



**USE AGREEMENT**

between

**King County Department of Natural Resources and Parks, Parks and Recreation Division**

and

**Kent Youth Soccer Association**

for the

**Synthetic Soccer Fields**

at

**Petrovitsky Park**

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This Agreement (“Agreement”) is entered into by and between King County Department of Natural Resources and Parks, Parks and Recreation Division (hereinafter “Parks” or “Division”) and Kent Youth Soccer Association (hereinafter “KYSA”) (collectively, the “Parties”) for the use, development, and construction of two (2) synthetic turf soccer fields (hereinafter “Soccer Facility”) at Petrovitsky Park (hereinafter “Site”).

In consideration of the promises, covenants, and other provisions set forth in this Agreement, the Parties agree as follows.

**ARTICLE 1. BACKGROUND**

- 1.1 King County, a home rule charter county and political subdivision of the State of Washington, is the owner of the Site, located at 16400 Petrovitsky Rd SE Renton, WA 98058, and described and depicted with greater particularity in Attachment A to this Agreement.
- 1.2 KYSA is a not-for-profit Washington corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. KYSA is a community-based, open-membership club organized to provide public opportunities for youth soccer, and is a member in good standing with the Washington State Youth Soccer Association (WSYSA).
- 1.3 KYSA has the experience, ability, and resources to develop synthetic sports fields and associated facilities at the Site and intends to develop a facility for soccer and other athletic and recreational uses at the Site.
- 1.4 Parks has determined that synthetic soccer fields located at the Site will have significant regional and/or rural public recreation value.
- 1.5 King County Ordinance 14509 authorized the Department of Natural Resources and Parks to create new public recreation opportunities by empowering user groups, sports

associations, and community organizations to develop mutually agreed upon capital improvements for public recreation facilities on King County land, and thereby address regional and/or rural recreation needs without increasing tax-funded operations and maintenance costs.

- 1.6 Allowing KYSA to develop certain mutually-agreed upon capital improvements, including synthetic soccer fields at the Site, will serve to implement the authority provided in Ordinance 14509, and to achieve the goals set forth in Section 1.5 above.
- 1.7 King County Code 4.56.150(E) and Revised Code of Washington 35.21.278 authorize King County to enter into agreements with non-profit organizations that provide a service to the public and make improvements to King County property.
- 1.8 Parks is willing to allow KYSA to develop the Soccer Facility at the Site under the terms and conditions set forth in this Agreement, and to give KYSA scheduling priority over a term of 30 years pursuant to Section 2.10 below.

**ARTICLE 2. CONSIDERATION**

- 2.1 The effective date ("Effective Date") of this Agreement is the date of execution by the last party to execute this Agreement.
- 2.2 KYSA agrees to design and construct the Soccer Facility on the Site consistent with the terms and conditions set forth in this Agreement. The Soccer Facility will include two (2) synthetic soccer fields and related infrastructure, all as set forth in Attachment A to this Agreement.
- 2.3 KYSA agrees to assume responsibility for design, permitting, and construction for the Soccer Facility as set forth in this Agreement.
- 2.4 KYSA has inspected and knows the condition of the Site, and agrees to accept the Site in AS IS condition.
- 2.5 Parks does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Site, and no official, employee, representative, or agent of King County is authorized to represent otherwise.
- 2.6 Parks will provide a total of \$250,000 towards the capital cost to construct the Soccer Facility at the Site to be disbursed as follows:

<b><u>Milestone Triggering Payment</u></b>	<b><u>Capital Fund Disbursal</u></b>	<b><u>Funds To Be Used For</u></b>	<b><u>Anticipated Milestone</u></b>
Completion of Clearing and Grading	\$125,000	Clearing and Grading	December 2011
Complete Installation of Synthetic Turf Fields	\$125,000	Synthetic surface	January 2012

KYSA will be solely responsible to secure and provide all other funding needed to design and construct the Soccer Facility. The present total estimated market cost to design, permit, and construct the Soccer Facility is \$1.9 million including donated materials, services, and other vendor consideration to KYSA. With the exception of any Community Partnership and Grants ("CPG") and Youth Sports Facility Grants ("YSFG") that may independently be awarded to KYSA, Parks will be under no obligation, directly or indirectly, to pay for any labor, material, or improvement associated with the Site or the Soccer Facility in excess of the \$250,000 capital grant outlined above. KYSA will, upon request, inform any inquiring person or entity that Parks has no further financial obligations associated with the construction of the Site or the Soccer Facility.

- 2.7 For the Term of this Agreement, as defined in Section 2.10, Parks agrees that KYSA shall have first priority of use of the Soccer Facility pursuant to the terms and conditions set forth in Attachment B. KYSA acknowledges and agrees that substantial public access to and use of the Soccer Facility is a material consideration for Parks' execution of this Agreement. KYSA's annual hours of use shall be capped at 4800 hours.
- 2.8 In consideration of KYSA's substantial investment in cash, in-kind, and other contributions towards construction of the Facility, each year during the first ten (10) years of the Term of this Agreement up to \$180,000 shall be credited towards KYSA's hourly field use and lighting fees for use of the Facility.
- 2.9 At least twelve (12) months before the expiration of the ten (10) year period described in Section 2.8, Parks and KYSA will begin negotiations regarding synthetic surface replacement and KYSA's hourly use fee and lighting fees for the next ten (10) year period under this Agreement. The Parties will renegotiate KYSA's Facility rental fees at least every ten (10) years during the Term of this Agreement, if not more often.
- 2.10 In light of KYSA's substantial investment in the Soccer Facility, as well as KYSA's ongoing supplemental maintenance responsibilities under this Agreement, the term ("Term") of this Agreement will be thirty (30) years. Provided that KYSA is then in compliance with the terms and conditions of this Agreement, KYSA will notify Parks in writing at least twelve (12) months prior to the expiration of this Agreement whether KYSA desires to negotiate renewal or extension of the Agreement (including any proposed modifications). KYSA and Parks may renew or extend this Agreement, contingent upon KYSA's full compliance with the terms and conditions of this Agreement and Parks' written commitment to renew or extend. The Parties may modify this Agreement during the Term, as a condition of renewal, extension, or during a renewal or extension term, consistent with Section 5.21.
- 2.11 King County shall retain ownership of the Site and the Soccer Facility, including all improvements, permanent fixtures, and county-purchased equipment.
- 2.12 In recognition that the design, development, and construction of the Soccer Facility and Site will benefit the Division and its park users upon completion, Parks agrees to coordinate with KYSA and to use its best efforts to assist with and facilitate the issuance

of any federal, state, county, or local permits or approvals necessary for construction at the Soccer Facility and Site to begin. KYSA understands, acknowledges, and agrees that the Division's assistance and facilitation shall not and does not constitute King County's official endorsement or approval of KYSA's plans, drawings, design documents, or construction for purposes of any applicable laws, regulations, codes, ordinances, guidelines, or industry standards (collectively, "authorities"). As between KYSA and the Division, KYSA will be solely responsible to comply with all applicable authorities and to obtain all necessary permits, approvals, and endorsements.

