



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 1, 2012

Ordinance 17315

Proposed No. 2012-0128.2

Sponsors Hague, Ferguson and Lambert

1 AN ORDINANCE authorizing the King County executive
2 to execute a thirty-year use agreement with Kirkland Youth
3 Lacrosse, a Washington nonprofit corporation, for the
4 design, installation and use of a synthetic turf
5 lacrosse/soccer field located at Big Finn Hill park in King
6 County, Washington.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 **SECTION 1. Findings:**

9 A. King County, a home rule charter county and political subdivision of the state
10 of Washington, is the owner of the site, located at NE 138th and Juanita Drive NE,
11 Kirkland, WA 98028, and described and depicted with greater particularity in Attachment
12 A to this ordinance.

13 B. Kirkland Youth Lacrosse ("KYL") is a not-for-profit Washington corporation
14 that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. KYL is a
15 community-based, open-membership club organized to provide public opportunities for
16 youth lacrosse.

17 C. KYL has the experience, ability, and resources to develop a synthetic sports
18 field and associated facilities at the site and intends to develop a facility for lacrosse,
19 soccer and other athletic and recreational uses at Big Finn Hill park.

20 D. The parks and recreation division of the department of natural resources and
21 parks has determined that a synthetic lacrosse/soccer field located at Big Finn Hill park
22 will have significant regional and/or rural public recreation value as it will be the only
23 dedicated lacrosse field located in east King County.

24 E. In December 2009, the Kirkland city council took action to approve the
25 annexation of the Finn Hill, North Juanita and Kingsgate neighborhoods. The King
26 County council approved Ordinance 4229 formally adopting the annexation of the area to
27 the city of Kirkland with an effective date of June 1, 2011. As part of the annexation,
28 Edith Moulton, Juanita Heights, Kingsgate and Winsor Vista parks were transferred to the
29 city of Kirkland, effective June 1, 2011, and 132nd Square Park transferred as of January
30 1, 2012. Big Finn Hill park was not transferred as part of the Kirkland annexation and
31 remains under King County's jurisdiction.

32 F. King County Ordinance 14509 authorized the department of natural resources
33 and parks to create new public recreation opportunities by empowering user groups,
34 sports associations, and community organizations to develop mutually agreed-upon
35 capital improvements for public recreation facilities on King County land, and thereby
36 address regional and/or rural recreation needs without increasing tax-funded operations
37 and maintenance costs.

38 G. Allowing KYL to develop certain mutually agreed-upon capital
39 improvements, including a synthetic lacrosse/soccer field at Big Finn Hill park, will serve
40 to implement the authority provided in Ordinance 14509. In addition, allowing KYL to
41 convert the field to a synthetic surface will benefit the public by increasing playing time,
42 improving safety, and reducing ongoing maintenance costs.

43 H. In accordance with K.C.C. 4.56.150.E. the King County council may adopt an
44 ordinance permitting the county to enter into agreements for the use of county property
45 with a bona fide nonprofit organization if the property is to be used by the nonprofit
46 organization to make improvements to the county property or to provide services that will
47 benefit the public.

48 I. The parks and recreation division is willing to allow KYL to develop a
49 lacrosse/soccer field at the Big Finn Hill park under the terms and conditions set forth in
50 Attachment A to this ordinance, and to give KYL scheduling priority over a term of thirty
51 years in accordance with Section 2.6 of Attachment A to this ordinance.

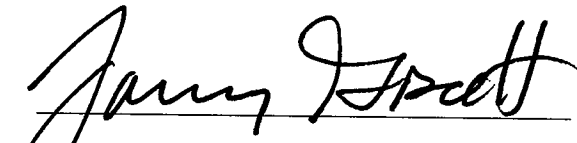
52 SECTION 2. The King County executive is hereby authorized to sign a use
53 agreement, substantially the same as Attachment A to this ordinance, with Kirkland

54 Youth Lacrosse, for the design, installation and use of a synthetic turf lacrosse/soccer
55 field located at Big Finn Hill park in King County, Washington.
56


Ordinance 17315 was introduced on 4/2/2012 and passed by the Metropolitan King County Council on 4/30/2012, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Ferguson, Mr. Dunn and Mr.
McDermott
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

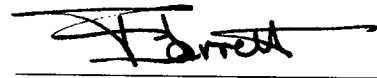

Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 11 day of May, 2012.



Dow Constantine, County Executive

RECEIVED
2012 MAY 11 PM 4:09
KING COUNTY COUNCIL CLERK

Attachments: A. Use Agreement between DNRP and Kirkland Youth Lacrosse at Big Finn Hill Park -
(Revised April 25, 2012), B. Memorandum of Understanding



USE AGREEMENT

between

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

and

Kirkland Youth Lacrosse

for the

Synthetic Lacrosse/Soccer Field

at

Big Finn Hill Park

This Agreement (“Agreement”) is entered into by and between the Parks and Recreation Division of the Department of Natural Resources and Parks, (hereinafter “Parks” or “Division”) and Kirkland Youth Lacrosse (hereinafter “KYL”) (collectively, the “Parties”) for the design, installations, and use of a synthetic turf lacrosse/soccer field (hereinafter “Facility”) at Big Finn Hill Park (hereinafter “Site”).

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

SECTION 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 NE 138th and Juanita Drive NE Kirkland WA 98028, and described and depicted with greater particularity in Exhibit A to this Agreement.
- 1.2. KYL is a not-for-profit Washington corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. KYL is a community-based, open-membership club organized to provide public opportunities for youth lacrosse.
- 1.3. KYL has the experience, ability, and resources to develop a synthetic sports field and associated facilities at the Site and intends to develop a facility for lacrosse, soccer, and

other athletic and recreational uses at the Site.

- 1.4. Parks has determined that a synthetic lacrosse/soccer field 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 KYL to develop certain mutually-agreed upon capital improvements, including a synthetic lacrosse/soccer field 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 KYL to develop the Facility at the Site under the terms and conditions set forth in this Agreement, and to give KYL scheduling priority over a term of thirty (30) years pursuant to the terms and conditions as set forth in Exhibit B to this Agreement.

