

September 11 , 2003

04-041

APPROVAL OF A MASTER DEVELOPMENT AGREEMENT  
WITH THE TUALATIN HILLS PARK AND RECREATION  
DISTRICT FOR DEVELOPMENT OF A RECREATIONAL  
COMPLEX AT THE ROCK CREEK CAMPUS

PREPARED BY: Randy McEwen, Vice President, Administrative Services  
Bill Christopher, Executive Dean, Rock Creek Campus

FINANCIAL  
RESPONSIBILITY: Steve Sivage, Director, Physical Plant

APPROVED BY: Gerard "Jerry" Berger, Interim President

REPORT: The Tualatin Hills Park and Recreation District (THPRD) proposed to PCC in late 2000 the idea of a joint-use recreation facility to be constructed on PCC-owned land east of the Rock Creek Campus. The proposal entailed a lease of approximately 25 acres of land by PCC to THPRD. THPRD would develop and then operate the facility. The facility itself would include recreational sports fields, community garden spaces, parking and the required infrastructure. Future possibilities include the addition of an aquatic center on the site, but that was not then (nor subsequently) defined. President Moriarty asked PCC staff to discuss the idea further with THPRD to build an understanding of the scope and usage of what was intended, and to preliminarily assess the impacts to PCC. These discussions continued with President Carreon.

In these early discussions, PCC staff embraced a number of informal guidelines about the criteria that such a partnership must meet:

- any such facility must present additive educational opportunities for PCC students, and must be usable by them;
- the development of any such facility must not increase PCC's ongoing operating costs;
- the development of such a facility must have no adverse impact on the 2000 Bond Program, the surrounding community, or the ongoing educational work of the College;

- THPRD must bear all costs associated with developing the facility, including infrastructure costs on or off campus.

The discussions continued through 2001 and 2002, and culminated in a comprehensive review of the proposed facility by THPRD leadership at the PCC Board's January 2003 Work Session. Following that review, the PCC Board directed staff to work with THPRD staff to develop an Intergovernmental Agreement (IGA) for this recreational facility. The Board further directed that such an agreement must be consistent with the guidelines above.

THPRD and PCC staffs, and each organization's legal advisors, have come to agreement on a Master Development Agreement shown in Exhibit A. This agreement would establish (if approved by the Board of each organization) the facility development relationships between the parties and describes the intent of the parties to enter into a ground lease agreement by which PCC will lease the required land to THPRD on a long-term, twenty-five (25) year basis, with three (3) five (5) year renewal options.

**RECOMMENDATION:**

That the Board of Directors approve the attached Master Development Agreement between PCC and THPRD, thereby providing PCC authorization to execute its responsibilities in the development of the recreational complex at the Rock Creek Campus.

# DRAFT

## MASTER DEVELOPMENT AGREEMENT

This MASTER DEVELOPMENT AGREEMENT (the "Agreement") dated as of this \_\_\_\_ day of \_\_\_\_\_ 2003, is by and between PORTLAND COMMUNITY COLLEGE, a community college district existing under the laws of the State of Oregon ("College"), and TUALATIN HILLS PARK AND RECREATION DISTRICT, a special park district existing under the laws of the State of Oregon ("District").

### RECITALS

WHEREAS, College and District, as governmental entities, may enter into intergovernmental agreements, pursuant to ORS 190.010, for the purpose of among other things, jointly constructing, owning, leasing and operating facilities; and

WHEREAS, College owns certain real property, of approximately 25 acres, as part of its Rock Creek Campus, as depicted on Exhibit 1 attached hereto (the "Site"); legal description to follow; and

WHEREAS, District has a need for recreational facilities for park and recreational purposes and desires to develop, maintain and use the Site for such recreational purposes, including, but not limited to, athletic fields, tennis courts, children play areas, a community garden and parking in support of such facilities (the "Facilities"); and

WHEREAS, District is best suited to provide for the planning, development, construction, operation and maintenance of such Facilities, and the parties therefore desire to enter into agreements for the provision of such Facilities on the Site, including a long term ground lease governing, among other things, the joint use, operation and maintenance of the Site and Facilities; and

WHEREAS, preliminary to entering into a long term ground lease, the parties desire to enter into a master development agreement, as set forth herein, providing for a cooperative and collaborative process for the planning, development and construction of the Facilities;

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises set forth below, the parties agree as follows:

1. District agrees as follows:

- a. District, at no cost or expense to College, has prepared a conceptual site plan identifying the Facilities to be located on the Site, including proposed improvements, access, and other amenities (the "Conceptual Site Plan"), a copy of which is attached hereto as Exhibit 2. District

shall make no material changes to the Conceptual Site Plan without the prior written consent of College, which should not be unreasonably withheld, however, the parties agree and understand that the Conceptual Site Plan identifies a "Recreation/ Aquatic Center", which shall not be part of the development of the Facilities provided for herein but may be considered and agreed to by the parties in a subsequent agreement. District shall be responsible for implementing the agreed upon Conceptual Site Plan, including, but not necessarily limited to, construction of the Facilities and related improvements and preparing all necessary land use, and any other required applications, necessary for the development of the site in accordance with the Conceptual Site Plan. District shall be solely responsible for all fees and costs associated with obtaining the necessary approvals, including, but not necessarily limited to, a Type II land use review, traffic impact study, and all permits and licenses necessary to develop, construct and operate the Facilities.

- b. Upon obtaining all necessary approvals for the development of the Site in accordance with the Conceptual Site Plan, and subject to the parties entering into a ground lease as set forth in paragraph 3 (B) below, District shall proceed with the development and construction of the Facilities in accordance with the Conceptual Site Plan. All costs of construction, and any construction related costs, shall be borne solely by District. District shall be the Project Manager for any and all construction and development of the Site in accordance with the Conceptual Site Plan.

2. College agrees as follows:

- a. College shall cooperate with District in District's efforts to obtain any and all permits and approvals necessary to develop the Site in accordance with the Conceptual Site Plan, including, but not necessarily limited to, signing, as property owner, applications for such permits and approvals where necessary.
- b. College shall assign a staff member to work with District in the application for any and all necessary permits and approvals, including any public outreach. District shall reimburse College for time of assigned College staff member at the rate of \$50/ hour for up to 300 hours. College may provide assigned staff support to District beyond 300 hours, provided College and District mutually agree as to the payment for such additional time.
- c. College shall permit District the right to enter and inspect the Site during normal business hours to the extent necessary to carry out the purposes of this Agreement.



3. Both College and District agree as follows:

- a. Time is of the essence, and both parties shall work diligently and in good faith to obtain all permits and approvals necessary to develop the Site in accordance with the Conceptual Site Plan as soon as practicable.
- b. Upon District obtaining all necessary permits, approvals and financing to construct the Facilities in accordance with the Conceptual Site Plan, District and College shall sign the long term ground lease attached hereto as Exhibit 3.
- c. That certain Memorandum of Understanding between the parties dated June 25, 2003, is hereby terminated and superceded by the terms of this Agreement.

4. Miscellaneous:

- a. Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney's fees, including costs and attorney's fees on appeal.
- b. Notices. Any notice required or permitted under this agreement shall be given when actually delivered or forty-eight (48) hours after deposited in the United States mail, certified mail, addressed to the address as specified below:

PCC: Office of the President  
Portland Community College  
PO Box 19000  
Portland, OR 97280

THPRD: General Manager  
Tualatin Hills Park and Recreation District  
15707 S.W. Walker Road  
Beaverton, OR 97006

- c. Governing Law. This agreement shall be governed by the laws of the State of Oregon.
- d. Entire Agreement. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party to the extent incorporated into this Agreement.

- e. Waiver. No term or provision of this Agreement shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the party claimed to have waived or consented to such breach. Any consent by either to, or waiver of, a breach by the other party shall not constitute a waiver of or consent to any subsequent or different breach. If either party shall fail to enforce a breach of this Agreement by the other party, such failure to enforce shall not be considered as consent to or a waiver of said breach of any subsequent breach for any purpose whatsoever.
  
- f. Headings. The titles and headings to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

IN WITNESS THEREOF, the parties have entered into this Agreement as of the date first above written.

**Tualatin Hills Park and Recreation District**

**Portland Community College**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Printed Name & Title

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Date

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Date

## GROUND LEASE AND JOINT USE AGREEMENT

This GROUND LEASE AND JOINT USE AGREEMENT (this "Lease") dated as of this \_\_\_\_ day of \_\_\_\_\_ 200\_, is by and between PORTLAND COMMUNITY COLLEGE, a community college district existing under the laws of the State of Oregon ("Lessor") and TUALATIN HILLS PARK AND RECREATION DISTRICT, a special park district existing under the laws of the State of Oregon ("Lessee").