2.13 Parks personnel or agents may inspect the Soccer Facility construction project at any time provided that such persons observe due regard for workplace safety and security. Parks may require KYSA or its contractors to stop work if the Division deems work stoppage necessary to remedy construction defects or to address risks to health, safety, or welfare. KYSA specifically understands, acknowledges, and agrees that at a minimum, Parks will inspect the Soccer Facility construction project and approve work progress at the following milestones:

- A. Completed set of construction plans, drawings, specifications, and related design documents for the Soccer Facility construction project;
- B. Preconstruction meeting with KYSA and primary contractor when all permits and approvals are in hand;
- C. Demolition, excavation of Site complete;
- D. Site plumbing complete and Site prepared for installation of base material;
- E. Initial compaction of each and every lift of base material installed on Site;
- F. Final compaction of base material;
- G. Installation of synthetic turf carpet surface prior to fill;
- H. G-max or equivalent shock test of synthetic turf carpet with completed fill; and
- I. Installation of Soccer Facility amenities other than playing surface (fencing, paving, bleachers, etc.).

Parks may hire an outside consultant to inspect and approve excavation, drainage improvements, and fill compaction work. If the Division does so then Parks will forward the consultant's invoices to KYSA for payment. KYSA hereby agrees to timely pay the consultant's invoices.

2.14 When KYSA considers that all work or work associated with the Soccer Facility is substantially complete, KYSA shall give written notice to Parks. Parks will promptly inspect the work and, if it does not agree that the work is substantially complete, Parks

will prepare a list of items to be completed or corrected ("Punch List"). KYSA or its contractor shall promptly complete or correct all Punch List items at the sole cost of KYSA or its contractor, as they may decide between them. For purposes of this Agreement, "substantially complete" means that:

- A. KYSA and Parks have full and unrestricted use and benefit of the Soccer Facility for the purpose intended;
- B. All the systems and parts of the Soccer Facility are functional;
- C. Only minor incidental work or correction or repair remains to complete all Soccer Facility construction requirements; and
- D. KYSA's contractor has provided all occupancy permits and easement releases, to the extent that any are required or applicable, to the Soccer Facility.

## 2.15 WARRANTIES.

2.15.1 With respect to all warranties, express or implied, for work performed or materials supplied in connection with the Soccer Facility, KYSA shall:

- A. Obtain all warranties, express or implied, that would be given in normal commercial practice from suppliers, manufacturers, contractors, or installers;
- B. Require all warranties be executed, in writing, for benefit of King County;
- C. Enforce all warranties for the benefit of King County; and
- D. Be responsible to enforce any warranty of a contractor, subcontractor, manufacturer, or supplier.

2.15.2 If, within an applicable warranty period, any part of the Soccer Facility or work performed to construct the Soccer Facility is found not to conform to specifications, permit requirements, or industry standards, KYSA shall correct it promptly after receipt of written notice from Parks to do so. If Parks determines that KYSA's corrective action is not satisfactory and/or timely performed, then the Division may either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party, and invoice KYSA for the cost to remedy the problem. KYSA shall promptly reimburse the Division for all costs, expenses, or damages incurred by Parks, including but not limited to the cost to remedy the problem. An invoice is deemed received by KYSA three (3) days after deposit in the U.S. mail with proper address and postage. Invoices must be paid within sixty (60) days. Parks will add a late fee of five percent (5%) to any invoice not timely paid. Any invoice outstanding sixty (60) days after receipt will be sent to collections.

- 2.15.3 The warranty-related remedies provided in this Section 2.15 are in addition to any other rights or remedies provided elsewhere in this Agreement or by applicable law.

### **ARTICLE 3. CONSTRUCTION OF SOCCER FACILITY**

- 3.0 CAPITAL IMPROVEMENTS. KYSA will raise and invest \$1.2 million in expenditures for the development and construction of the Soccer Facility on the Site, and contribute an estimated \$600,000 in donated professional services, management services, manpower, materials, and other consideration. KYSA will serve as the supervisory not-for-profit corporation for development and construction of the Soccer Facility. KYSA shall design, develop, and construct facilities, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, mitigations, and all other requirements in coordination with King County Parks CPG staff. KYSA understands, acknowledges, and agrees that it may not undertake or commence any construction activities on the Site until KYSA can demonstrate to Parks' satisfaction that KYSA has obtained and has in hand all \$1.2 million of cash or cash equivalents, together with executed contracts or similarly firm, binding commitments for at least \$600,000 worth of donated professional services, materials, equipment, and other in-kind contributions. For purposes of this Section 3.0, "construction activities" do not include preliminary activities such as surveying, mapping, drainage test pits, installation of temporary fencing, or other low-impact or readily reversible actions.
- 3.1 EXCLUSIVE POSSESSION DURING CONSTRUCTION. KYSA shall be entitled to exclusive possession and use of that portion of the Site designated for development and construction of the Soccer Facility during the design, development, and construction phases. This right of exclusive possession and use by KYSA is subject to King County's entry, inspection, acceptance, and audit rights under Sections 2.13, 4.13, 5.11, and 5.12 of this Agreement.
- 3.2 DESIGN. KYSA has retained a licensed architect and/or licensed professional engineer, registered in the State of Washington, who will prepare a design for the Site and the Soccer Facility and exterior landscaping, which visually blends with the setting. Parks shall review the design plans for the Site in concept and reserves the right to approve the final design of the Site and the Soccer Facility, consistent with established King County zoning, design code, or both.
- 3.3 CONSTRUCTION/SITE WORK/FENCING. KYSA will be solely responsible for the site work, required permits, and grading at the Soccer Facility. KYSA will ensure the work area is properly barricaded, and will ensure that signage is installed directing unauthorized persons not to enter onto the construction site during any phase of development or construction. Unless otherwise agreed by the Parties in writing, fencing will be placed around work areas. In addition, construction sites will be kept clean and organized during development periods. KYSA will be responsible for site security,

traffic, and pedestrian warnings at the Soccer Facility during the development and construction phases.