SECTION 2. CONSIDERATION AND USE FEES

- 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. KYL agrees to design and construct the Facility on the Site consistent with the terms and conditions set forth in this Agreement. The Facility will include one (1) synthetic lacrosse/soccer field and related infrastructure, all as set forth in Exhibit A to this Agreement.
- 2.3. KYL agrees to assume responsibility for design, permitting, and construction for the Facility as set forth in this Agreement.
- 2.4. KYL 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 For the Term of this Agreement, as defined in *Section 2.7*, Parks agrees that KYL shall have first priority of use of the Facility pursuant to the terms and conditions set forth in Exhibit B. KYL acknowledges and agrees that substantial public access to and use of the Facility is a material consideration for Parks' execution of this Agreement.
- 2.7 KYL will be charged King County's standard hourly synthetic field use and lighting fees ("use fees") for use of the Facility. In consideration of KYL's substantial investment in the construction of the Facility, each year during the first ten (10) years of the Term of this Agreement \$130,000 per year shall be credited towards that year's KYL's use fees for use of the Facility.
- 2.8 At least twelve (12) months before the expiration of the ten (10) year period described in Section 2.7, and of each succeeding ten (10) year period), Parks and KYL will begin negotiations regarding potential amendment of this Agreement to provide for synthetic surface replacement and future credits, if any, toward KYL's Facility use fees in consideration of additional facility investments by KYL.
- 2.9 In light of KYL's substantial investment in the Facility, the term ("Term") of this Agreement will be thirty (30) years. Provided that KYL is then in compliance with the terms and conditions of this Agreement, KYL will notify Parks in writing at least twelve (12) months prior to the expiration of this Agreement whether KYL desires to negotiate renewal or extension of the Agreement (including any proposed modifications). KYL and Parks may renew or extend this Agreement, contingent upon KYL'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. Any renewal, extension or amendment is subject to approval by ordinance.
- 2.10 King County shall retain ownership of the Site and the Facility, including all improvements, permanent fixtures, and county-purchased equipment.
- 2.11 In recognition that the design, development, and construction of the Facility and Site will benefit the Division and its park users upon completion, Parks agrees to coordinate with KYL 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 Facility and Site to begin. KYL 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 KYL's plans, drawings, design documents, or construction for purposes of any applicable laws, regulations, codes, ordinances, guidelines, or industry standards (collectively, "authorities"). As between KYL and the Division, KYL will be solely responsible to comply with all applicable authorities and to obtain all necessary permits, approvals, and endorsements.
- 2.12 Parks personnel or agents may inspect the Facility construction project at any time provided that such persons observe due regard for workplace safety and security. Parks may require KYL 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.

KYL specifically understands, acknowledges, and agrees that at a minimum, Parks will inspect the 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 Facility construction project;
- B. Preconstruction meeting with KYL 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 Facility amenities other than playing surface (fencing, paving, bleachers, etc.).

2.13 When KYL considers that all work or work associated with the Facility is substantially complete, KYL 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"). KYL or its contractor shall promptly complete or correct all Punch List items at the sole cost of KYL or its contractor, as they may decide between them. For purposes of this Agreement, "substantially complete" means that:

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

2.14 WARRANTIES.

- 2.14.1 With respect to all warranties, express or implied, for work performed or materials supplied in connection with the Facility, KYL 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 the 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.
- 2.14.2 King County's approval of plans, drawings, designs, specifications, reports, construction and other products of the services rendered hereunder shall not in any way relieve the KYL of responsibility for the technical adequacy or accuracy thereof. Neither the County's review, approval, or acceptance, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The County shall make a good faith effort to review materials in an expeditious manner; provided, however, that the County shall have a minimum of thirty (30) calendar days to review and provide comments on plans, drawings, specifications, reports, construction or other products. The County typically completes its review within forty-five (45) calendar days.
- 2.14.3 The warranty-related remedies provided in this *Section 2.14* are in addition to any other rights or remedies provided elsewhere in this Agreement or by applicable law.

SECTION 3. CONSTRUCTION OF FACILITY

- 3.0 CAPITAL IMPROVEMENTS. KYL will raise and invest a minimum of \$1.8 million for the development and construction of the Facility on the Site. . If KYL does not demonstrate to Parks' satisfaction, within one-hundred and eighty (180) days after the Effective Date, that KYL has placed in escrow for the development and construction of the Facility on the Site \$1.8 million of cash or cash equivalents, this Agreement will then automatically terminate. KYL will serve as the supervisory not-for-profit corporation for development and construction of the Facility. KYL 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 the King County Parks Community Partnerships

Grants project manager KYL understands, acknowledges, and agrees that it may not undertake or commence any construction activities on the Site until KYL can demonstrate to Parks' satisfaction that KYL has obtained and has in hand all \$1.8 million of cash or cash equivalents. 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.** KYL shall be entitled to exclusive possession and use of that portion of the Site designated for development and construction of the Facility during the design, development, and construction phases. This right of exclusive possession and use by KYL is subject to King County's entry, inspection, acceptance, and audit rights under **Sections 2.12, 2.13, 4.13, 5.11, and 5.12** of this Agreement.
- 3.2 **DESIGN.** KYL 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 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 Facility, consistent with established King County zoning, design code, or both.
- 3.3 **CONSTRUCTION/SITE WORK/FENCING.** KYL will be solely responsible for the site work, required permits, and grading at the Facility. KYL 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. KYL will be responsible for site security, traffic, and pedestrian warnings at the Facility during the development and construction phases.
- 3.4 **CONSTRUCTION DEADLINES.** KYL is required to complete the development and construction of the Facility within one (1) year from the date that KYL receives all funding, in-kind contributions, and the permits necessary to commence construction on the Facility. KYL shall act in good faith and make all reasonable efforts to expedite the obtaining of necessary permits.
- 3.5 **RELOCATION OF UTILITY LINES.** KYL 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 Facility.
- 3.6 **ALTERATION OF SITE OR FACILITY AFTER CONSTRUCTION.** After the Facility is completed and accepted by Parks and KYL, as defined herein, KYL will not make any material alteration to the Site or to the Facility, including any changes to the landscaping, without express, written consent by Parks.

- 3.7 DEVELOPMENT AND CONSTRUCTION FEES AND EXPENSES. KYL will be responsible to obtain and pay for all necessary permits, fees, and expenses associated with the development and construction of the Facility.
- 3.8 PUBLIC WORKS LAWS. To the extent applicable, KYL 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). KYL 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, KYL understands, acknowledges, and agrees that before beginning construction of the Facility on the Site, KYL 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 Facility construction contract (\$1.8 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. KYL must notify the surety of any changes in the work. KYL must promptly furnish additional bond security to protect King County and persons supplying labor or materials required to construct the 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 Facility increases beyond the bond amount.
- 3.9 CONTRACTOR AND PROFESSIONAL CONSULTANT INDEMNIFICATION AND HOLD HARMLESS. KYL will require its professional consultants, construction contractors and sub consultants/contractors 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 resulting from the their officers, employees, agents and/or sub consultants/contractors performance or failure to perform this Contract, to the maximum extent permitted by law.

