



AGENDA
City Council Special Meeting
May 6, 2021 – 3:00 p.m.
Gig Harbor Civic Center

Due to public health concerns, this meeting will be held remotely. You may access the meeting by dialing (253) 215-8782 and entering the Meeting ID 932 1605 6382 or through Zoom at: <https://zoom.us/j/93216056382>

CALL TO ORDER / ROLL CALL:

EXECUTIVE SESSION: Per RCW 42.30.110(1)(b) to consider the acquisition of real estate with potential action to follow.

AGENDA:

1. YMCA Sports Complex Phase 1A Lease Agreement  
2. Administration Update (oral report)

ADJOURN

Americans with Disabilities (ADA) accommodations provided upon request. Those requiring special accommodations please contact the City Clerk at (253) 853-7613 at least 24 hours prior to the meeting.

M E M O R A N D U M

DATE: April 30, 2021
TO: Gig Harbor City Council
FROM: Daniel P. Kenny
RE: YMCA Lease Key Terms - Updated

The City of Gig Harbor and the YMCA have concluded their lease negotiations and the final draft lease is ready for City Council review and consideration. This summary of key lease terms has been updated (originally provided in early March) to show any changes to the key lease provisions. Changes since the last version are shown in *red italics*. To review the unabridged terms, please refer to the sections referenced in each area below. Further, not all lease terms are included in this summary.

Term - See Section C(a): There is an initial term of 35 years.

Renewal Periods - See Section C(c): There are 3 renewal periods of 20 years each after the initial term

- If the YMCA wants changes to terms for the next extension period, the City must approve that request at least 90 days before the end of the term.
- The City may also propose changes in its response to the YMCA's request for changes prior to the commencement of any Extension Period.
- If the YMCA does not propose changes, the City would not have an opportunity to make changes.

Termination and Right of First Refusal to Purchase - See Section D:

- If the City denies changes proposed by the YMCA for a renewal period, the YMCA can terminate the lease or propose different terms.
- If the parties cannot agree upon proposed changes, and they are material and consistent with the overall structure, spirit, intent of the agreement, then either party may terminate the agreement with notice.
 - o During the notice period the parties must submit the disagreement to dispute resolution.
- If the City rejects changes at a renewal juncture, and the YMCA terminates the agreement, the YMCA has the exclusive option to purchase the Premises for Fair Market Value. There is a defined way to get to the fair market value.
- If the YMCA chooses not to purchase the property following the process to determine the Fair Market Value, the City shall be required to purchase from the YMCA the Phase 1A Improvements at the then current fair market value of such improvements with appropriate depreciation for wear, tear, and credit for remaining useful life. There is a process outlined to determine the Fair Market Value for the phase 1A improvements.
- If the YMCA does purchase the Premises, any funds remaining in the Capital Reserve Fund shall go to Tenant.

- If the City purchases the improvements, the appraiser used to obtain the fair market value of the improvements shall calculate the cost to improve the fields to “like new” condition. “Like new” condition is the point where the improvements have at least 75% of the normal useful life that a brand-new field would have. The capital reserve fund is then reduced by the calculated cost to improve the fields to “like new” condition with that reduced amount going to the YMCA along with the fair market value payment for the improvements. The remaining amount in the capital reserve fund goes to Landlord with the field purchase. If the fields are already in “like new” condition or better, no reduction in the capital reserve fund is made and the entire capital reserve fund goes to Landlord with the field purchase.
- *YMCA is required to submit to the City all land use permit applications necessary for the development of Phase 1A by June 30, 2023.*
 - o *If the YMCA will not meet the Deadline it must provide written notice no later than the Deadline.*
 - o *If all necessary applications for the development of Phase 1A are not submitted by the Application Deadline, then either party may terminate this Agreement within 30 days of the Application Deadline with no termination fee, the options to purchase will be deemed extinguished, and no requirement to go through dispute resolution, by giving the other notice of such termination with an effective date at least 30 days from the Application Deadline.*
 - o *This is also included below in **Permits** – See Section I(e). That section below include one additional term most relevant to that section re ability to get the project documentation with payment.*

Obligation to Complete Fundraising and Project- See Section E(b)(v): *Tenant will fully and completely fund the Project and complete construction of Phase 1A of the Gig Harbor Sports Complex no later than December 31, 2024, or such later date for completion set forth in the YAF Grant Agreement as the same may be amended. Should Tenant not comply with the YAF Grant requirements and all or a portion of the YAF Grant funds are unavailable as a result thereof, Tenant shall nonetheless be responsible to fund the Project.*

- The City agrees to pursue a two-year extension to the RCO grant timeline, which would dictate the timeline for Phase 1A Improvement completion. See Commencement – Section I(a).

Rent – See Section F: Annual rent is \$1 with community benefit provided.

Community Benefit – See Section G: During the entire term of the lease, YMCA must provide community benefit. Many of these requirements will be further defined in the Services Agreement.