- 3.4 CONSTRUCTION DEADLINES. KYSA is required to complete the development and construction of the Soccer Facility within one (1) year from the date that KYSA receives all funding, in-kind contributions, and the permits necessary to commence construction on the Soccer Facility.
- 3.5 RELOCATION OF UTILITY LINES. KYSA will be responsible to relocate and improve storm drains, sewers, water lines, and other utilities, if any, as required to complete development and construction of the Soccer Facility.
- 3.6 ALTERATION OF SITE OR SOCCER FACILITY AFTER CONSTRUCTION. After the Soccer Facility is completed and accepted by KYSA and Parks, as defined herein, KYSA will not make any material alteration to the Site or to the Soccer Facility, including any changes to the landscaping, without express, written consent by Parks.
- 3.7 DEVELOPMENT AND CONSTRUCTION FEES AND EXPENSES. KYSA will be responsible to obtain and pay for all necessary permits, fees, and expenses associated with the development and construction of the Soccer Facility.
- 3.8 PUBLIC WORKS LAWS. To the extent applicable, KYSA will comply with all public works laws, regulations, and ordinances, including but not limited to those related to prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW 39.08), use of licensed contractors (see RCW 39.06), and competitive bidding (see RCW 36.32 and RCW 35.21.278). KYSA will indemnify and defend King County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws, regulations, and ordinances in connection with the improvements. Without limiting the foregoing, KYSA understands, acknowledges, and agrees that before beginning construction of the Soccer Facility on the Site, KYSA must execute and deliver to King County a performance and payment bond in an amount equal to one hundred percent (100%) of the estimated full value of the Soccer Facility construction contract (\$1.4 million), on a form acceptable to King County with an approved surety company and in compliance with RCW Ch. 39.08. King County must be named as the beneficiary of the payment and performance bond. KYSA must notify the surety of any changes in the work. KYSA must promptly furnish additional bond security to protect King County and persons supplying labor or materials required to construct the Soccer Facility if (a) King County has a reasonable objection to any surety; (b) any surety fails to furnish reports on its financial condition pursuant to King County's request; or (c) the estimated cost of the Soccer Facility increases beyond the bond amount.
- 3.9 CONTRACTOR INDEMNIFICATION AND HOLD HARMLESS. KYSA will require its construction contractors and subcontractors to defend, indemnify and hold King County, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney's fees and costs, arising out of or in connection with the design, development, and construction of the Soccer Facility

(hereinafter "Design and Construction Phase"), except for injuries and damages caused by the negligence of King County.

- 3.10 **COMMERCIAL GENERAL LIABILITY INSURANCE.** KYSA will require its construction contractors to procure and maintain, for the duration of construction of the Soccer Facility, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the construction contractors and subcontractors, their agents, representatives, or employees. All said policies will name King County as an additional named insured and will include a provision prohibiting cancellation or reduction in the amount of said policies except upon 45 days prior written notice to Parks. KYSA will require its construction contractors to maintain minimum commercial general liability insurance limits of no less than \$1,000,000 each occurrence; \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit; business automobile coverage for a limit of not less than \$1,000,000 combined single limit per occurrence; and workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limit.
- 3.11 **BUILDER'S RISK INSURANCE.** KYSA will require its construction contractors to procure and maintain, for the duration of the Design and Construction Phase of the Soccer Facility, builder's risk insurance covering interests of King County and the construction contractor in the work. The builders risk insurance will be in the amount of the completed value of the Soccer Facility with no coinsurance provisions. builder's risk insurance will be on an all-risk policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings, and debris removal. This builder's risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the construction contractor. Higher deductibles for flood and earthquake perils may be accepted by King County upon written request by KYSA and written acceptance by King County. Any increased deductibles accepted by King County will remain the responsibility of the construction contractor. The Builders Risk insurance will be maintained until final acceptance of the work by KYSA and Parks.
- 3.12 **PROFESSIONAL ERRORS AND OMISSIONS.** KYSA must require its professional service providers to carry insurance meeting all requirements set forth in Section 3.10 of this Agreement. In addition, KYSA must require its professional service providers to carry professional liability errors and omissions insurance in an amount of not less than \$1,000,000 per claim/aggregate. KYSA must require its professional service providers to provide copies of all insurance certificates or insurance policies to King County upon request.
- 3.13 **SUBCONTRACTORS.** KYSA will require its construction contractors during the Design and Construction Phase to include all subcontractors as insured under its policies or will furnish separate certificates and endorsements for each subcontractor. All



coverage for subcontractors will be subject to all of the same insurance requirements as stated herein for the construction contractor.

- 3.14 **INSURANCE COVERAGE TYPE AND DURATION.** Each insurance policy must be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior approval by King County Office of Risk Management. If coverage is approved and purchased on a "claims made" basis, KYSA warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of contract termination or expiration, and/or conversion from a "claims made" form to an "occurrence" coverage form.
- 3.15 **VERIFICATION OF COVERAGE.** KYSA will furnish Parks with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the commercial general liability insurance of the construction contractor before commencement of the work. Before any exposure to loss may occur, KYSA will file with Parks a copy of the builder's risk insurance policy that includes all applicable conditions, exclusions, definitions, terms, and endorsements related to work under this Agreement.
- 3.16 **ACCEPTABILITY OF INSURERS.** Unless otherwise approved by Parks, the following provisions apply exclusively during the Design and Construction Phase:
- 3.16.1 Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.
- 3.16.2 If at any time any of the foregoing policies fail to meet the above minimum standards, then KYSA will, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to Parks with certificates and endorsements, for approvals.
- 3.16.3 The required liability insurance policies (except Workers Compensation) are to be endorsed to:
- Name "King County, its officers, officials, agents and employees" as additional insured with respect to use of the Site as outlined in this Agreement (Form CG 2026 or its current equivalent);
  - Such coverage shall be primary and non-contributory insurance as respects King County;
  - State that KYSA's or its contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability;
  - State that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after forty-five (45) days prior written notice to King County.

