



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 24, 2012

Ordinance 17383

Proposed No. 2012-0084.2

**Sponsors Phillips, Patterson, Dunn, von
Reichbauer, Ferguson and Hague**

1 AN ORDINANCE authorizing the King County executive
2 to execute a ten-year use agreement with Kent Youth
3 Soccer Association, a Washington nonprofit corporation,
4 for the use of two synthetic turf soccer fields located at the
5 Petrovitsky park in King County, Washington.

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. Findings:

8 A. King County, a home rule charter county and political subdivision of the state
9 of Washington, is the owner of Petrovitsky park, located at 16400 Petrovitsky Road SE
10 Renton, WA 98058, and described and depicted with greater particularity in Attachment
11 A to this ordinance.

12 B. The Kent Youth Soccer Association ("KYSA") is a not-for-profit Washington
13 corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code.
14 KYSA is a community-based, open-membership club organized to provide public
15 opportunities for youth soccer, and is a member in good standing with the Washington
16 State Youth Soccer Association.

17 C. KYSA has the experience, ability and resources to develop synthetic sports
18 fields and associated facilities at Petrovitsky park.

19 D. The parks and recreation division of the department of natural resources and
20 parks has determined that synthetic soccer fields located at Petrovitsky park will have
21 significant regional or rural, or regional and rural, public recreation value.

22 E. Ordinance 14509 authorizes the department of natural resources and parks to
23 create new public recreation opportunities by empowering user groups, sports
24 associations and community organizations to develop mutually agreed upon capital
25 improvements for public recreation facilities on King County land, and thereby address
26 either or both regional and rural recreation needs without increasing tax-funded
27 operations and maintenance costs. In 2011, King County and KYSA entered into an
28 agreement for the design, development, permitting and construction of the soccer facility
29 on the site.

30 F. KYSA has proceeded under the provisions of that agreement and has
31 completed construction of the facility.

32 G. Allowing KYSA priority use and field use fee credits to allow it to provide
33 youth soccer services on soccer fields at Petrovitsky park, will serve to implement the
34 policy goals established in Ordinance 14509.

35 G. In accordance with K.C.C. 4.56.150.E, the King County council may adopt an
36 ordinance permitting the county to enter into agreements for the use of county property
37 with bona fide nonprofit organizations if the property is to be used by the nonprofit
38 organization to make improvements to the county property or to provide services that will
39 benefit the public. The agreements are exempt from the requirements of fair market
40 value, appraisal and notice.

41 H. The parks and recreation division is willing to allow KYSA to use the soccer
42 fields at Petrovitsky park under the terms and conditions set forth in Attachment A to this
43 ordinance, and to give KYSA scheduling priority over a term of ten years pursuant to
44 Section 2.2 of Attachment A to this ordinance.

45 SECTION 2. The King County executive is hereby authorized to sign a use agreement,
46 substantially the same as Attachment A to this ordinance, with the Kent Youth Soccer

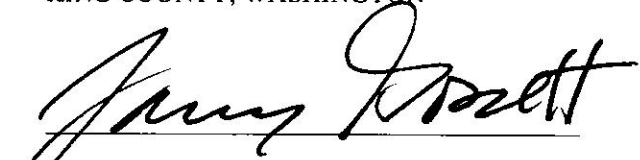
47 Association, for the use, of two synthetic turf soccer fields located at Petrovitsky park in King
48 County, Washington.

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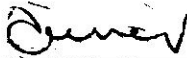
Ordinance 17383 was introduced on 3/5/2012 and passed by the Metropolitan King
County Council on 7/23/2012, by the following vote:

Yes: 8 - Mr. von Reichbauer, Mr. Gossett, Ms. Hague, Ms. Patterson,
Ms. Lambert, Mr. Ferguson, Mr. Dunn and Mr. McDermott
No: 0
Excused: 1 - Mr. Phillips

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 3 day of AUG., 2012.



Dow Constantine, County Executive

Attachments: A. 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, dated July 17, 2012



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

This Use 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 of two (2) synthetic turf soccer fields (hereinafter “Soccer Facility” or “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 Road SE, Renton, WA 98058, and described and depicted with greater particularity in Attachment A to this Agreement.
- 1.2 KYSA is a non-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 King County has long identified soccer fields as a regional or rural recreation need in King County, and has determined that soccer fields located at the Site have a significant and unique regional and/or rural public recreation value.
- 1.4 King County Ordinance No. 14509 authorized the Department of Natural Resources and Parks to create new public recreation opportunities by empowering user groups, sports associations, and community organizations, like KYSA, 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.