### RECITALS

WHEREAS, Lessor is the owner of certain real property described on Exhibit A attached hereto and depicted on Exhibit B attached hereto (the "Premises"), which is a part of Lessor's Rock Creek Campus; and

WHEREAS, Lessee desires to lease the Premises from Lessor for the purpose of developing, constructing, operating and maintaining certain recreational facilities, including, but not limited to, athletic fields, tennis courts, children play areas, a community garden and parking areas, drainage and sanitary and storm water facilities in support of such facilities (collectively, the "Facilities"); and

WHEREAS, Lessor desires to lease the Premises to Lessee, reserving the right to jointly use the Facilities, and Lessee desires to lease the Premises from Lessor and undertake construction, maintenance and operation of the Facilities for the joint use of such Facilities by Lessor and Lessee, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth herein, the parties agree as follows:

#### **Section 1. Lease of Premises**

1.1 Lessor hereby leases the Premises to Lessee, and Lessee leases the Premises from Lessor, on the terms, covenants and conditions set forth in this Lease. Lessee hereby represents and warrants that it has completed a due diligence investigation of the condition of the Premises and is satisfied with the condition of the Premises, and that it has obtained all governmental approvals, financing commitments, final plans and specifications, design and construction contracts, and any other approvals or contracts reasonably determined to be necessary by Lessee to develop, construct, operate and maintain the Facilities.

1.2 Lessor leases the Premises to Lessee for a term (the "Term") of twenty-five (25) years, commencing on the date of this Lease, with an option to extend for three (3) additional five (5)-year terms as set forth in Section 21 below.

#### **Section 2. Construction of the Project**

2.1 Lessee intends to construct the Facilities and related improvements on, under, and over the Premises. The Facilities and all related improvements for the development, construction, operation and maintenance of the Facilities are referred to in this Lease as the "Project."

2.2 The plans and specifications for the Project are attached hereto as Exhibit C and incorporated in this Lease by this reference (the "Plans"). Lessee shall construct the Project at its sole cost and expense and in accordance with the plans and specifications and shall be solely responsible for any

environmental remediation actions required as a result of the design and construction of the Facilities. There shall be no material change to the Plans without the prior written consent of Lessor. Lessee shall, subject to acts of God, strikes, or any other reason beyond the reasonable control of Lessee, commence construction of the Project no later than two (2) years after execution of this Lease and complete construction within two (2) years thereafter. The work shall be performed in accordance with all applicable laws, ordinances, orders, rules, regulations, approvals and requirements of all federal, state, and municipal governments, departments, and commissions (the "Legal Requirements") and shall be performed in a good and professional manner. Lessor shall have the right to inspect the work at reasonable intervals subject to the supervision of Lessee and in a manner that will minimize any interference with the work.

### **Section 3. Rent**

3.1 Lessee covenants and agrees to pay to Lessor, at the time of entering into this Lease, TWENTY-FIVE DOLLARS (\$25) as rent for the initial Term of this Lease. Rent for any extensions of this Lease shall be subject to mutual agreement by the parties.

3.2 Lessee shall also pay without notice, except as may be provided in this Lease, and without abatement, deduction, or setoff, as additional rent, all sums, impositions, costs, and other payments which Lessee in any of the provisions of this Lease assumes or agrees to pay, and in the event of any nonpayment, Lessor shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law in the case of nonpayment of the Rent.

### **Section 4. Use**

4.1 Lessee shall use the Premises during the Term for the operation of a community recreational facility. The Premises may not be used for any other purpose without the prior written consent of Lessor. Lessee shall provide daily operational oversight of the Facilities, including hours of access. (The Lessee's operational oversight responsibilities, as provided herein, do not require Lessee providing staff at the Premises on a day-to-day basis.) The parties agree to work on a cooperative joint use basis with regard to scheduling use of the Facilities. Lessee shall have preference for the use of the Premises after 5:00 pm, Monday through Friday, and every Saturday and Sunday. Lessor shall have preference for the use of the Premises for the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

4.2 Lessee shall not use or occupy, or permit or suffer all or any part of the Premises or the Facilities to be used or occupied (1) for any unlawful or illegal business, use, or purpose, (2) in any such manner to constitute a nuisance of any kind, or (3) for any purpose or in any way in violation of any Legal Requirements.

### **Section 5. Liens**

5.1 Lessee shall have no power to do any act or to make any contract that may create any lien, mortgage, or other encumbrance on the reversion or other estate of Lessor or on any interest of Lessor in the Premises.