In the event it is determined that R.C.W. 4.24.115 applies to this Contract, the Consultant/Contractor agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of their negligence. Consultant/Contractor agrees to defend, indemnify, and hold harmless the County for claims by their employees and agrees to waiver of their immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

- 3.10 Minimum Scope and Limits of Insurance. KYL will require its construction contractors to procure and maintain 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.

- A. General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering COMMERCIAL GENERAL LIABILITY. \$1,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
 - B. Explosion & Collapse, Underground Damage (XCU). Coverages shall apply for the same limits as the General Liability. Evidence of Insurance must specifically state coverage has not been excluded.
 - C. Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9. \$1,000,000 combined single limit per accident.
 - D. Workers’ Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or “other States” State Law.
 - E. Employer’s Liability or “Stop Gap”. Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy \$1,000,000 Limit.
- 3.11 BUILDER'S RISK INSURANCE. KYL will require its construction contractors to procure and maintain, for the duration of the Construction Phase of the 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 Facility with no coinsurance provisions. Builder’s risk insurance will be on an all-risk policy form at least as broad as ISO form number CP0020 (Builder Risk Coverage 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 off-site storage and property in transit. The coverages shall insure for direct physical loss to property of the entire construction project, for one-hundred percent (100%) of replacement value of the entire construction project. The policy shall be endorsed to cover the interests, as they may appear of King County, contractor and subcontractors. The Builders Risk insurance will be maintained until final acceptance of the work by KYL and Parks.
- 3.12 PROFESSIONAL ERRORS AND OMISSIONS. KYL must require its professional service providers to carry insurance meeting all requirements set forth in **Section 3.10** of this Agreement. In addition, KYL 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. KYL must require its professional service providers to provide copies of all insurance certificates or insurance policies to King County upon request.

- 3.13. SUBCONTRACTORS. KYL 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, KYL 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. KYL 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 or Notice to Proceed is issued, KYL 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 KYL 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 and Professional) are to be endorsed to:
- Name "King County, its officers, officials, agents and employees" as additional insured with respect to use and development 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 KYL's or its consultants/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 thirty (30) days prior written notice to King County.

- 3.17 **WAIVER OF SUBROGATION.** KYL will cause its consultants/contractors and subconsultants/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 **Section 3** of this Agreement, KYL 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 KYL or King County.
- 3.18 **INSURANCE PROVISIONS ARE MATERIAL TERMS.** By requiring such minimum insurance as described in this **Section 3**, King County shall not be deemed or construed to have assessed the risks that may be applicable to KYL under this Agreement. KYL shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Nothing contained within this **Section 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 **Section 3** shall effect and/or alter the application of any other provision contained within this Agreement. Failure by KYL, its agents, employees, officers, and/or subcontractors to comply with these insurance requirements shall constitute a material breach of this Agreement.

SECTION 4. USE OF FACILITY

- 4.0 **NON-EXCLUSIVE LICENSE.** In recognition that KYL shall invest substantial funds to design, develop, construct, and provide supplemental maintenance for the Facility at the Site, for the duration of the Term KYL is granted a non-exclusive license to use the Facility by Parks on a first priority basis consistent with the terms and conditions set forth in Exhibit B to this agreement.
- 4.1 **STEWARDSHIP.** KYL must be a good steward of the Facility and Site. All approved activities and use by KYL shall be considerate of the capital, programmatic, and environmental value of the Facility and Site to the greatest extent possible. All approved construction, maintenance, and other modifications by KYL shall strictly adhere to all applicable environmental laws and regulations at all times.
- 4.2 **FACILITY USE POLICY.** Parks and KYL shall mutually develop and implement a Good Neighbor/Facility Use Policy (Exhibit C) (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 Facility and/or integrated into print materials or websites pertaining to facility use.

Mitigation efforts for traffic, noise, parking, or other neighborhood impacts shall be thorough, ongoing, and in good faith.

- 4.3 **FACILITY PROGRAMMING.** KYL shall have first priority for use of the Facility. All costs associated with KYL's programming and use of the Facility will be the responsibility of KYL. All non-KYL use of the Facility shall be scheduled by and through Parks, the cost of which shall be Parks' responsibility. By January 15 of each calendar year, KYL shall provide Parks with a master schedule (hereinafter "KYL Master Schedule") of its anticipated use for that year (e.g., hours and days of use) in order that Parks may schedule Facility use by others around KYL's reserved use. The Parties recognize that the KYL Master Schedule may require periodic supplementation to accommodate KYL's changing practice needs and game schedules. At the beginning of each month (or earlier, if the need for schedule changes is known), KYL shall timely provide Parks with a revised monthly schedule if KYL's anticipated field use will deviate from the KYL Master Schedule. Any requested modifications to the KYL Master Schedule shall be approved by Parks unless (i) the request is unreasonable or (ii) the time requested by KYL is already scheduled by Parks for non-KYL use and cannot be reasonably re-scheduled. The Parties agree to coordinate in good faith with respect to all scheduling of the Facility.
- 4.4 **USE.** Use of the Facility shall be limited to providing programming and other activities for approved users as follows:
- A. Lacrosse;
 - B. Soccer;
 - C. Other approved sports that are appropriate for synthetic fields; and
 - D. Other approved activities that are appropriate for synthetic fields.
- 4.5 **INCIDENTAL USES.** KYL may conduct tax-exempt fundraising activities to support the Site, the Facility, and KYL'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 Facility. Such activities shall be shown on KYL's Master Schedule.
- 4.6 **SECURITY AND NUISANCE DURING USE.** KYL will take reasonable precautions to secure the Facility during use by KYL. KYL will use the Site and the 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.
- 4.7 **SITE MAINTENANCE PLAN.** Parks shall operate and maintain the Site upon final acceptance of the Facility improvements that KYL will construct.
- 4.8 **PERFORMANCE REPORT.** At the end of each calendar year during the Term, KYL shall furnish the Community Partnerships Grants project manager with a summary of the prior year's use by KYL for approved activities on the Site or at the Facility.

