period.
2. Athletic Club agrees to pay to the City as rent for use of the Facility the Tennis Courts of Ten Dollars (\$10.00) per athlete. Billing and payment shall be made in lump sum at the end of the season.
3. Athletic Club agrees to abide by all rules and guidelines in the Sports Complex policy manual. Repeated violations shall be grounds for termination of this agreement.
4. The City shall retain the final management and control authority in respect to the Facility. Athletic Club shall have no management or control authority in respect to the Facility except as permitted by the City.
5. The City shall provide and/or perform the following functions within the Facility:

- a. Oversee and coordinate the scheduling of the Facility and maintain a master schedule regarding the use of the Facility.
6. During the term of each Seasonal Use Period, or any time the Athletic Club shall use the Facility, Athletic Club shall have in force the following insurances:
 - a. Comprehensive general liability insurance, including products, bodily injury and property damage with combined single limits of \$1,000,000 for each occurrence. Insurance policies required by this paragraph shall name Athletic Club as insured and the City of Mitchell as an additional insured.
 - b. A copy of additional insured endorsements required hereunder shall be delivered to the City prior to any use of the Facility by Athletic Club. Such policies or certifications shall provide that the insurance coverage may not be cancelled or materially changed unless thirty (30) days advance notice is given to the City.
 - c. The Athletic Club shall be responsible for insuring any of its personal property that is stored in the building and stores such personal property in the building at its sole risk. Athletic Club agrees to indemnify and hold harmless the City from any and all liability arising from the use of the Facility for programs carried on by the Athletic Club. Such agreement to indemnify and hold harmless does not include any sports program that the City would sponsor and supervise, or which may be operated within the Facility by any person or entity other than the Athletic Club.
 - d. The parties shall reassess insurance needs at least once per contract year to determine whether or not the coverage required by this agreement is adequate.
7. For activities within the Facility sponsored solely by the Athletic Club, all revenue generated in connection with the activity shall be retained by the Athletic Club.
 - a. Athletic Club shall meet with the Hitchcock Park Manager prior to each season to discuss the previous season and goals for the upcoming season. Athletic Club will file an annual revenue and expense statement

of gross receipts generated as a result of programs offered at Hitchcock. These records shall be provided to the City no later than March 15th of the following year. The City shall have the right to examine any books, records, documents, and papers related to this Agreement, including State and Federal tax records.

8. Revenue generated by the City for the letting of the Facility to persons or parties other than the Athletic Club at any time while this agreement is in effect shall be retained by the City. Athletic Club shall have no authority to rent the Facility to other parties.
 - a. Revenues generated by Athletic Club as a result of selling advertising panels which are affixed to the Facility shall be retained by the Athletic Club. The placement and size of advertising panels within the Facility building must be approved by the City prior to sale and placement. Cost of panel sales will be addressed in an advertisement plan approved by the City.
 - b. Per previous agreement with the Park and Recreation Board, Athletic Club shall have no advertisement regarding specific alcoholic beverages or tobacco products, via signage sponsorship. City retains a general right to reject content it deems inappropriate for its Facility.
9. The Athletic Club agrees to use the Facility in a responsible manner for the purpose of conducting youth and recreational tennis programs in cooperation with the City, and shall not allow the Facility to be misused.
 - a. Food serving or preparation areas must be approved by the city prior to all events.
 - b. Concession Operator shall be subject to any exclusive product supplier agreements to which the City is a party. If no such agreement is in effect at the start of the Term, Concession Operator may utilize whichever product supplier it deems appropriate during that Term only. In either event, Concession Operator shall maintain its right to retain all profits from sales.
 - c. Observe and comply with all State and Federal laws and City Ordinances applying to the operation of said concession stands. Food handler requirements must be met.
 - d. The Athletic Club shall, on an annual basis, prior to or on December 31 of each year, reimburse or pay all non-insured expenses for repair or

replacement to the Facility, courts, and any other City items or equipment, arising from Athletic Club's use of the Facility during the Seasonal Use Period or Off Season, normal wear and tear excepted. The City shall be responsible for structural and equipment repair and maintenance for the Facility.

10. Nothing in this Agreement shall limit Athletic Club from cooperating with the City in caring for, maintaining, supervising, and/or constructing improvements, in the furtherance of this Agreement. Athletic Club shall make no alteration, addition, or improvement to the Facility without the advance consent and approval of the City.

- a. The parties acknowledge that any permanent improvements to be placed on the Facility premises shall have prior approval from the City and shall meet all applicable City codes and ordinances, including any planning and development requirements of City for such improvements. Athletic Club will be responsible for obtaining all necessary permits and approvals and for providing any required paper work, fees and/or exhibits required to obtain the permits or approvals or to otherwise complete the planning and development review process. Any construction of buildings or any other improvements at or on the Facility premises shall be in conformity with the regulatory codes of the City and subject to the written approval of the Parks and Recreation Director or his designee prior to issuance of building permits for construction.

All improvements to the Facility premises, upon completion of construction, shall be deemed to be the sole property of the City.

11. The Athletic Club shall not allow any lien to be placed against said improvements or the complex in general for any unpaid labor or materials and agrees to indemnify the City for any amounts of said liens and to hold the City harmless from any of Athletic Club's improvement expenses arising from this Agreement.
12. The City and Athletic Club shall make good faith efforts to accommodate the needs of each respective entity in order to maximize the overall use of the Facility. City and Athletic Club shall each designate a contact person to coordinate use of the facility.

13. This Agreement constitutes the entire agreement between the parties and shall not be modified unless mutually agreed by the City Park and Recreation Board and the Athletic Club in writing.
14. The Athletic Club shall have no right to assign any of the rights or benefits under this Agreement without prior written consent of the City.
15. Athletic Club agrees to engage in useful communication with the City and other User Groups to coordinate schedules and share use of the facilities.
16. If any section, or portion thereof, of this Agreement is found to be void, unenforceable, or unconstitutional, the improper portion shall be severed and the remaining provisions will remain in full force and effect to the maximum extent permitted by law.

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

Approved and adopted by the Park & Recreation Board of the City of Mitchell, South Dakota, this _____ day of January, 2021.

CITY OF MITCHELL, SOUTH DAKOTA
PARK AND RECREATION BOARD

By: _____
Title: Board President

Approved and adopted by the _____, this _____ day of January, 2021.

MITCHELL _____ ASSOCIATION

By: _____
Title: President