5.2 Lessee shall not suffer or permit any liens to attach to the interest of Lessee in all or any part of the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or anyone occupying or holding an interest in all or any part of the Facilities on the Premises through or under Lessee. If any such lien shall at any time be filed against



the Premises, Lessee shall cause the same to be discharged of record within 30 days after the date of filing the same, by either payment, deposit, or bond.

## **Section 6. Taxes and Other Charges**

The parties understand and agree that the Premises are to be used, operated and maintained in an *ad valorem* tax exempt manner. Lessee shall be responsible for assuring the property maintains such status. Lessee shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, any applicable assessments (including, but not limited to, assessments for public improvements or benefits), water, electric, sewer and other utility charges, and all other governmental and utility impositions and charges of every kind and nature whatsoever, which shall be levied, assessed, or imposed against the Premises or the Facilities or any interest of Lessor or Lessee under this Lease, or shall be levied, assessed, or imposed on or in connection with the development, construction, operation, maintenance, use, or occupancy of the Premises or the Facilities (all of such system development charges, water charges, sewer charges, assessments, and other governmental impositions and charges that Lessee is obligated to pay being collectively called "Fees, Assessments or Charges").

## **Section 7. Insurance**

7.1 Lessee, at Lessee's sole cost and expense, shall maintain, for the mutual benefit of Lessee and Lessor, property insurance covering loss or damage by fire, and such other risks covered by special form coverage insuring the full replacement cost of the Facilities. The amount of such insurance policy shall be increased from time to time as the full replacement cost of the Facilities increases. Any dispute regarding insurance matters shall be arbitrated by the parties.

7.2 Neither party, nor its officers, directors, employees, agents, or invitees, nor, in case of Lessee, its sublessees, shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property normally covered under a special form policy of property insurance even though such loss or damage might have been occasioned by the negligence of such party, its agents, or employees.

7.3 Lessee, at its expense, shall maintain at all times during the Term of this Lease commercial general liability insurance in respect of the Premises and the conduct or operation of its business, with Lessor as additional insured, with \$2,000,000.00 minimum combined single-limit coverage, or its equivalent. Such policies shall contain such exclusions, endorsements and deductibles as are reasonably requested by Lessee subject to the approval by Lessor, provided such approval is not to be unreasonably withheld. Such insurance shall include contractual liability coverage in such amount for the Lessee's indemnification obligations contained herein.

7.4 All policies of insurance shall be issued by good, responsible companies, reasonably acceptable to Lessor and that are qualified to do business in the state of Oregon. Each policy shall name Lessor as an additional insured, and executed copies of such policies of insurance, including additional insured endorsements specifically providing coverage for Lessor, shall be delivered to Lessor prior to the Commencement Date with renewal policies delivered to Lessor not less than 30 days before the expiration of the term of each such policy. Insurance certificates will not be accepted in lieu of the actual policies and endorsements. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All policies of insurance must contain a provision that the company writing the policy will give Lessor 30 days' written

notice in advance of any cancellation, substantial change of coverage, or the effective date of any reduction in amount of insurance.

### **Section 8. Lessor's Right to Perform Lessee's Covenants**

8.1 If Lessee at any time fails to pay any Fees, Assessments or Charges in accordance with the provisions of this Lease or fails to make any other payment or perform any other act on its part to be made or performed, then Lessor, after 10 days' notice to Lessee (or without notice in case of an emergency) may do so without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take such action as may be permissible under this Lease as a result of such default.

### **Section 9. Compliance with Legal Requirements**

9.1 Throughout the Term, Lessee shall promptly comply with all Legal Requirements that may apply to the Premises or to the use or manner of uses of the Premises or the Facilities or the owners or users of the Facilities, whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Term commences. Lessee shall pay all costs of compliance with Legal Requirements.

9.2 Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Legal Requirement, provided such contest does not subject Lessor to criminal liability and Lessee furnishes to Lessor security, reasonably satisfactory to Lessor, against any loss, and then prosecutes the contest with due diligence.

### **Section 10. Repairs and Maintenance and Alterations**

10.1 Lessee, at its sole cost and expense, shall maintain, repair, and replace the Premises and the Facilities as necessary to keep them in good order, condition, and repair throughout the entire Term. Lessee's obligations shall extend to both structural and nonstructural items and to all maintenance, repair, and replacement work, including but not limited to unforeseen and extraordinary items.