- 3.17 **WAIVER OF SUBROGATION.** KYSA will cause its contractors and subcontractors and their insurance carriers to release and waive all rights of subrogation against King County during the Design and Construction Phase to the extent a loss is covered by property insurance in force. Except as otherwise provided in Article 3 of this Agreement, KYSA hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under the respective fire insurance policies of its contractors, subcontractors, or any of them, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of KYSA or King County.
- 3.18 **INSURANCE PROVISIONS ARE MATERIAL TERMS.** By requiring such minimum insurance as described in this Article 3, King County shall not be deemed or construed to have assessed the risks that may be applicable to KYSA under this Agreement. KYSA shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Nothing contained within this Article 3 shall be deemed to limit the scope, application, and/or limits of the coverage afforded by the policies specified herein, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policies. Nothing contained within this Article 3 shall effect and/or alter the application of any other provision contained within this Agreement. Failure by KYSA, its agents, employees, officers, and/or subcontractors to comply with these insurance requirements shall constitute a material breach of this Agreement.

#### **ARTICLE 4. USE OF SOCCER FACILITY**

- 4.0 **NON-EXCLUSIVE LICENSE.** In recognition that KYSA shall invest substantial funds to design, develop, construct, and provide supplemental maintenance for the Soccer Facility at the Site, for the duration of the Term KYSA is granted a non-exclusive license to use the Soccer Facility by Parks on a first priority basis consistent with the terms and conditions set forth in this Agreement.
- 4.1 **STEWARDSHIP.** KYSA must be a good steward of the Soccer Facility and Site. All approved activities and use by KYSA shall be considerate of the capital, programmatic, and environmental value of the Soccer Facility and Site to the greatest extent possible. All approved construction, maintenance, and other modifications by KYSA shall strictly adhere to all applicable environmental laws and regulations at all times.
- 4.2 **FACILITY USE POLICY.** Parks and KYSA shall mutually develop and implement a Good Neighbor/Soccer Facility Use Policy (Attachment B) (hereinafter "Use Policy") in coordination with other users of the Site to ensure positive relations with the surrounding community, as well as other current or future Site users. The Use Policy shall be posted in clear view at the Soccer Facility and/or integrated into posted or otherwise distributed use rules for the Site. Mitigation efforts for traffic, noise, parking, or other neighborhood impacts shall be thorough, ongoing, and in good faith.

- 4.4 **SOCCER FACILITY PROGRAMMING.** KYSA shall have first priority for use of the Soccer Facility. All costs associated with KYSA's programming and use of the Soccer Facility will be the responsibility of KYSA. All non-KYSA use of the Soccer Facility shall be scheduled by and through Parks, the cost of which shall be Parks' responsibility. By January 15 of each calendar year, KYSA shall provide Parks with a master schedule (hereinafter "KYSA Master Schedule") of its anticipated use for that year (e.g., hours and days of use) in order that Parks may schedule Soccer Facility use by others around KYSA's reserved use. The Parties recognize that the KYSA Master Schedule may require periodic supplementation to accommodate KYSA's changing practice needs and game schedules. At the beginning of each month (or earlier, if the need for schedule changes is known), KYSA shall timely provide Parks with a revised monthly schedule if KYSA's anticipated field use will deviate from the KYSA Master Schedule. Any requested modifications to the KYSA Master Schedule shall be approved by Parks unless (i) the request is unreasonable or (ii) the time requested by KYSA is already scheduled by Parks for non-KYSA use and cannot be reasonably re-scheduled. The Parties agree to coordinate in good faith with respect to all scheduling of the Soccer Facility.
- 4.5 **USE.** Use of the Soccer Facility shall be limited to providing programming and other activities for approved users as follows:
- A. Soccer;
  - B. Other approved sports that are appropriate for synthetic fields; and
  - C. Other approved activities that are appropriate for synthetic fields.
- 4.6 **OPERATING HOURS.** The availability of recreational opportunities for King County residents is a material consideration for Parks' execution of this Agreement. Hours of operations shall be limited to 7 a.m. to 11 p.m. All field use other than soccer shall be scheduled and approved by Parks in consultation with KYSA.
- 4.7 **INCIDENTAL USES.** KYSA may conduct tax-exempt fundraising activities to support the Site, the Soccer Facility, and KYSA's own beneficial or charitable mission as a not-for-profit Washington corporation, provided that such fundraising activities shall not displace public use of the Site or the Soccer Facility. Such activities shall be shown on KYSA's Master Schedule.
- 4.8 **SECURITY AND NUISANCE DURING USE.** KYSA will take reasonable precautions to secure the Soccer Facility during use by KYSA. KYSA will use the Site and the Soccer Facility for no unlawful purposes and will not use or occupy the Site in any manner which would constitute a public nuisance or otherwise violate federal, state, or local laws.
- 4.9 **SITE MAINTENANCE PLAN.** Parks shall operate and maintain the Site upon final acceptance of the Soccer Facility improvements that KYSA will construct.