- Affordable rental fees and program rates.
- Financial assistance to those residents/households meeting the United States Department of Health and Human Services Poverty Guidelines to participate in YMCA programs and activities as well as for rental of the facilities.
- Provide designated times/hours for free public use of the improvements.
- Work in collaboration with the City and other community agencies to host free public or special events on the improvements.
- Clean and maintain the parking lot (D3 and D6), restroom/concessions facilities (E1), and internal and perimeter landscaping.

- For the period of time where the restrooms are constructed but the remaining Phase 1A Improvements are not yet constructed and operational, the Landlord will maintain the restrooms.

Services Agreement – See Section H: The Services Agreement will outline the structure for the use, maintenance, and control of the Phase 1A Improvements for both the Tenant’s and the public’s use. The Services Agreement will include, but is not limited to, the following:

- *General Public Use.* The general public shall be allowed to use the Phase 1A Improvements subject to reasonable time, place, and manner restrictions. At minimum, any time the Phase 1A Improvements are not being utilized by Tenant for programming or are not otherwise reserved, the Phase 1A Improvements shall be open to the general public.
 - a. City must approve the days and hours which the Premises will be available for Public use.
- *Scheduling.* Tenant will provide its internet-based field/team management software, *PlayerSpace* or equivalent, to enable individuals and families, local sports groups, other community groups, and the general public the ability to reserve use of the fields.
 - All scheduling and management of field use is the sole responsibility of Tenant. Tenant will provide view-only access to these systems to the City.
- *Maintenance.* At all times during the Lease Term, or any extension thereof, Tenant shall keep and maintain the Premises and the Phase 1A Improvements in good order, condition and repair at Tenant’s sole expense. The fields must be able to meet the minimum field condition standards required to host tournaments as specified by the Washington State Interscholastic Athletic Association or other appropriate standards for the majority of user groups.
 - The City and Tenant will annually review the maintenance and condition of the facilities against the standards.
 - City maintenance of restrooms until Phase 1A Improvements are constructed and operational (see language in Community Benefit – section G above), also included here.
- *Public Coordination.* Once per quarter, Tenant will host a public coordination meeting with local sports and community groups, individuals, families, and frequent users of the Phase 1A Improvements to schedule and coordinate rentals.
 - A use lottery may be used in the event multiple individuals or groups request use on the same dates and times.
 - Tenant will provide the City with a list of all users quarterly and/or upon request.
- *Use Rates.* Tenant will consider utilizing field rental fee rates established by Peninsula School District or other comparable market rates for similar facilities.
 - These rates will be reviewed annually by the City of Gig Harbor Parks Manager, and must be approved by the Mayor or his/her designee once per year.
- *Field Coordinator.* Tenant will hire/assign a Field Coordinator to oversee day-to-day cleaning, maintenance, and scheduling.
- *Rules for All Users.* To protect the quality of the synthetic turf fields and provide a healthy and clean environment, Tenant will establish rules for all users
- *Insurance for Phase 1A Improvements.* Tenant will maintain appropriate insurance covering the Phase 1A Improvements including, but not limited to: building and outdoor property (includes synthetic turf fields, bleachers, fences, etc.), equipment, and replacement cost valuation.
- *Capital Reserve Fund.* The YMCA shall establish a separate, interest-bearing Capital Reserve Fund. The Capital Reserve Fund shall be maintained at a level mutually agreed to by the Parties and will

support the maintenance, repair, and replacement of the Phase 1A Improvements for the duration of the Lease Term and any extension thereto.

- The fund level established must be sufficient to address both short-term as well as long-term needs.
- All rental fees collected by Tenant for use of the Premises for any non-Tenant activity and all donations or sponsorships received by Tenant not directly used for the construction of the Phase 1A Improvements shall be placed into the Capital Reserve Fund.
- The City and Tenant will review the status of the Capital Reserve Fund annually.
- Surplus Capital Reserve funds shall be reinvested in the Phase 1A Improvements or, if no such reinvestment is possible or beneficial, reinvested into the General Public's use of the facilities through reduced rental rates or other similar uses. Reinvestment in the Phase 1A Improvements does not include reimbursement to Tenant for the initial costs incurred in constructing those improvements.
- **Donations.** Tenant may offer sponsorship opportunities to individuals or businesses that wish to donate funds to support the ongoing operation, maintenance, and replacement of the Phase 1A Improvements.
 - All such donations shall be placed into the Capital Reserve Fund unless received and used for the initial construction of the Phase 1A Improvements.
 - The facility shall be named the Gig Harbor Sports Complex with any naming right being a ribbon above the main sign.
 - The City has the right to reject any sign or naming right if it believes such is not in the best interests of the Gig Harbor community.