10.2 As used in this Lease, the term *Modifications* means any demolition, improvement, alteration, change, or addition, of, in, or to all or any part of the Premises or the Facilities. The term *Minor Modifications* shall mean any Modifications for which a building permit is not required, and the term *Major Modifications* shall mean any and all Modifications other than Minor Modifications. At any time during the Term and at Lessee's own cost and expense, Lessee may make or permit to be made any Minor Modifications, provided there is no existing and unremedied default on the part of Lessee, of which Lessee has received notice of default, under any of the terms, covenants, and conditions of this Lease. Major Modifications shall require the prior consent of Lessor. All salvage material in connection with any Modification that Lessee is permitted to make shall belong to Lessee.

### **Section 11. No Waste**

Lessee shall not do or suffer any waste or damage, disfigurement, or injury to the Premises or the Facilities.

## **Section 12. Inspection and Access**

Lessor may enter the Premises and the Facilities at all times for the purposes of inspecting the same and making any repairs or performing any work that Lessee has neglected or refused to make in accordance with the terms, covenants, and conditions of this Lease. Nothing in this Lease shall imply any duty or obligation on the part of Lessor to do any such work or to make any improvements of any kind whatsoever to the Premises (including, but not limited to, repairs and other restoration work made necessary due to any fire, other casualty, irrespective of the sufficiency or availability of any fire or other insurance proceeds which may be payable). The performance of any work by Lessor shall not constitute a waiver of Lessee's default in failing to perform the same.

## **Section 13. Indemnity**

13.1 Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Facilities or any injury or damage to the Premises or the Facilities or to any property, whether belonging to Lessee or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of the Facilities, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Facilities, including defects in construction of the Facilities, latent or otherwise, except for injury or damage directly resulting from Lessor's activities on the Premises.

13.2 Lessee shall indemnify and hold Lessor harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorney fees, that may be imposed on or incurred by or asserted against Lessor by reason of any of the following occurrences during the Term:

13.2.1 Any work or thing done in, on, or about all or any part of the Premises or the Facilities by Lessee or any party other than Lessor;

13.2.2 Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Facilities or any adjacent alley, sidewalk, curb, vault, passageway, or space;

13.2.3 Any negligence on the part of Lessee or any of its agents, contractors, servants, employees, sublessees, licensees, or invitees;

13.2.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Facilities not directly resulting from Lessor's activities on the Premises; or

13.2.5 Any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

13.3 In case any action or proceeding is brought against Lessor by reason of any such claim, Lessee on written notice from Lessor shall, at Lessee's expense, resist or defend such action or proceeding by counsel approved by Lessor in writing, which approval shall not be unreasonably withheld.



13.4 Notwithstanding the above, Lessor shall hold harmless, defend and indemnify Lessee, its officers, agents and employees, for any claims of injury or damages to third parties arising from Lessor's and/or its guests' and invitees' use of the Premises.

#### **Section 14. Assignment and Subletting**

14.1 Lessee shall not sell, assign, or in any other manner transfer this Lease or any interest in this Lease or the estate of Lessee under this Lease without the prior consent of Lessor.

14.2 Lessee shall have the right to grant revocable licenses to portions of the Premises at any time and from time to time, but only for a term or terms that shall expire before the expiration of the Term.

#### **Section 15. Default; Remedies**

15.1 The occurrence of any one or more of the following events of default constitutes a breach of this Lease by Lessee:

15.1.1 If Lessee, whether by action or inaction, is in default of any of its obligations under this Lease and such default continues and is not remedied within 60 days after Lessor has given Lessee a notice specifying the same, or, in the case of a default that can be cured but not within a period of 60 days, if Lessee has not (1) commenced curing such default within such 60-day period, (2) notified Lessor of Lessee's intention to cure the default, or (3) continuously and diligently completed the cure of the default.

15.2 On the occurrence of an event of default, Lessor may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

15.2.1 Lessor or Lessor's agents and employees may immediately or at any time thereafter reenter the Premises either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises, to the end that Lessor may have, hold, and enjoy the Premises.

15.2.2 Lessor may relet the whole or any part of the Premises from time to time, either in the name of Lessor or otherwise, to such Lessees, for such terms ending before, on, or after the expiration date of the Lease Term, at such rentals and on such other conditions (including concessions and free rent) as Lessor may determine to be appropriate. Lessor at its option may make such physical changes to the Premises, as Lessor, in its sole discretion, considers advisable and necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.