- 4.9 LIMITED USE. KYL shall use the 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 KYL activities may be allowed on a case-by-case basis with prior written approval of Parks, which shall not be unreasonably withheld.
- 4.10 SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by KYL nor allowed by KYL to be exhibited, inscribed painted, or affixed on any part of the Facility without the prior written approval of Parks, which shall not be unreasonably withheld. All new Facility and/or Site signs shall follow the King County Sign System Guide and shall be manufactured and installed by King County, unless KYL receives prior written approval from Parks to do otherwise. Written approval shall be requested through Parks' liaison. If KYL violates this provision, Parks may remove the sign without any liability and may charge the expense incurred by such removal to the KYL. 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.
- 4.11 RIGHT TO INSPECT. King County at its discretion reserves the right to review and approve KYL's use of the Facility and compliance with this Agreement. If Parks does not approve of KYL's use and compliance, Parks will timely notify KYL in writing of the specific items that Parks deems objectionable. KYL 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.
- 4.12 MINIMUM SCOPE AND LIMITS OF INSURANCE FOR KYL. In addition to insurance requirements set forth in **Section 3** that are applicable to the Design and Construction Phase, KYL will at a minimum procure and maintain insurance throughout the duration of this Agreement that covers KYL's activities and usage of the Facility and Site as follows:
- 4.12.1 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.
- 4.12.2 AUTOMOBILE LIABILITY. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$1,000,000 combined single limit per accident.
- 4.12.3 WORKERS' COMPENSATION - STATUTORY REQUIREMENTS OF THE STATE OF RESIDENCY. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

- 4.12.4 EMPLOYER'S LIABILITY OR "STOP GAP". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy \$1,000,000 Limit.
- 4.12.5 Property Insurance. KYL shall maintain direct risk of physical loss property coverage at full replacement value for all facilities and improvements at subject site. The policy shall be endorsed to cover the interests, as they may appear of King County.
- 4.13 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 KYL.
- 4.14 OTHER INSURANCE PROVISIONS. The insurance policies required by *Section 4* of this Agreement shall also contain or be endorsed to contain the following provisions where applicable:
 - 4.14.1 LIABILITY POLICIES.
 - 4.14.1.1 Each insurance policy will be written on an "occurrence" form.
 - 4.14.1.2 King County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities and usage of the Facility and Site.
 - 4.14.1.3. KYL'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 KYL's insurance or benefit KYL in any way.
 - 4.14.2 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 thirty (30) days' prior written notice has been given to KYL and Parks.
- 4.15 ACCEPTABILITY OF INSURERS. Unless otherwise approved by Parks, the following provisions apply exclusively to KYL's activities and usage of the Facility and Site during the duration of this Agreement:
 - 4.15.1 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.

- 4.15.2 If at any time any of the foregoing policies fail to meet the above minimum standards, then KYL 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.
- 4.16 WAIVER OF SUBROGATION. KYL 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. KYL 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 KYL or King County.
- 4.17. INSURANCE LIMITS AND DOCUMENTATION.
- 4.17.1. 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. KYL will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.
- 4.17.2. KYL 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 KYL'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.
- 4.18. KING COUNTY INSURANCE.
- 4.18.1 LIABILITY EXPOSURE. KYL 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 KYL with at least thirty (30) days prior written notice of any change in its self-insured status and will upon request provide KYL with a letter of self-insurance as adequate proof of insurance.

SECTION 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
201 South Jackson St, Suite 701
Seattle, WA 98104-3855
Email: tj.davis@kingcounty.gov
Phone: 206-263-6214

If to KYL:

Steve Lytle
Kirkland Lacrosse Club
8251 NE Juanita Drive
Kirkland, WA 98034
Email:
Phone:

5.2 NONDISCRIMINATION. KYL 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. KYL does not anticipate hiring any employees to develop the Facility or otherwise perform its obligations under this Agreement. If KYL should elect to do so, however, KYL agrees not to discriminate against any employee or applicant for employment because of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide 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 race, color, age, gender, marital status, sexual orientation, religion, ancestry, national origin, disability or use of a service or assistive animal by an individual with a disability, unless based upon a bona fide contractual qualification. Youth lacrosse rules permit girls playing on boys' teams. Neither KYL nor its component teams will reject a girl who wishes to participate. KYL promotional materials, including its website, shall state that KYH does not discriminate in providing services for youth. 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. KYL shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.
- 5.3 ASSIGNMENT. KYL 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 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 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. KYL 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. KYL further understands that pursuant to Ordinance No. 14509, additional subject-matter restrictions on advertising may be imposed by the Director of the King 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, KYL 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. KYL 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 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 KYL's use of the Site or the 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. KYL agrees to pay on a current basis all applicable taxes or assessments levied on its activities; PROVIDED, however, that nothing contained herein will modify KYL's right to contest any such tax, and KYL 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 KYL LIENS. KYL 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 Facility, or to charge fees for any claim in favor of any person or entity dealing with KYL, 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 KYL from its obligations under this Agreement, require KYL 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. KYL will pay to King County upon demand any sum paid by King County to remove the liens. Further, KYL 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 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 Facility.
- 5.11 RECORDS, AUDITS AND INSPECTIONS. During this Term of this Agreement, KYL'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 Facility during KYL'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 Facility.
- 5.13 COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Facility, KYL 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). KYL 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 KYL.
- 5.15 PERMITS AND LICENSES. KYL 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 Facility shall be at KYL's sole risk, and King County will not be liable for any damage done to, or loss of, such personal property. However, KYL will not be responsible for losses or claims of stolen property during King County-scheduled use of the Site or the Facility by persons or entities other than KYL.
- 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 KYL 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 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 KYL 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. KYL may not, however, assert such a claim to the extent that KYL creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of KYL performing construction activities on the Site, changing the configuration of the Site, or changing the use of the Site.
- 5.17.4 If KYL 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. KYL 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, KYL is an independent contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of King County for any purpose. KYL 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 KYL, its employees, subcontractors, and/or others by reason of this Agreement.
- 5.19 INDEMNIFICATION AND HOLD HARMLESS.
- 5.19.1 KYL 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) KYL's failure to pay any compensation, wages, benefits, or taxes in connection with or support of the performance of this Agreement; and/or (2) KYL's failure to pay for work, services, materials, or supplies to KYL employees or other KYL suppliers in connection with or support of the performance of this Agreement.
- 5.19.2 KYL 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 KYL, 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 KYL 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 KYL's use of the Site or Facility under this Agreement. KYL'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 KYL's expense for claims that fall within this *Section 5.19*;
- 5.19.3.2 Indemnification of claims, including those made by KYL'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 KYL.
- 5.19.3.4 KYL 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 KYL's subcontractor(s), its officers, employees, and/or agents in connection with or in support of this Agreement.
- 5.19.3.5 KYL 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, KYL, 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 and are subject to approval by ordinance.
- 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 KYL and the Community Partnerships Grants program manager from Parks shall meet in person, within four (4) days of the dispute arising, and work to resolve the dispute. KYL 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 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 KYL shall invest substantial funds to develop the 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 in addition to Automatic Termination as provided in Section 3.0, above, 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 KYL in this Agreement, and the performance thereof by King County will not constitute a waiver of KYL's default. King County will not in any event be liable for inconvenience, annoyance, and disturbance in its activities on the Site or the Facility, provided that King County will not intentionally permit a loss of business or other damage to KYL by reason of King County's actions pertaining to the Site or the Facility.