Payment on the YAF Grant – See Section l(c): *In order to receive and use the YAF Grant funds on the Project, Tenant shall submit to the City the necessary documentation required by the YAF Grant with each request for reimbursement from the YAF Grant.*

- *The City will process and submit to RCO the reimbursement request with 10 business days of the request for reimbursement.*
- *Upon payment of the reimbursement from RCO the City will provide the reimbursement payment to YMCA within 14 business days.*

Permits – See Section l(e): *YMCA is required to submit to the City all land use permit applications necessary for the development of Phase 1A by June 30, 2023.*

- *If the YMCA will not meet the Deadline it must provide written notice no later than the Deadline.*
- *If all necessary applications for the development of Phase 1A are not submitted by the Application Deadline, then either party may terminate this Agreement within 30 days of the Application Deadline with no termination fee, the options to purchase will be deemed extinguished, and no requirement to go through dispute resolution, by giving the other notice of such termination with an effective date at least 30 days from the Application Deadline.*
- *If either Landlord or Tenant decides to terminate this agreement, Landlord is entitled to all design and permitting documentation generated up until that point upon payment to Tenant of the documented cost thereof. The City does not have to obtain the documentation and pay the fee – it can choose to forego that option.*

City Contributions – See Section I(h): Landlord commits to contributing the following elements to the Phase 1A Improvements:

- The sewer line between the restrooms, including the connection in Harbor Hill drive, which will be completed in conjunction with Landlord’s construction of Phase 1B.
 - o *Approx. Value = \$100,000.*
- The water main between McCormick Creek Drive and Harbor Hill Drive and all fire hydrants *on Phase 1B* connected to that water main.
 - o *Approx. Value = \$110,000.*
- Approximately 40% of the East/West retaining walls (shown in red on AHBLs drawing attached as an Exhibit)
 - o *Approx. Value = \$60,000.*
- Landlord will coordinate with Tenant to provide access to and use of the Phase 1B facilities and amenities such that Tenant can operate existing levels of Tenant programming and existing levels of general public use until such time as the synthetic turf fields are available.
 - o *Approx. Value = \$24,000*
- *To ensure that there are operational restrooms serving the Phase 1B project, Landlord will design and construct, initially at Landlord’s cost, the concession stand/restroom structure and will build out the restroom to a functional state on the same timeline as the Phase 1B project. If no termination occurs, Tenant is responsible to reimburse Landlord for all design, permitting, and construction costs incurred by Landlord for the concession stand/restroom within 18 months of the completion of the concession stand/restroom. Further, Landlord will maintain the concession stand/restroom structures until the Phase 1A Improvements Construction Completion Date.*

Phase 1B – See Section J: Phase 1B is exclusively the responsibility of the City.

- *The water and sewer mainline connections shall be completed no later than June 30, 2022, and the remainder shall be completed no later than the Phase 1A Improvements Construction Completion Date.*
- *At all times until such Phase 1B Improvement work is completed, the City shall provide, at its sole cost and expense, adequate, safe, and ADA accessible pedestrian access from the Tom Taylor Family YMCA facility parking lot through or around Phase 1B Improvement work area, to the Phase 1A Improvement work area.*
- *The Phase 1B Improvements Construction Completion Date may be further modified by mutual written agreement of the Parties.*

Reconstruction – See Section K: If any aspect of the Phase 1A Improvements are damaged or destroyed following the Commencement Date, Tenant shall repair, restore or reconstruct the Phase 1A Improvements so as to restore the Phase 1A Improvements to the condition as it existed immediately prior to such damage or destruction.

- Only when insurance proceeds fail to cover full reconstruction of the Phase 1A Improvements, Tenant may choose to use the Capital Reserve Funds to further cover the reconstruction. At that point if the insurance proceeds along with the capital reserve funds are insufficient to reconstruct the Phase 1A Improvements, Tenant may restore the Premises to the condition it was in prior to the Commencement Date and this Lease shall automatically terminate when the restoration to pre-Commencement Date condition is complete with the capital reserve fund going to Landlord.

Utilities – See Section L: Tenant shall pay all charges for public or private utility services, including but not limited to, all charges for heat, light, electricity, water, gas, telephone service, garbage collection and sewage. Landlord agrees storm drainage is not separately metered and storm drainage charges will be apportioned to Tenant by Landlord.

Indemnification – See Section N:

- The YMCA will indemnify the City from claims incurred arising out of, or in connection with, or incident to the design, development, or construction of the Facility by the YMCA.
- The City will indemnify the YMCA from claims incurred arising out of, in connection with, or incident to the maintenance, use and occupancy of the Facility by the City, its agents, servants, employees or invitees.
- The full indemnification terms are in Section N.

Insurance – See Section O:

- The City will provide insurance covering bodily injury, personal injury, and property damage arising out of and relating to the general public's use of the Premises outside of any YMCA programming or use.
- The YMCA will provide insurance covering bodily injury, personal injury, and property damage arising out of the design, development, construction or use of the Premises by the YMCA, its agents, servants, employees or invitees.

Default – See Section R: There is a process where the defaulting party has an opportunity to remedy the failure within 60 days after written notice from the non-defaulting party. If the lease is terminated by Landlord for a material breach and failure to cure, Tenant must surrender the Premises in a good and safe condition and relinquishes rights to all Improvements which shall immediately become property of Landlord upon termination of the lease following a material breach and failure to properly cure. There is also a dispute resolution process outlined in Section S that must be addressed by the parties when there is a dispute not arising to the level of a material breach.

Exhibit B – Detailed Description of the Phase 1A Improvements – Exhibit added.

Exhibit C – List of Encumbrances on Premises – Exhibit updated and new information is being reviewed for inclusion as well.