15.2.3 Whether or not Lessor retakes possession or relets the Premises, Lessor has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by Lessor in restoring the Premises or otherwise preparing the Premises for reletting, and all costs incurred by Lessor in reletting the Premises.

15.2.4 In the event the Premises are retaken by Lessor as provided herein, Lessee shall be entitled to remove any Facilities, fixtures and personal property on the Premises, provided that such



Facilities, fixtures and personal property were fully paid for by Lessee and the removal of such will not damage or cause waste of the Premises.

15.3 No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent on a breach constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, shall be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

15.4 Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor or Lessee of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

#### **Section 16. Option to Extend Lease**

Provided Lessee is not in default under this Lease, the Term may be extended, at the option of Lessee, for three (3) additional five (5)-year periods. Such options shall be exercised by Lessee giving written notice to Lessor not more than 24 months nor less than 12 months before the initial Term or previous option extension expires. Such extended Term(s) shall be on the same terms, covenants, and conditions, with the same Rent, as provided in this Lease for the initial Term. Payment of all additional charges required to be made by Lessee as provided in this Lease for the initial Term shall continue to be made during the extended Term.

#### **Section 17. Quiet Enjoyment**

Lessee, on paying the Rent and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term without hindrance or molestation by anyone claiming by, through, or under Lessor as such, subject, however, to the exceptions, reservations, and conditions of this Lease.

#### **Section 18. Surrender**

18.1 Except as otherwise provided, Lessee, on the last day of the Term, shall surrender and deliver up the Premises and all Facilities to the possession and use of Lessor without delay, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than those, if any, presently existing or created or suffered by Lessor, without any payment or allowance whatever by Lessor on account of any Facilities on the Premises.

18.2 When furnished by or at the expense of Lessee any fixtures or equipment may be removed by Lessee at or before this Lease terminates, provided, however, that the removal will not injure the Premises or the Facilities or necessitate changes in or repairs to the same. Lessee shall pay or cause to be paid to Lessor the cost of repairing any damage arising from such removal and restoration of the Premises and/or the Facilities to their condition before such removal.

18.3 Any personal property of Lessee or any sublessee that shall remain on the Premises after the termination of this Lease and the removal of Lessee from the Premises may, at the option of Lessor, be deemed to have been abandoned by Lessee and may either be retained by Lessor as its property or be disposed of, without accountability, in such manner as Lessor may see fit, or if Lessor gives written notice to Lessee to such effect, such property shall be removed by Lessee at Lessee's sole cost and expense.

18.4 The provisions of this section shall survive any termination of this Lease.

### **Section 19. Invalidity of Particular Provisions**

If any term or provision of this Lease or the application of the Lease to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

### **Section 20. No Representations**

Lessee acknowledges that it has examined the Premises and that no representations as to the condition of the Premises have been made by Lessor or any agent or person acting for Lessor (except as expressly provided in this Lease). Before any construction commences on the Premises, Lessee shall, at its cost and expense, conduct tests of the subsurface and soil conditions to ascertain the suitability of the Premises for the contemplated Project and shall furnish such fill and take such other steps, including all environmental remediation, as may be required before the commencement of construction. Lessor shall have no liability because of, or as a result of, the existence of any subsurface or soil condition, either on the Premises or on adjacent land that might affect Lessee's construction.

### **Section 21. Notices**

21.1 Any notice required or permitted by the terms of this Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

If to Lessor:  
Office of the President  
Portland Community College  
PO Box 19000  
Portland, OR 97280

If to Lessee:  
General Manager  
Tualatin Hills Park and Recreation District  
15707 SW Walker Road  
Beaverton, OR 97006

or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt.

**Section 22. Arbitration**

22.1 Disputes to be Arbitrated. If any dispute arises between the parties (as to a matter which this Lease says should be arbitrated, or as to any other question involving apportionment or valuation), either party may request arbitration through the Portland Arbitration Association. The arbitrator shall proceed according to the rules of the Portland Arbitration Association. The arbitration shall take place in Washington County, Oregon.

**Section 23. Costs and Attorney Fees**

With respect to any dispute relating to this Lease, or in the event that a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to recover from the losing party its reasonable fees for attorneys, paralegals, accountants, and other experts and professionals and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including (without limitation) deposition and expert fees and costs incurred in creating exhibits and reports, as determined by the judge or arbitrator at trial or other proceeding, or on any appeal or review, in addition to all other amounts provided by law. For purposes of this Lease, the term *attorney fees* includes all charges of the prevailing party's attorneys and their staff (including, without limitation, legal assistants, paralegals, word-processing staff, and other support personnel) and any post-petition fees in a bankruptcy court.