5.23.1.2 PAYMENTS TO OTHER PARTIES. Except as expressly provided hereunder, all obligations of KYL under this Agreement will be performed by KYL at KYL's sole cost and expense. If KYL fails to pay any sum of money owed to any party other than King County for which KYL is liable hereunder, or if KYL 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 KYL from its obligations, make any such payment or perform any such other act to be made or performed by KYL. Thereafter, on written demand by King County, KYL 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 KYL. KYL understands, acknowledges, and agrees that King County is under no obligation to make any payment on behalf of KYL.

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 KYL, 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 KYL's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

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

(1) KYL 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 KYL's breach is such that more than sixty (60) days are reasonably required for cure, then KYL will not be in default if KYL 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

(3) KYL 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 KYL's estate and such appointment is not vacated within sixty (60) days; or

(4) If this Agreement is assigned or the Site or the Facility is used by KYL for activities other than in accordance with the terms of this Agreement, and such default is not cured within thirty (60) days after written notice from King County to KYL; or

(5) KYL 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 (60) days after mailing of written notice thereof by King County.

5.23.3 TERMINATION FOR CHANGE IN KYL STATUS. King County may terminate this Agreement without penalty or liability if, at any time during the Term of this Agreement, KYL 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; that King County will not terminate the Agreement under this **Section 5.23.3** if KYL reasonably 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 KYL TERMINATION. KYL may terminate this Agreement for any reason upon twelve (12) months notice in writing to King County. In this event KYL shall not be entitled to any compensation from King County for capital improvements made by KYL 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 KYL. In this event KYL shall be entitled to reasonable compensation from King County for capital improvements made by KYL to the Site with due regard for the funds invested by KYL, KYL debts remaining to be paid relating to the Facility, the fair market value of the Facility at the time of termination, and the length of time KYL has had use of the 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 Facility are destroyed or injured by fire, earthquake, or other casualty during the Design and Construction Phase, then KYL will proceed to rebuild and restore the Site and the 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, KYL will use the proceeds of such insurance policies first to rebuild and then to restore the Site and the 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 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 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 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, KYL will remove from the Site and the Facility all its personal property, goods, and effects. If KYL fails to perform this duty at termination, Parks may cause such removal to be made and KYL's personal property, goods and effects to be stored, the cost and expense to be paid by KYL. It is understood and agreed that the real property constituting the Site and the 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 KYL's design, construction, or use of the Site or the 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 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 Facility is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then KYL 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 Facility with the compensation thereof awarded solely to KYL.
- 5.26.2 NON-TERMINATION. If any part of the Site or the 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 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 Facility, or this Agreement, or any of them, will belong to and be apportioned between KYL and Parks in accordance with their respective interests under this Agreement as determined between them or by a court. Additionally, KYL 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 KYL. King County

will have no claim to condemnation proceeds attributable to KYL's interest in the Facility, nor will KYL 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, KYL shall remove any and all of its portable improvements at the Facility. If improvements include non-portable fixtures, such improvements shall inure to the benefit of King County and shall remain at the 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 Seattle, Washington.
- 5.31 RIGHT TO PARTICIPATE IN LITIGATION. KYL will have the right to participate in any litigation, arbitration, or dispute directly affecting the Site, the Facility, or interest of KYL 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 KYL of the same.
- 5.32 EXHIBITS.
- A. Description and Map of Site and Facility
 - B. Facility Use Schedule
 - C. Facility Use Rules / Good Neighbor 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 KYL. 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.

