

HEISE PARK TENNIS COURTS USE AGREEMENT

THIS USE AGREEMENT is made and entered into this 18th day of September, 2018, by and between the CITY OF GALION, OHIO ("City"), a municipal corporation duly organized and operating under the laws of the State of Ohio, having its office located at 301 Harding Way East, Galion, Ohio 44833, and the GALION CITY SCHOOLS ("School"), with their offices at 470 Portland Way North, Galion, Ohio 44833.

WITNESSETH:

WHEREAS, the Galion City Schools sponsors an athletic program that includes tennis teams for both boys and girls, and

WHEREAS, tennis courts in Heise Park have been used for School home tennis games in previous years, and

WHEREAS, School wishes to continue using the courts for its home games and for practice, and

WHEREAS, both the City and the School believe that continuation of this partnership will benefit the City of Galion and the participants of said athletics program, and this request provides a suitable use for said facility.

In consideration of the matters described above and of the mutual benefits and obligations set forth in this Agreement, the parties hereto agree as follows:

1. **Grant of Use.** City hereby grants to School, and School accepts from City, the right and privilege of using the tennis courts in Heise Park. Parking lots may be used by parents and spectators of the games. Use can involve both games and practice by School teams. The City reserves the full right and authority to control the use of said tennis courts and all other facilities within Heise Park, in accordance with City ordinances.

2. **Condition of Premises.** School acknowledges the tennis courts were rebuilt to like-new condition in 2018. School has had an opportunity to examine the tennis courts to its full satisfaction, including without limitation, all equipment and netting made available by City, and finds same to be in good condition and accepts them in their present "AS IS" condition, with City not being required to make any alterations or repairs thereto, and shall return same to City upon the expiration or earlier termination of this Agreement in at least the same condition as received, except for ordinary wear and tear.

3. **Term.** The term of this Agreement shall commence on September 1, 2018 and expire on August 31, 2021, unless earlier terminated under the terms of this Agreement or by mutual consent of the parties. If School is interested in continuing to use these facilities from and after August 31, 2021, its representative should notify the Safety Service Director or his authorized representative on or before May 1, 2021.

4. **Use of Premises.** School shall have the right to use the tennis courts during the term of this agreement. City shall have the right to allow others, including the general public, to use the premises in their sole discretion for any lawful use, provided that said use does not interfere with the School tennis team schedules. School use must be covered by its insurance or through a named insured clause on a School's insurance policy, and that use is consistent with the use of the tennis courts. Schools shall not use the tennis courts for any other purpose without the prior written consent of the Safety Service Director or his authorized representative. School acknowledges these courts are public property and are therefore open to use by the general public. School is prohibited from charging any fees for use of or admission to the courts unless approved by the city in advance.

5. **Equipment Provided by City.** City shall provide netting and fenced surround for tennis courts. School represents that it has examined said equipment, found same to be in good order, accepts their use in their present "AS IS" condition, and shall return same to City upon the expiration or earlier termination of this Agreement in the same condition as received, except for ordinary wear and tear.

6. **Maintenance.** City shall provide all maintenance for the tennis courts, including without limitation, surface repairs and upkeep and maintenance of the fencing. School shall be responsible for the replacement of netting. School shall also be required to repair any damage that is a result of its use.

7. **Alterations.** In the event School desires to make additional improvements and/or alterations to the tennis courts, it must first obtain the written consent of the Safety Service Director or his authorized representative. All such improvements and/or alterations authorized by the City will be at School's sole expense, and in connection with such consent, the parties will at that time agree whether said alterations and/or improvements will remain with the property upon the expiration or earlier termination of this Agreement or will be removable by the School.

8. **Indemnification.** To the extent permitted under Ohio law, School shall defend and hold City free and harmless from and against any and all liability for injuries to or deaths of persons or damage to property arising from activities conducted by School under this Agreement.

9. **Insurance and Financial Matters.** Throughout the term of this Agreement, School shall acquire and maintain liability insurance coverage for activities covering the School and all participants, teams, coaches and School staff members against claims for bodily injury, property damage and litigation costs to defend against such claims, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City shall also be included as an additional insured thereunder. Said policy or policies shall be acquired from a reputable company authorized to do business in the State of Ohio. Proof of such insurance shall be provided to City prior to the term of this Agreement, upon each renewal of such policy or policies, and at any time upon request by the City. Said policy or policies shall require that such coverage cannot be cancelled without at least thirty (30) days advance written notice to City. The School shall also obtain and keep on file a current completed Release and Waiver of Liability/Informed Consent signed by each participant and the parents of each underage participant. To the extent applicable, School shall provide Workers' Compensation coverage for all of its employees. School shall also make its public financial records available to the City for review upon reasonable notice.

10. **Termination by City.** If, in the judgment of City, the manner of operation of the tennis program does not meet the requirements of this Agreement, or if School is in default of any term of this Agreement, City shall give School a written notice specifying the particulars of such default. If School fails or refuses to remedy the unsatisfactory performance within ten (10) days after receipt by School of the notice, City may terminate this Agreement. In addition, if the City agrees to sell some or all of the real property occupied by the tennis courts and/or parking, the City may terminate this Agreement upon a thirty (30) day notice to School. The decision of City on any such matters shall be final.

11. **Assignment.** School may not assign any right or privilege conferred by this Agreement without first obtaining the written consent of the Safety Service Director or his authorized representative. School has no right to permit other organizations to use the tennis courts except to the extent necessary and related to School's use for tennis matches and parking.

12. **Waiver of Breach.** The waiver by City of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term.

13. **Material Terms.** Each term of this Agreement is material, and a breach by School of any one of the terms of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination of the entire Agreement by City.

14. **Headings.** Paragraph headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

15. **Modification.** Notwithstanding any provisions of this Agreement, the parties, by mutual consent, may agree to modifications or additions to it. Any such modifications or additions shall be in writing and shall be signed by both parties.

16. **Notices.** Any and all notices to be given by one party hereunder to the other shall be deemed given by depositing the same in the United States Mail, postage prepaid, and addressed to the party at the following addresses:

For City:

Nicole M. Ward, Safety Service Director
City of Galion, Ohio
301 Harding Way East
Galion, Ohio 44833

For School:

James Grubbs, Superintendent
Galion City Schools
470 Portland Way North
Galion, Ohio 44833

Any change in said addresses shall be provided to the other party pursuant to this paragraph.

17. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes any prior discussions, negotiations, comments, notes and memoranda exchanged between them.

18. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding against, the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto through their authorized representatives and with the intent of being legally bound have executed this Agreement upon the day and year first above written.

City of Galion, Ohio

By _____
Nicole M. Ward, Safety-Service Director

Galion City Schools

By _____
James Grubbs, Superintendent