- 1.5 KYSA has the experience, ability, and resources to develop synthetic sports fields for soccer and other athletic and recreational uses at the Site. Recognizing this, in 2011 King County and KYSA entered into an agreement for the design, development, permitting, and construction of the Soccer Facility on the Site. The total market cost for construction of the Facility was \$2.1 million.
- 1.6 King County Code sections 4.56.150(E) and (F) authorize the Department of Natural Resources and Parks to enter into use agreements with non-profit organizations in order for the non-profit organization to provide services that will benefit the public.
- 1.7 Construction of the Soccer Facility is now complete and Parks and KYSA desire to enter into this new Agreement in order to establish the terms of use of the Facility by KYSA

ARTICLE 2. CONSIDERATION

- 2.1 The effective date ("Effective Date") is the date of execution by the last party to execute this Agreement. The term of this Agreement shall be ten (10) years from the Effective Date ("Term"), provided that, the parties may extend the agreement for up to two separate additional ten year periods based on negotiations provided for in Section 2.7. 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). 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 4.21. Any renewal, extension, or amendment is subject to approval by ordinance.
- 2.2 KYSA assumed the responsibility for design, permitting, and construction for the Soccer Facility.
- 2.3 KYSA has inspected and knows the condition of the Site and Facility, and agrees to accept the Site and facility "AS IS"
- 2.4 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 Facility and the Site, and no officials, employee, representative or agent of King County is authorized to represent otherwise.
- 2.5 For the Term of this Agreement, as defined in Section 2.1, 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 4,800 hours.

- 2.6 KYSA will be charged Parks' standard hourly synthetic field use and lighting fees for use of the Facility ("Use Fees"). Parks will grant KYSA a credit toward its charges for use of the Facility. Each year during the ten (10) year Term of this Agreement up to \$180,000 per year shall be credited toward KYSA's Use Fees for that year.
- 2.7 At least twelve (12) months before the expiration of (a) this Agreement's Term or (b) the first 10 year extension period, provided that KYSA is then in compliance with the terms and conditions of this Agreement, Parks and KYSA will begin negotiations regarding extending the agreement for an additional ten year period to provide for synthetic surface replacement and future credits, if any, toward KYSA's Facility Use Fees in consideration for additional Facility investments if made by KYSA. Prior to the expiration either of the term or the first 10 year extension period, King County shall not negotiate with any person or entity other than KYSA regarding a Use Agreement for the fields.
- 2.8 King County shall retain ownership of the Site and the Soccer Facility, including all improvements, permanent fixtures, and county-purchased equipment.

ARTICLE 3. USE OF SOCCER FACILITY

- 3.1 **NON-EXCLUSIVE LICENSE.** In recognition that KYSA invested substantial funds to design, develop, and construct 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.
- 3.2 **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 use by KYSA shall strictly adhere to all applicable environmental laws and regulations at all times.
- 3.3 **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.
- 3.4 **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.

- 3.5 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.
- 3.6 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.
- 3.7 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 non-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 the KYSA Master Schedule.
- 3.8 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.
- 3.9 SITE MAINTENANCE PLAN. Parks shall operate and maintain the Site during the Term of this Agreement.
- 3.10 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.

- 3.11 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.
- 3.12 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.
- 3.13 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.
- 3.14 MINIMUM SCOPE OF INSURANCE FOR KYSA. KYSA will, at a minimum, maintain insurance that covers KYSA's activities and usage of the Soccer Facility and Site as follows:
- 3.14.1 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.
- 3.15 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.
- 3.16 OTHER INSURANCE PROVISIONS. The insurance policies required by Article 3 of this Agreement shall also contain or be endorsed to contain the following provisions where applicable:
- 3.16.1 LIABILITY POLICIES.

- 3.16.1.1 Each insurance policy will be written on an "occurrence" form.
- 3.16.1.2 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.
- 3.16.1.3 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.
- 3.16.2 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.
- 3.17 ACCEPTABILITY OF INSURERS. Unless otherwise approved by Parks, the following provisions apply to KYSA's activities and usage of the Soccer Facility:
 - 3.17.1 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.
 - 3.17.2 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.
- 3.18 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.
- 3.19 INSURANCE LIMITS AND DOCUMENTATION.
 - 3.19.1 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.

- 3.19.2 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.