Kirkland Youth Lacrosse

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

By _____

By _____

TITLE _____

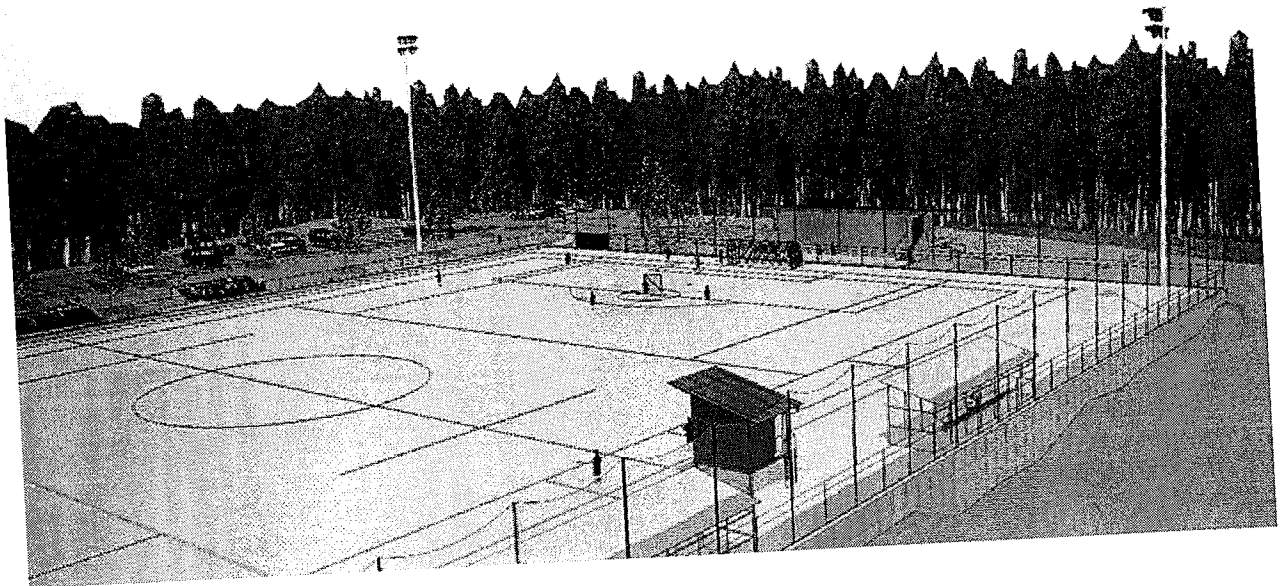
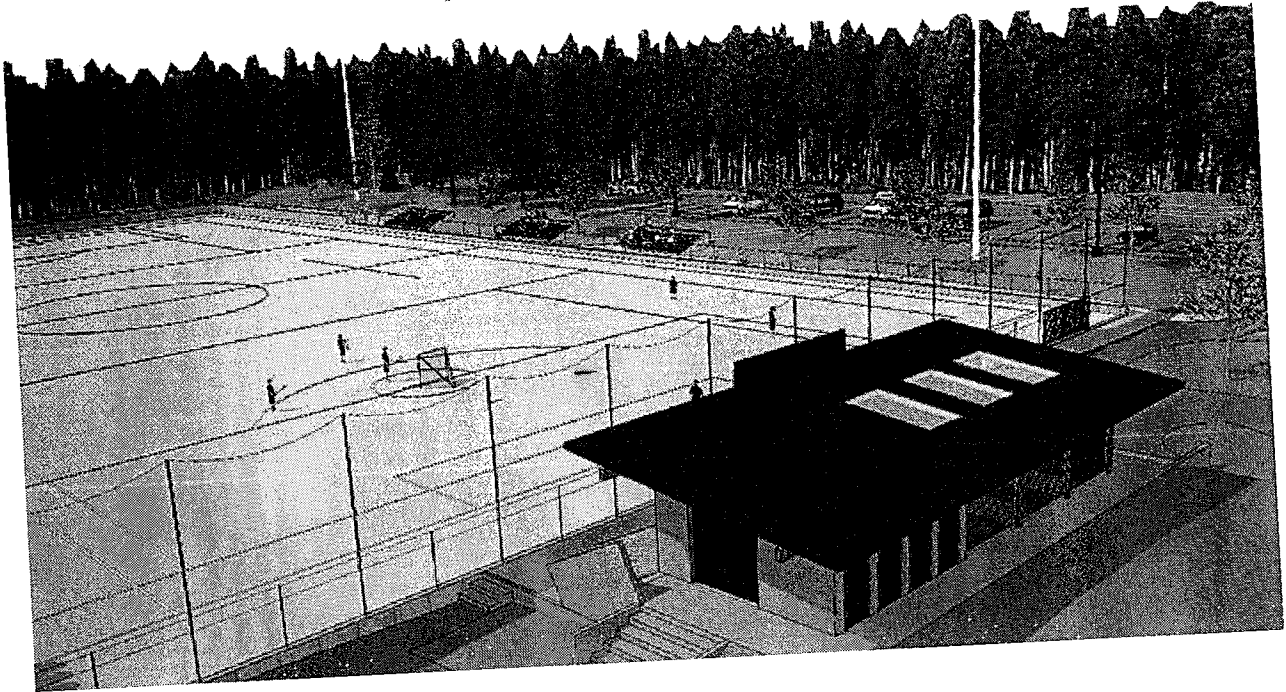
TITLE _____