**Section 24. Entire Agreement**

This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Lessee and Lessor that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease.

**Section 25. Applicable Law**

This Lease shall be governed by, and construed in accordance with, the laws of the state of Oregon.

**Section 26. Covenants to Bind and Benefit Parties**

Subject to the limitations set forth in Section 15, the covenants and agreements contained in this Lease shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its successors and assigns.

IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized officers.

LESSOR:

PORTLAND COMMUNITY COLLEGE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE:

TUALATIN HILLS PARK  
AND RECREATION DEPARTMENT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

1912000.5



MEMORANDUM

**To:** Randy McEwan  
**From:** John M. Junkin  
**Date:** August 7, 2003  
**Re:** Agreement with Tualatin Hills Park and Recreation District

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In January of this year THPRD presented "A Partnership for the Future" that proposed PCC and THPRD enter into an Intergovernmental Agreement that would allow for THPRD's development and use of 25 acres of the PCC Rock Creek Campus (the "Property") for community recreational facilities, over a period of 25 years, at a nominal lease cost. The PCC Board directed that staff develop an agreement providing for the proposal, as outlined by THPRD. In developing the agreement it became apparent that there were two aspects: 1) developing the Property in a manner mutually agreeable to the parties; and 2) providing for the long term use of the Property for community recreational facilities. We suggested that the parties enter into a Master Development Agreement that would set out how the Property would be developed and the parties' respective responsibilities in that regard; and provided the Property was developed as mutually agreed to, the terms and conditions for the use of the Property would be set forth in a Ground Lease and Joint Use Agreement. Draft agreements have been prepared for your review. Below is a summary of each agreements salient points:

**Master Development Agreement**

1. Identifies and describes the subject 25 acres;
2. Incorporates a "Conceptual Site Plan" for the development of the Property (Exhibit 2 to Master Development Agreement). Although the "Conceptual Site Plan" identifies a "Recreation/Aquatic Center" on the Property, such development is not part of this agreement and development of such a facility would only occur if the parties agree to provide the facility and enter into a subsequent agreement. No material changes can be made to the Conceptual Site Plan without prior written consent; however, such consent cannot be unreasonably withheld;
3. THPRD is solely responsible for all costs and expenses associated with obtaining the necessary development approvals, including, but not limited to land use review and approval and necessary studies and reports required for such approval, e.g., traffic studies. Although no specific time to obtain the approvals is set out, the agreement does say time is of the essence and both parties will work diligently and in good faith to obtain the approvals;

4. PCC shall cooperate with THPRD, including signing necessary applications as the owner and shall assign a staff person to work with THPRD in pursuing the necessary development approvals, and THPRD shall reimburse PCC for that person's time at the rate of \$50/hour up to 300 hours. Any time after 300 hours is subject to reaching a further mutually acceptable agreement;
5. Upon THPRD obtaining all approvals, PCC and THPRD shall enter into the attached Ground Lease and Joint Use Agreement.

#### **Ground Lease and Joint Use Agreement**

1. The Ground Lease is for 25 years with the option of three five-year extensions;
2. THPRD is solely responsible for any and all costs of constructing the Facilities and maintaining them. THPRD must commence construction within 2 years of signing the Ground Lease and complete construction within 2 years thereafter;
3. The use of the Property shall be for the operation of a community recreational facility. THPRD shall have operational oversight. The parties shall work cooperatively in regard to scheduling use, with THPRD having preference for use after 5 p.m. Monday through Friday and on weekends; and PCC having use preference between the hours of 8 a.m. to 5 p.m.;
4. THPRD is responsible for any and all costs in operating the facilities, including repair and replacement costs;
5. THPRD may not assign or sublet the premises, but may grant revocable licenses for use of portions of the premises;
6. THPRD shall hold harmless, defend and indemnify PCC from any claims arising from the use of the premises (except claims arising from the use of the premises by PCC, its guests and invitees). THPRD will obtain liability insurance acceptable to PCC and in an amount not less than \$2 million and PCC shall be a named insured;
7. Once constructed, THPRD cannot make any modification to the facilities that would require a building permit without the prior consent of PCC;
8. If THPRD defaults on any of its obligations under the Ground Lease and Joint Use Agreement, PCC has several remedies, including taking the property back.