- 4.10 **PERFORMANCE REPORT.** At the end of each calendar year during the Term, KYSA shall furnish the CPG project manager with a summary of the prior year's use by KYSA for approved activities on the Site or at the Soccer Facility.
- 4.11 **LIMITED USE.** KYSA shall use the Soccer Facility for no business or purpose other than as explicitly provided in this Agreement or as otherwise generally permitted to members of the public. Other KYSA activities may be allowed on a case-by-case basis with prior written approval of Parks, which shall not be unreasonably withheld.
- 4.12 **SIGNS.** No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by KYSA nor allowed by KYSA to be exhibited, inscribed painted, or affixed on any part of the Soccer Facility without the prior written approval of Parks, which shall not be unreasonably withheld. All new Soccer Facility and/or Site signs shall follow the King County Sign System Guide and shall be manufactured and installed by King County, unless KYSA receives prior written approval from Parks to do otherwise. Written approval shall be requested through Parks' liaison. If KYSA violates this provision, Parks may remove the sign without any liability and may charge the expense incurred by such removal to the KYSA. All signs erected or installed pursuant to Parks' prior written approval shall also comply with any applicable federal, state, or local statutes, ordinances or regulations.
- 4.13 **RIGHT TO INSPECT.** King County at its discretion reserves the right to review and approve KYSA's use of the Soccer Facility and compliance with this Agreement. If Parks does not approve of KYSA's use and compliance, Parks will timely notify KYSA in writing of the specific items that Parks deems objectionable. KYSA agrees to undertake reasonable corrective action within a time period agreed to by the Parties, or if no time period is agreed, within sixty (60) days.
- 4.14 **MINIMUM SCOPE OF INSURANCE FOR KYSA.** In addition to insurance requirements set forth in Article 3 that are applicable to the Design and Construction Phase, KYSA will at a minimum maintain insurance during the post-Design and Construction Phase that covers KYSA's activities and usage of the Soccer Facility and Site as follows:
- 4.14.1 **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (Insurance Services Office form number (CG00 001), covering commercial general liability with a limit of not less than \$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate.
- 4.15 **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductibles or self-insured retentions must be declared to and approved by King County. The deductible and/or self-insured retention of the policies will not limit or apply to King County and will be the sole responsibility of KYSA.

4.16 OTHER INSURANCE PROVISIONS. The insurance policies required by Article 4 of this Agreement shall also contain or be endorsed to contain the following provisions where applicable:

4.16.1 LIABILITY POLICIES.

4.16.1.1 Each insurance policy will be written on an "occurrence" form.

4.16.1.2 King County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities and usage by KYSA of the Soccer Facility and Site.

4.16.1.3 KYSA's comprehensive general liability insurance coverage will be primary insurance as respects King County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees or agents will not contribute with KYSA's insurance or benefit KYSA in any way.

4.16.2 Coverage will not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days' prior written notice has been given to KYSA and Parks.

4.17 ACCEPTABILITY OF INSURERS. Unless otherwise approved by Parks, the following provisions apply exclusively to KYSA's activities and usage of the Soccer Facility and Site during the post-Design and Construction Phase:

4.17.1 Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.

4.17.2 If at any time any of the foregoing policies fail to meet the above minimum standards, then KYSA will, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to King County with certificates and endorsements, for approvals.

4.18 WAIVER OF SUBROGATION. KYSA and its insurance carriers will release and waive all rights of subrogation against King County to the extent a loss is covered by property insurance in force. KYSA hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under their respective fire insurance policies, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of KYSA or King County.

4.19 INSURANCE LIMITS AND DOCUMENTATION.

- 4.19.1 By requiring such minimum insurance as specified herein, neither party is deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement. KYSA will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.
- 4.19.2 KYSA will furnish Parks with certificates of insurance and endorsements as required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for KYSA's insurance are to be on forms approved by King County and are to be received and approved by King County prior to the Effective Date of this Agreement. Parks reserves the right to require complete certified copies of all required policies at any time.

4.20 KING COUNTY INSURANCE.

- 4.20.1 LIABILITY EXPOSURE. KYSA acknowledges, agrees, and understands that King County is self-insured for all of its liability exposures, including but not limited to worker's compensation. King County agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement, or, at King County's sole discretion, to purchase equivalent insurance coverage through an insurance policy or policies, or through a risk sharing pool. King County agrees to provide KYSA with at least thirty (30) days prior written notice of any change in its self-insured status and will upon request provide KYSA with a letter of self-insurance as adequate proof of insurance.

**ARTICLE 5. GENERAL TERMS AND CONDITIONS**

- 5.1 NOTICE. Notice will be given as follows:

If to Parks:

**T.J. Davis, CPG Manager  
King County Department of Natural Resources and Parks  
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If to KYSA:

**Wayne Jensen or Current KYSA President  
KYSA  
P.O. Box 6293**

**Kent, WA 98064**  
**Email: [zwej@comcast.net](mailto:zwej@comcast.net)**  
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- 5.2 NONDISCRIMINATION. KYSA will comply with King County Code ("K.C.C.") Chapter 12.16 regarding nondiscrimination in employment, K.C.C. Chapter 12.17 regarding nondiscrimination in contracting, and K.C.C. Chapter 12.18 regarding fair employment practices.
- 5.2.1 EMPLOYMENT. KYSA does not anticipate hiring any employees to develop the Soccer Facility or otherwise perform its obligations under this Agreement. If KYSA should elect to do so, however, KYSA agrees not to discriminate against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification. This requirement shall apply without limitation to all aspects of employment (including lay-offs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship) and advertisement.
- 5.2.2 SERVICES AND ACTIVITIES. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for termination or suspension in whole or in part of this Agreement by King County and may result in ineligibility for further King County agreements.
- 5.2.3 OTHER NONDISCRIMINATION LAWS. KYSA shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.
- 5.3 ASSIGNMENT. KYSA may not assign this Agreement or any interest therein without King County's prior approval, which shall not be unreasonably withheld. King County will have the right to sell or otherwise transfer or dispose of the Site or the Soccer Facility, or to assign this Agreement or any interest of the County hereunder, provided that in the event of sale or transfer of the Site or the Soccer Facility, King County will arrange for the purchaser or transferee to assume the Agreement and King County's obligations hereunder. King County will not otherwise assign this Agreement or any interest of King County hereunder unless the assignee or purchaser agrees to assume Parks' obligations hereunder.