Date _____

Date _____

—

EXHIBIT A
Description and Map of Site and Facility



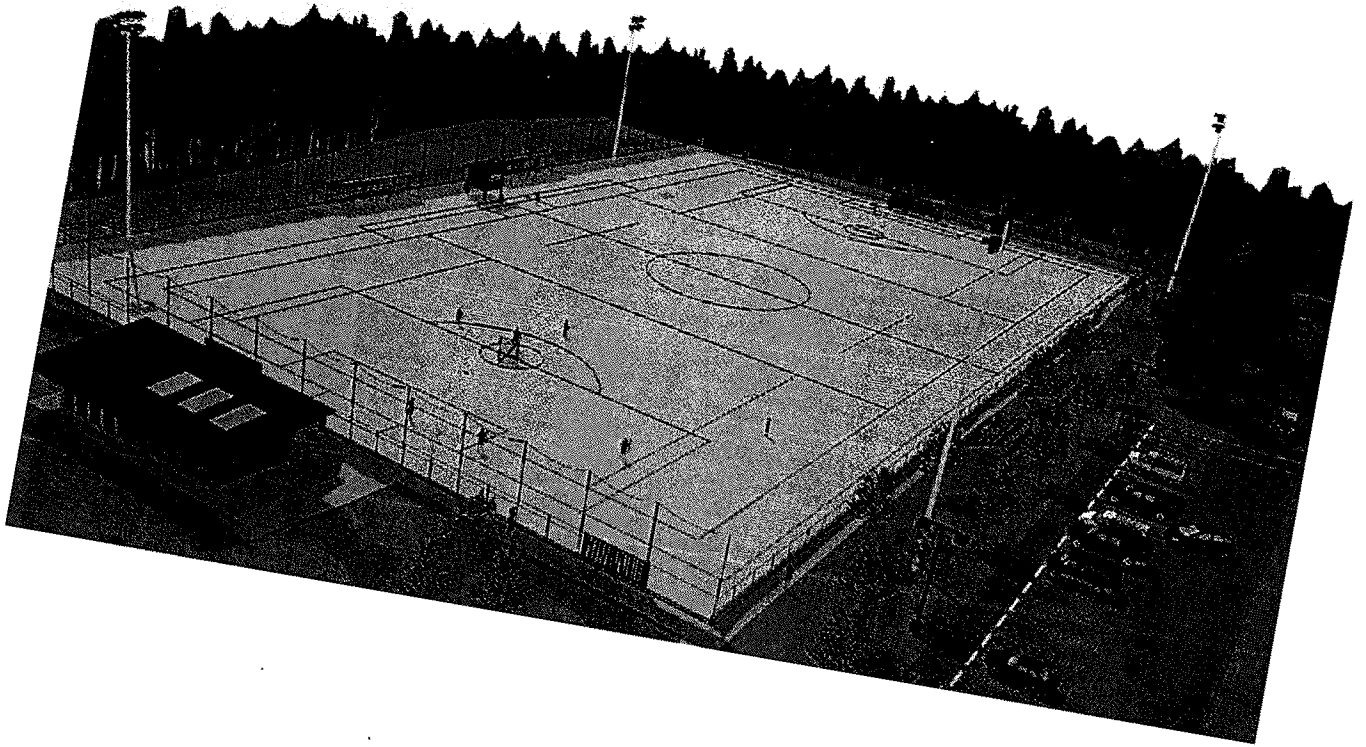


Exhibit B
Facility Public Use Schedule

For purposes of scheduling, King County Parks has determined that this field will primarily serve local public youth lacrosse and local public youth soccer. King County also recognizes that public youth sports users and their respective teams are organized by service boundaries. The Big Finn Hill Synthetic Field is within the public youth sports service boundaries of Kirkland Lacrosse and Lake Washington Youth Soccer Association whom together represent over 90 percent of the public sports field users in the surrounding service area (about 8,000 public users). As the primary local public users Kirkland Lacrosse and Lake Washington Youth Soccer and their respective local youth sports teams will receive first priority in scheduling with local public youth lacrosse receiving priority during the typical lacrosse season and local public youth soccer user getting priority the rest of the year. Additional public youth sports groups from outside the service boundaries and public adult sports groups will receive second priority.

The typical annual use schedule shall be delineated as stated below. Not all of these hours will necessarily be scheduled, but this reflects the typical hours available for various public uses within the various public recreation seasons. **General public drop-in use is available any time during the day that the field is not otherwise scheduled.** Any organized use and/or use requiring lights require formal scheduling and associated public use fees through the regional scheduling office. Scheduled uses must include pre and post game buffers and switchovers. Additional appropriate public field uses such as rugby, football, ultimate Frisbee, other field sports will also be scheduled by the King County Parks regional scheduling office as the prioritized schedule allows.

January 15 – February 1: Public youth lacrosse (Pre-season 1 middle school and high school) and Public Youth Soccer (Winter Season)

- Monday - Friday:
 - General public drop in use from 8am to 5pm (unless otherwise scheduled)
Scheduled public youth lacrosse practices from 5pm to 7pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 7pm to 11pm*
- Saturdays:
 - Scheduled public youth soccer games 8am to 8pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 8pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled
- Sundays:
 - Scheduled public youth soccer games from 8am to 8pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 8pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled

February 1 – March 1: Public youth lacrosse (Pre-season 2 – All Youth) and Public Youth Soccer (Winter Season)

- Monday - Friday:
 - General public drop in use field use from 8am to 5pm (unless otherwise scheduled)
 - Scheduled public youth lacrosse practices from 4pm to 8pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 8pm to 11pm*
- Saturdays:
 - Scheduled public youth soccer games 8am to 8pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, from 8pm to 11pm
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled*
- Sundays:
 - Scheduled public youth soccer games from 8am to 8pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 8pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled

March 1 - May 30: Public Youth Lacrosse (Primary Season) / Public Youth Soccer (Spring Season)

- Monday - Friday:
 - General public drop in use field use, 8am to 4pm (unless otherwise scheduled)
 - Public youth lacrosse practice from 4pm to 10pm
- Saturdays:
 - Scheduled public youth lacrosse games from 8am to 8pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 8pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled
- Sundays:
 - Scheduled public youth soccer games from 8am to 7pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 7pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled

May 30 - June 21: Public Youth lacrosse (Post-Season) / Public Youth Soccer (Spring Season)

- Monday - Friday:
 - General public drop in use field use, from 8am to 4pm (unless otherwise scheduled)
 - Scheduled public youth lacrosse practice from 4pm to 8pm
 - Scheduled public adult soccer, lacrosse, or other appropriate field use 8pm to 11pm
- Sundays:
 - Scheduled public youth soccer games from 8am to 7pm
 - Scheduled adult soccer, lacrosse, or other appropriate field use, 7pm to 11pm*

- General public drop-in use is available any time during the day that the field is not otherwise scheduled

June 21 - August 7: Public Youth Lacrosse and Public Youth Soccer (Summer Season and Camps)

- Monday - Friday:
 - General public drop in use field use, from 8am to 4pm (unless otherwise scheduled)
 - Scheduled public youth lacrosse camps (3-4 per summer), 9am - 3pm
 - Scheduled public youth soccer camps (2-3 per summer), 9am - 3pm
 - Scheduled public youth soccer practices, 10am - 8pm
 - Scheduled public adult soccer, lacrosse, or other appropriate field use, 8pm to 11pm*
- Saturday:
 - Scheduled public youth soccer games, 10am - 6pm
 - Scheduled public adult soccer, lacrosse, or other appropriate field use, 8am - 10am and 6pm - 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled
- Sunday:
 - Scheduled public youth soccer games, 9am - 7pm
 - Scheduled public adult soccer, lacrosse, or other appropriate field use, 7pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled

August 7 - November 24 Public Youth Lacrosse and Public Youth Soccer (Fall Season:

- Monday - Friday:
 - General public drop in use field use, 8am to 4pm (unless otherwise scheduled)
 - Scheduled public youth soccer practices, 4pm to 9:30pm
 - Scheduled public adult soccer, lacrosse, or other appropriate field use, 9:30-11pm*
- Saturday:
 - Scheduled public youth soccer games, 8am to 8pm
 - Scheduled public adult soccer, lacrosse, or other appropriate field use, 8pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled
- Sunday:
 - Scheduled public youth soccer games, 8am to 7pm
 - Scheduled public adult soccer, lacrosse, or other appropriate field use, 7pm to 11pm*
 - General public drop-in use is available any time during the day that the field is not otherwise scheduled

November 24 – January 15 Public youth soccer (Holiday Season):

- General public drop in use field use, 8am to 4pm (unless otherwise scheduled)
- Scheduled public youth or adult, soccer, lacrosse, or other appropriate field use 4pm to 11pm

To the extent possible, the master schedule for all user groups for the entire year shall be submitted by January 15th. Kirkland Lacrosse and Lake Washington Youth Soccer will coordinate their public use schedules prior to submitting to the King County regional scheduling office. All additional times outside of the scheduled public uses jointly requested by Kirkland Lacrosse and Lake Washington Youth soccer will be scheduled by the King County Parks regional scheduling office on a first come, first serve basis per the regional scheduling policies. Use fees and fee consideration for facility investments will be estimated on an annual basis and administered quarterly.