3.20 KING COUNTY INSURANCE.

- 3.20.1 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 4. GENERAL TERMS AND CONDITIONS

- 4.1 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 0700
Seattle, WA 98104-3855
Email: tj.davis@kingcounty.gov
Phone: 206-263-6214**

If to KYSA:

**Wayne Jensen or Current KYSA President
KYSA
P.O. Box 6293
Kent, WA 98064
Email: zwej@comcast.net**

Phone: 425-830-9182

- 4.2 **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.
- 4.2.1 **EMPLOYMENT.** , KYSA 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.
- 4.2.2 **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. 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.
- 4.2.3 **OTHER NONDISCRIMINATION LAWS.** KYSA shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.
- 4.3 **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.

- 4.4 **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 4.4 by it will be a material breach of its contractual obligations to Parks pursuant to this Agreement.
- 4.5 **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.
- 4.6 **POWERS OF THE COUNTY.** Nothing contained in this Agreement will be considered to diminish the governmental or police powers of King County.
- 4.7 **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.
- 4.8 **AGREEMENT IS PUBLIC DOCUMENT.** This Agreement will be considered a public document and will be available for inspection and copying by the public.
- 4.9 **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.
- 4.10 **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. 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 4.10.

- 4.11 **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.
- 4.12 **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.
- 4.13 **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.
- 4.14 **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.
- 4.15 **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.
- 4.16 **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.

4.17 ENVIRONMENTAL LIABILITY.

- 4.17.1 "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.
- 4.17.2 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.
- 4.17.3 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.
- 4.17.4 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.
- 4.17.5 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.

4.18 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.

4.19 INDEMNIFICATION AND HOLD HARMLESS.

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- 4.19.1 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.
- 4.19.2 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.
- 4.19.3 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:
- 4.19.3.1 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 4.19;
- 4.19.3.2 Indemnification of claims, including those made by KYSA's own employees and/or agents for this purpose, for claims that fall within this Section 4.19;
- 4.19.3.3 In the event King County incurs any judgment, award, and/or cost arising from claims that fall within this Section 4.19, including attorney's fees to successfully enforce the section, all such fees, expenses, and costs shall be recoverable from KYSA.
- 4.19.3.4 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.

4.19.3.5 KYSA expressly and specifically agrees that its obligations under this Section 4.19 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.

4.20 **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.

4.21 **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.

4.22 **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 4.22 shall otherwise limit the Parties' legal, equitable, or other rights or remedies.

4.23 **TERMINATION/NOTICE/CURE.** In recognition that KYSA has invested 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:

4.23.1 **FAILURE TO PERFORM.**

4.23.1.1 **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.

4.23.1.2 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 4.23.1.2, 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.

4.23.2 DEFAULT.

4.23.2.1 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.

4.23.2.2 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.

- 4.23.3 **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 non-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 4.23.3 if KYSA seasonably cures any and all such loss or change of status.
- 4.23.4 **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.
- 4.23.5 **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.

4.23.6 OTHER KING COUNTY TERMINATION.

4.23.6.1 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.

4.23.6.2 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.

4.23.7 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.

4.24 DESTRUCTION OF PREMISES AND USE OF INSURANCE PROCEEDS. Unless otherwise mutually agreed by the Parties, if the Site and/or the Soccer Facility are destroyed by fire, earthquake, or other casualty and if adequate insurance proceeds are available, 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 insurance policies, King County will use the available 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. Insurance proceeds shall be deemed available to King County if insurance proceeds are disbursed as a result of a casualty that impacts only the Soccer facility. If insurance proceeds are disbursed as a result of a casualty that affect the Soccer facilities and other King County properties and such proceeds are inadequate to repair and replace all affected County owned properties including the Soccer facilities, then insurance proceeds shall not be deemed available to King County and King County shall not be obligated to repair or replace.

4.25 DUTIES UPON TERMINATION OR EXPIRATION. Upon termination or expiration of this Agreement and any successive extensions, 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 or expiration, 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.

4.26 EMINENT DOMAIN. The following rules will govern the rights and duties of the Parties in the event of interference with KYSA's use of the Site or the Soccer Facility as a result of the exercise of eminent domain or private purchase in lieu thereof.

4.26.1 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.

4.26.2 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.

4.26.3 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.

4.27 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.

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- 4.28 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.
- 4.29 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.
- 4.30 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.
- 4.31 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.
- 4.32 ATTACHMENTS.
- A. Description and map of Site and Facility
 - B. Soccer Facility Use Policy
- 4.33 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.
- 4.34 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 _____