- 5.4 **ADVERTISING RESTRICTIONS.** KYSA understands that the advertising of tobacco products as defined in King County Ordinance No. 10615 and spirits as defined in King County Ordinance No. 14509 is strictly prohibited. KYSA further understands that pursuant to Ordinance No. 14509, additional subject-matter restrictions on advertising may be imposed by the Director of the County Parks and Recreation Division ("Director"). If the Director imposes additional restrictions, a copy of the restrictions will be included in an attachment hereto over time. Therefore, KYSA expressly covenants that neither it nor any of its sponsors or concessionaires will at any time display, promote, or advertise any tobacco products, spirits, or other subject matter expressly prohibited by the Director. KYSA further agrees that any violation of this Section 5.4 by it will be a material breach of its contractual obligations to Parks pursuant to this Agreement.
- 5.5 **SOLICITING.** Except as otherwise provided in this Agreement, canvassing, soliciting, or peddling in the Site, the Soccer Facility, or in adjacent areas are each prohibited without the prior written approval from Parks.
- 5.6 **POWERS OF THE COUNTY.** Nothing contained in this Agreement will be considered to diminish the governmental or police powers of King County.
- 5.7 **FORCE MAJEURE.** The performance of this Agreement by either party is subject to acts of God, war, government regulation or advisory, disasters, fire, accidents or other casualty, strikes or threat of strikes, civil disorder, acts and/or threats of terrorism, or curtailment of transportation services or facilities, cost or availability of power, or similar causes beyond the control of either party making it illegal, impossible, or impracticable to hold, reschedule, or relocate the KYSA's use of the Site or the Soccer Facility as contemplated herein. Either party may terminate or suspend its obligations under this Agreement if such obligations are prevented by any of the above events to the extent such events are beyond the reasonable control of the party whose reasonable performance is prevented.
- 5.8 **AGREEMENT IS PUBLIC DOCUMENT.** This Agreement will be considered a public document and will be available for inspection and copying by the public.
- 5.9 **TAXES.** KYSA agrees to pay on a current basis all applicable taxes or assessments levied on its activities; PROVIDED, however, that nothing contained herein will modify KYSA's right to contest any such tax, and KYSA will not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.
- 5.10 **NO KYSA LIENS.** KYSA acknowledges and agrees that it has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of King County in the fee interest in the Site or in the Soccer Facility, or to charge fees for any claim in favor of any person or entity dealing with KYSA, including those who may furnish materials or perform labor for any construction or repairs. If any such liens are filed, King County may, without waiving its rights and remedies for breach, and without releasing KYSA from its obligations under this Agreement, require KYSA to post security in form and amount reasonably



satisfactory to King County or to cause such liens to be released by any means King County deems proper, including payment upon satisfaction of the claim giving rise to the lien. KYSA will pay to King County upon demand any sum paid by King County to remove the liens. Further, KYSA agrees that it will save and hold King County harmless from any and all loss, cost, or expenses based on or arising out of the asserted claims or liens, except those of the lender, against this Agreement or against the right, title and interest of King County in the Site and the Soccer Facility or under the terms of this Agreement, including reasonable attorney's fees and costs incurred by King County to remove such liens, and in enforcing this Section 5.10. Additionally, it is mutually understood and agreed that this Section 5.10 is intended to be a continuing provision applicable to future repairs and improvements after the initial development and construction of the Site and the Soccer Facility.

- 5.11 RECORDS, AUDITS AND INSPECTIONS. During this Term of this Agreement, KYSA's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by King County at King County's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.
- 5.12 ENTRY BY KING COUNTY. King County may enter the Site or the Soccer Facility during KYSA's usage for any reason. Any person or persons who may have an interest in the purposes of King County's visit may accompany King County. King County has the right to use any and all means that King County deems proper to open doors and gates to obtain entry to the Site or to the Soccer Facility.
- 5.13 COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Soccer Facility, KYSA and its members shall comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA). KYSA specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King County, and further agrees that King County does not waive this provision by giving notice of demand for compliance in any instance.
- 5.14 INTERPRETATION OF COUNTY CODE AND RULES. If there is any question regarding the interpretation of any provision of King County Code or any King County rule or regulation, King County's decision will govern and will be binding upon KYSA.
- 5.15 PERMITS AND LICENSES. KYSA will obtain and maintain, at its own costs and expense, all necessary permits, licenses, and approvals required for the activities contemplated under this Agreement.
- 5.16 RISK OF LOSS. All personal property of any kind or description whatsoever on the Site or the Soccer Facility shall be at KYSA's sole risk, and King County will not be liable for any damage done to, or loss of, such personal property. However, KYSA will not be

responsible for losses or claims of stolen property during King County-scheduled use of the Site or the Soccer Facility by persons or entities other than KYSA.

5.17 ENVIRONMENTAL LIABILITY.

5.17.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

5.17.2 KYSA shall not, without first obtaining Parks' written approval, apply, store, deposit, transport, release, or dispose of any hazardous substances, petroleum products, sewage, medicinal, bacteriological, or toxic materials, or pollutants, on the Soccer Facility or Site. All approved application, storage, deposit, transportation, release, and disposal shall be done safely and in compliance with applicable laws.

5.17.3 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that KYSA might have against King County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Site by King County. KYSA may not, however, assert such a claim to the extent that KYSA creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of KYSA performing construction activities on the Site, changing the configuration of the Site, or changing the use of the Site.

5.17.4 If KYSA discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against King County it shall immediately notify Parks in writing. KYSA shall provide such notice not more than ten (10) days after discovery. The Parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.

5.17.5 In no event shall King County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

5.18 NO EMPLOYMENT RELATIONSHIP. In providing services under this Agreement, KYSA is an independent contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of King County for any purpose. KYSA shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law. King County assumes no responsibility for

the payment of any compensation, wages, benefits, or taxes by, or on behalf of KYSA, its employees, subcontractors, and/or others by reason of this Agreement.

5.19 INDEMNIFICATION AND HOLD HARMLESS.

- 5.19.1 KYSA shall protect, indemnify, and hold harmless King County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) KYSA's failure to pay any compensation, wages, benefits, or taxes in connection with or support of the performance of this Agreement, and/or (2) KYSA's failure to pay for work, services, materials, or supplies to KYSA employees or other KYSA suppliers in connection with or support of the performance of this Agreement.
- 5.19.2 KYSA further agrees that it is financially responsible for and will repay King County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure for any reason to comply with the terms of this Agreement by KYSA, its officers, employees, agents, representatives, or subcontractors. This duty to repay King County shall not be diminished or extinguished by the prior termination of the Agreement.
- 5.19.3 KYSA expressly agrees to protect, defend, indemnify, and hold harmless King County, its elected and appointed officials, officers, employees, and agents from and against liability for any claims (including all demands, suits, and judgments) for damages arising out of injury to persons or damage to property where such injury or damage is caused by, arises out of, or is incident to KYSA's use of the Site or Soccer Facility under this Agreement. KYSA's obligations under this section shall include, but not be limited to:
  - 5.19.3.1 The duty to promptly accept tender of defense and provide defense to the King County at KYSA's expense for claims that fall within this Section 5.19;
  - 5.19.3.2 Indemnification of claims, including those made by KYSA's own employees and/or agents for this purpose, for claims that fall within this Section 5.19;
  - 5.19.3.3 In the event King County incurs any judgment, award, and/or cost arising from claims that fall within this Section 5.19, including attorney's fees to successfully enforce the section, all such fees, expenses, and costs shall be recoverable from KYSA.
  - 5.19.3.4 KYSA shall protect, defend, indemnify, and hold harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the performance or non-performance of the obligations under this Agreement by KYSA's subcontractor(s), its

officers, employees, and/or agents in connection with or in support of this Agreement.