**The system wide King County policy for lit fields is lights-off at 11pm. Use of lights at this field from 10pm to 11pm is conditional upon compliance with Kirkland Noise Ordinances after 10pm. The field will only be available for public use with lights until 11pm upon successful demonstration of compliance as determined by the City of Kirkland through an independent onsite noise study with field measurements (paid for by King County). If typical public use of the field after 10pm does not comply with Kirkland Noise ordinances then the field will be closed at 10pm and the publicly schedulable hours will be adjusted accordingly.*

EXHIBIT C
Facility Use Rules / Good Neighbor Policy

DRAFT – To be finalized once SEPA/permit conditions are finalized and Kirkland ordinances related to operations are applied upon facility completion and occupancy. On site signage will be produced and installed depicting finalized facility use rules. Facility use rules shall also be included in all user rental agreements

- No gum is allowed on any of the turf surfaces by players, coaches, or fans.
- No seeds (sunflower, peanut, etc.) are allowed on any of the turf surfaces by players, coaches, or fans.
- No metal cleats are allowed on the turf surface.
- No high-heeled shoes are allowed on the turf surface.
- No soda is allowed on any of the turf surfaces by players, coaches, or fans.
- No Gatorade or other sugary drinks allowed on turf surface.
- No golfing is allowed on the turf surface
- No pets are allowed on the turf surface
- No folding chairs or outdoor furniture are allowed on the turf surface.
- No smoking or tobacco products of any kind are allowed on the turf surface
- No tent stakes are allowed on the turf surface
- No air horns are allowed at the field
- No amplified sound is allowed at the field
- Use of car stereos is prohibited in the parking lot.
- During scheduled uses, only coaches, players, or referees are allowed on the turf surface (inside the fence).
- All children must be supervised for their own safety
- All park users are prohibited from accessing bioswale, stormwater pond, or other stormwater facilities around the field and throughout the park.
- Organized field use must be scheduled through the regional scheduling office, but drop-in use is allowed if there are no scheduled uses
- Field users must remain in the field area after dusk. The remainder of park is closed after dusk

- Lights are centrally automated based on scheduled uses and will shut off 15 minutes after end of scheduled use for egress safety.
- Parking in designated areas only / no parking after closing time
- Parking in surrounding neighborhood is strictly prohibited; field users are required to use the public parking lot adjacent to the field or the public parking on other side of park.
- Car pooling is strongly encouraged to reduce traffic in and around the park
- Dogs and / or domestic animals must be kept on a leash no greater than 8'
- Dogs and / or domestic animals feces are to be removed from park
- Cutting, picking, or destruction of plant life on King County property is prohibited
- Removal of any county property prohibited
- Unauthorized possession of firearms or weapons is prohibited
- Household and / or commercial garbage dumping prohibited
- Overnight camping is prohibited throughout the park
- Model aircraft and rockets are prohibited on the turf surface and throughout the park
- All fireworks are prohibited on the turf surface and throughout the park
- Alcoholic beverages prohibited in the park

**Memorandum of Understanding
Big Finn Hill Park Field Conversion**

This Memorandum of Understanding ("MOU") is entered into between the City of Kirkland (the "City") and King County ("County"). The City and the County are also referred to herein collectively as the "Parties."

WHEREAS, Big Finn Hill Park is located in the Juanita/Finn Hill/Kingsgate ("JFK") Annexation Area, which was annexed by the City effective June 1, 2011; and

WHEREAS, prior to the effective date of the JFK Annexation, Big Finn Hill Park was part of unincorporated King County; and

WHEREAS, after the effective date of the JFK Annexation, Big Finn Hill Park will remain owned and operated by King County; and

WHEREAS, prior to the effective date of the JFK Annexation, Kirkland Youth Lacrosse ("KYL") applied for a grading permit to convert existing grass fields in Big Finn Hill Park to synthetic turf fields and to install field lights (the "Project"); and

WHEREAS, the County issued a notice of proposed Determination of Non-Significance ("DNS") under RCW Chapter 43.21C, the State Environmental Policy Act ("SEPA"); and

WHEREAS, the City and the County entered into a Development Services Interlocal Agreement in which the Parties allocated responsibility for the processing of building, grading and land use permits; and

WHEREAS, the City is responsible under the Interlocal Agreement for being lead agency with respect to SEPA determinations; and

WHEREAS, the City is responsible under the Interlocal Agreement for determining whether permits filed with the County prior to the effective date of annexation are vested; and

WHEREAS, the Parties to this MOU would like to allocate responsibilities for the continued processing of the Big Finn Hill field conversion project and clarify roles, responsibilities and the approximate timeframes under which the application will continue to be processed.

NOW, THEREFORE, it is hereby understood and agreed between the Parties as follows:

1. SEPA Lead Agency Status. Pursuant to WAC 197-11-942, the Parties hereby agree that the City shall assume SEPA lead agency status and administer the SEPA process for the Project pursuant to the City's SEPA regulations.

2. Vesting of Grading Permit. KYL submitted a grading permit for the Project to the County on May 27, 2011 and provided additional information with respect to field lighting to the County on May 31, 2011. After reviewing the application materials and consulting with the County, the City determines and agrees that the grading permit is complete, including the lighting to be provided, as of May 31, 2011.


3. SEPA Process. The County issued a proposed DNS and received comments through July 21, 2011. As lead agency, the City will issue a SEPA threshold determination pursuant to its SEPA regulations (Kirkland Municipal Code ("KMC") Chapter 24.02). Because the City's SEPA regulations call for comments or appeals to be filed after issuance of the threshold determination, the Parties understand that there will be a comment and appeal period following the City's issuance of a threshold determination. See KMC 24.02.160 and 24.02.230.


4. Process and Scheduling. The County will respond to comments on the County's proposed DNS, including comments received from the City, prior to turning over SEPA documents to the City. Once received, the City will confirm all information is available to prepare the SEPA threshold determination. The determination will be issued in a timely manner once all information is received. The comment and appeal period will follow. When the SEPA process is complete, the grading permit will be issued by the City.

Agreed to and accepted this 28th day of September, 2011

KING COUNTY

CITY OF KIRKLAND

By: 
Its: Director

By: 
Its: Planning Director