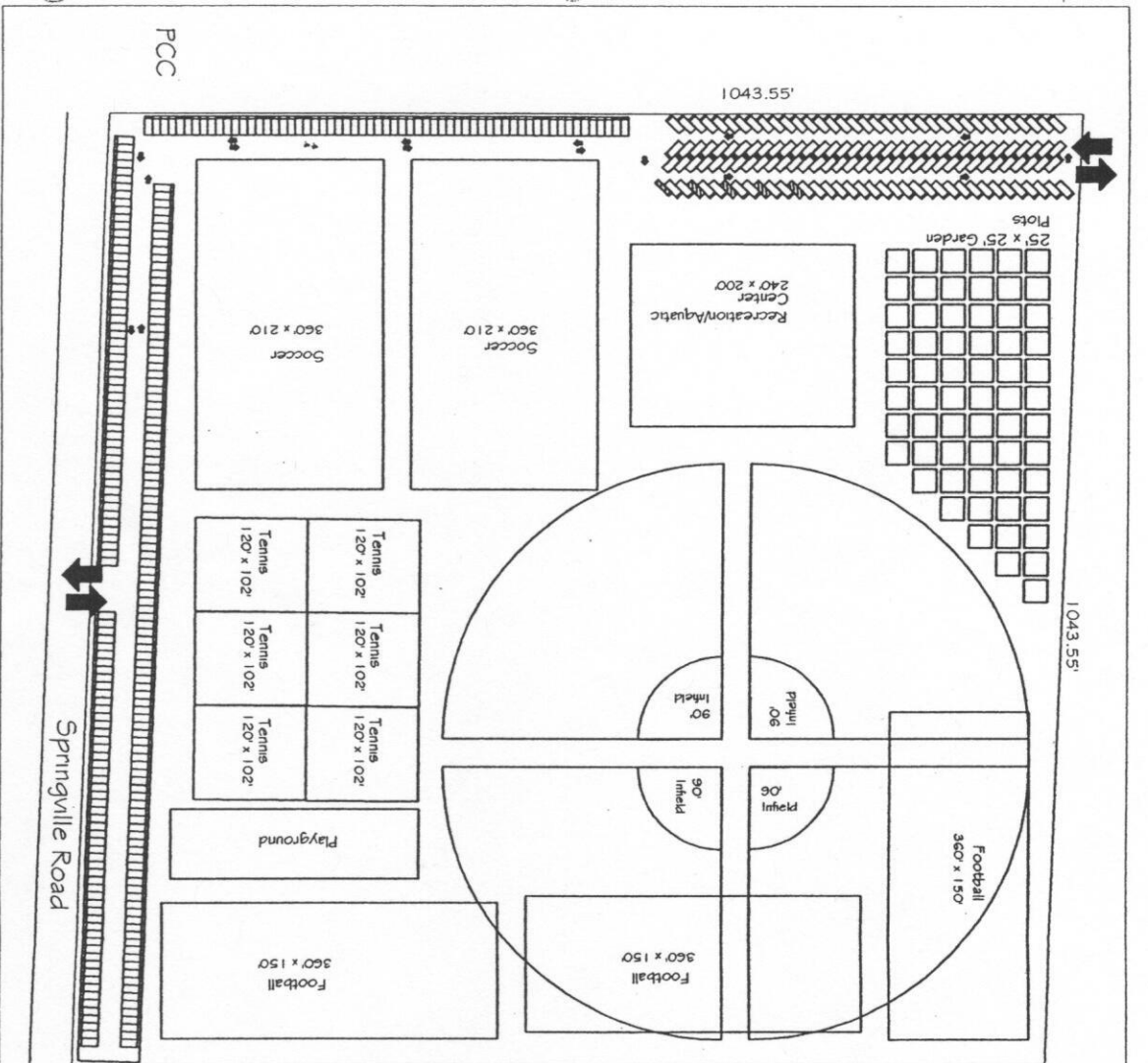
Attached are the draft Master Development Agreement and Ground Lease and Joint Use Agreement.

JMJ:tk  
1920982.1

PCC/THPRD  
MASTER DEVELOPMENT AGREEMENT  
EXHIBIT 1








- 3 Football Fields
- 2 Soccer Fields
- 4 Baseball / Softball Fields
- 12 Tennis Courts
- 1 Recreation/Aquatic Center
- 1 Playground
- 55 Garden Plots
- 420 Parking Spaces
- Vehicular Access from PCC Campus at Springville Road

Portland Community College  
 Rock Creek Campus  
 Preliminary Conceptual Design



NORTH