5.19.3.5 KYSA expressly and specifically agrees that its obligations under this Section 5.19 extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, KYSA, hereby expressly and specifically waives, with respect to King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County.

- 5.20 **WAIVER OF BREACH.** Waiver of any breach of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by King County, which shall be attached to the original Agreement.
- 5.21 **ADDITIONAL TERMS.** The Parties reserve the right to modify this Agreement as necessary to equitably address unforeseen circumstances that may arise. The Parties agree to cooperate in good faith and in the spirit of this Agreement with respect to any such requested modifications. Any such amendments or addendums to this Agreement shall be in writing and executed with equal formality as this Agreement.
- 5.22 **DISPUTE RESOLUTION.** The Parties agree to use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the purposes of this Agreement. In the event that a dispute arises and cannot be resolved within two (2) days of the dispute occurring, the field development director of KYSA and the CPG manager from Parks shall meet in person, within four (4) days of the dispute arising, and work to resolve the dispute. KYSA and Parks shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this Agreement are not frustrated, and so that any design, planning, construction, or use of the Soccer Facility or the Site is not delayed or interrupted. Provided, that nothing in this Section 5.22 shall otherwise limit the Parties' legal, equitable, or other rights or remedies.
- 5.23 **TERMINATION/NOTICE/CURE.** In recognition that KYSA shall invest substantial funds to develop the Soccer Facility at the Site, and in appreciation that King County has fiduciary responsibilities to its residents and taxpayers that may change over time, the Parties agree that this Agreement may be terminated as follows:

### 5.23.1 FAILURE TO PERFORM.

5.23.1.1 OBLIGATION TO PERFORM. Nothing herein shall imply any duty upon King County to do any work required to be performed by KYSA in this Agreement, and the performance thereof by King County will not constitute a waiver of KYSA's default. King County will not in any event be liable for inconvenience, annoyance, and disturbance in its activities on the Site or the Soccer Facility, provided that King County will not intentionally permit a loss of business or other damage to KYSA by reason of King County's actions pertaining to the Site or the Soccer Facility.

5.23.1.2 PAYMENTS TO OTHER PARTIES. Except as expressly provided hereunder, all obligations of KYSA under this Agreement will be performed by KYSA at KYSA's sole cost and expense. If KYSA fails to pay any sum of money owed to any party other than King County for which KYSA is liable hereunder, or if KYSA fails to perform any other act on its part to be performed hereunder, and such failure continues for ten days (10) after notice thereof by King County, King County may, without waving or releasing KYSA from its obligations, make any such payment or perform any such other act to be made or performed by KYSA. Thereafter, on written demand by King County, KYSA shall promptly pay to King County an amount equal to all sums so paid by King County, together with all necessary incidental costs incurred by King County, plus interest on the sum total of such sums and costs. For purposes of this Section 5.23.1.2, interest will be calculated at the lesser of 1 percent per month or the maximum rate permissible by law, beginning on the date that King County first makes a payment on behalf of KYSA. KYSA understands, acknowledges, and agrees that King County is under no obligation to make any payment on behalf of KYSA.

### 5.23.2 DEFAULT.

5.23.2.1 PARKS' DEFAULT. Parks will not be in default unless Parks fails to perform an obligation within sixty (60) days after notice by KYSA, which notice must specify the alleged breach; provided that if the nature of Parks' breach is such that more than sixty (60) days are reasonably required for cure, then Parks will not be in default if Parks commences to cure within sixty (60) days of KYSA's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

5.23.2.2 KYSA'S DEFAULT. The occurrence of any one or more of the following events constitutes a default by KYSA under this Agreement:

(1) KYSA will be in default of the performance of any covenants, conditions, or provisions of this Agreement, other than the covenants for the payment of use fees required by this Agreement, where such failure continues for a period of sixty (60) days after written notice is given by King County; provided that if the nature of KYSA's breach is such that more than sixty (60) days are reasonably required for cure, then KYSA will not be in default if KYSA commences to cure within sixty (60) days of King County's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or

(2) KYSA will be adjudged bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy is appointed for KYSA's estate and such appointment is not vacated within sixty (60) days; or

(3) if this Agreement is assigned or the Site or the Soccer Facility is used by KYSA for activities other than in accordance with the terms of this Agreement, and such default is not cured within thirty (30) days after written notice from King County to KYSA; or

(4) KYSA fails to make any payment when due, or fails to make any other payment required hereunder when due, when that failure is not cured within thirty (30) days after mailing of written notice thereof by King County.

5.23.3 **TERMINATION FOR CHANGE IN KYSA STATUS.** King County may terminate this Agreement without penalty or liability if, at any time during the Term of this Agreement, KYSA loses or changes its status: (1) as an active Washington not-for-profit corporation; or (2) as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code as now or hereafter codified; or (3) as a soccer club affiliated with the Washington State Youth Soccer Association (WYSA), American Youth Soccer Organization (AYSO), or a similar governing body as now or hereafter constituted. Provided, that King County will not terminate the Agreement under this Section 5.23.3 if KYSA seasonably cures any and all such loss or change of status.

5.23.4 **DEFAULT FOR OTHER CAUSE.** This Agreement may be immediately terminated for other cause by a party if the other party substantially fails to perform its obligations under this Agreement, through no fault of the terminating party, and the non-performing party does not commence correction of the failure of performance within sixty (60) days of the terminating party's sending notice to the non-performing party.

5.23.5 **OTHER KYSA TERMINATION.** KYSA may terminate this Agreement for any reason upon twelve (12) months notice in writing to King County. In this event

KYSA shall not be entitled to any compensation from King County for capital improvements made by KYSA to the Site.

#### 5.23.6 OTHER KING COUNTY TERMINATION.

5.23.6.1 King County may terminate this Agreement without cause upon twelve (12) months notice in writing to KYSA. In this event KYSA shall be entitled to reasonable compensation from King County for capital improvements made by KYSA to the Site with due regard for the funds invested by KYSA, KYSA debts remaining to be paid relating to the Soccer Facility, the fair market value of the Soccer Facility at the time of termination, and the length of time KYSA has had use of the Soccer Facility.

5.23.6.2 Any King County obligations under this Agreement beyond the current appropriation year are conditioned upon the King County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Agreement will terminate automatically at the close of the current appropriation year.

5.23.7 REMEDIES ARE CUMULATIVE. Remedies under this Agreement are cumulative; the failure to exercise any right on any occasion will not operate to forfeit such remedy.

#### 5.24 DESTRUCTION OF PREMISES AND USE OF INSURANCE PROCEEDS.

5.24.1 Unless otherwise mutually agreed by the Parties, if the Site or the Soccer Facility are destroyed or injured by fire, earthquake, or other casualty during the Design and Construction Phase, then KYSA will proceed to rebuild and restore the Site and the Soccer Facility, or such part thereof as may be injured or destroyed. In the event of any loss covered by the insurance policies described and required under this Agreement, unless this Agreement is terminated as provided herein, KYSA will use the proceeds of such insurance policies first to rebuild and then to restore the Site and the Soccer Facility and replace the improvements, fixtures, and equipment which may be damaged or destroyed by such casualty.

5.24.2 Unless otherwise mutually agreed by the Parties, if the Site and/or the Soccer Facility are destroyed by fire, earthquake, or other casualty after completion of the Design and Construction Phase, then King County will proceed to rebuild and restore the Site and the Soccer Facility, or such part thereof as may be injured or destroyed. In the event of any loss covered by the insurance policies described and required under this Agreement, unless this Agreement is terminated as provided herein, King County will use the proceeds of such insurance policies first to rebuild and then to restore the Site and the Soccer Facility and replace the improvements, fixtures, and equipment which may be damaged or destroyed by such casualty.

- 5.25 DUTIES UPON TERMINATION. Upon termination of this Agreement, and unless otherwise arranged, KYSA will remove from the Site and the Soccer Facility all its personal property, goods, and effects. If KYSA fails to perform this duty at termination, Parks may cause such removal to be made and KYSA's personal property, goods and effects to be stored, the cost and expense to be paid by KYSA. It is understood and agreed that the real property constituting the Site and the Soccer Facility is the real property of King County and that all improvements to that real property will continue to belong to King County upon termination of this Agreement.
- 5.26 EMINENT DOMAIN. The following rules will govern the rights and duties of the Parties in the event of interference with KYSA's design, construction, or use of the Site or the Soccer Facility as a result of the exercise of eminent domain or private purchase in lieu thereof.
- 5.26.1 RIGHT OF TERMINATION. If the whole of the Site or the Soccer Facility is taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Agreement will automatically terminate as of the date that title is taken. If more than twenty-five percent (25%) of the Site or the Soccer Facility is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then KYSA and King County will each have the right to terminate this Agreement on thirty (30) days notice to the other, given within ninety (90) days after the date of such taking. Provided, however, that if King County is exercising its right of eminent domain, a fair value will be placed on this Agreement and the Soccer Facility with the compensation thereof awarded solely to KYSA.
- 5.26.2 NON-TERMINATION. If any part of the Site or the Soccer Facility is so taken and this Agreement is not terminated, then King County will, at its own cost and expense, restore the remaining portion of the Site and the Soccer Facility to the extent necessary to render it reasonably suitable for the purposes contemplated under this Agreement.
- 5.26.3 COMPENSATION. The compensation awarded or paid upon a total or partial taking of the Site or the Soccer Facility, or this Agreement, or any of them, will belong to and be apportioned between KYSA and Parks in accordance with their respective interests under this Agreement as determined between them or by a court. Additionally, KYSA may prosecute any claim directly against the condemning authority for the costs of removal of the goodwill, stock, trade fixtures, furniture, and other personal property belonging to KYSA. King County will have no claim to condemnation proceeds attributable to KYSA's interest in the Soccer Facility, nor will KYSA have any interest in King County's condemnation proceeds, if any.



- 5.27 SURRENDER. Within thirty (30) days of the time this Agreement expires or is terminated, KYSA shall remove any and all of its portable improvements at the Soccer Facility. If improvements include non-portable fixtures, such improvements shall inure to the benefit of King County and shall remain at the Soccer Facility.
- 5.28 HEADINGS NOT PART OF AGREEMENT. The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
- 5.29 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Washington, without regard to its conflicts of law rules or choice of law provisions.
- 5.30 JURISDICTION AND VENUE. The exclusive jurisdiction and venue for any disputes arising under this Agreement, including matters of construction, validity and performance, shall be in the Superior Court for King County in Kent, Washington.
- 5.31 RIGHT TO PARTICIPATE IN LITIGATION. KYSA will have the right to participate in any litigation, arbitration, or dispute directly affecting the Site, the Soccer Facility, or interest of KYSA therein, including, without limitation, any suit, action, arbitration proceeding, condemnation proceeding, or insurance claim. King County, upon instituting or receiving notice of any such litigation, arbitration, or dispute will promptly notify KYSA of the same.
- 5.32 ATTACHMENTS.
- A. Description and map of Site and Facility
  - B. Soccer Facility Use Policy
- 5.33 ENTIRE AGREEMENT. This Agreement and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between King County and KYSA. There are no terms, obligations, allowances, covenants, or conditions other than those contained herein.
- 5.34 SEVERABILITY. Should any provision of this Agreement be found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date written.

**Kent Youth Soccer Association**

**King County Department of Natural Resources and Parks**

By \_\_\_\_\_

By \_\_\_\_\_

TITLE \_\_\_\_\_

TITLE \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_