



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**June 23, 2014**

**Ordinance 17838**

**Proposed No. 2014-0238.1**

**Sponsors Lambert**

1           AN ORDINANCE authorizing the King County executive  
2           to execute the fourth amendment to the forty-year use  
3           agreement with the Eastside Football Club approved by  
4           Ordinance 15704 and amended by Ordinance 16245.

5           STATEMENT OF FACTS:

- 6           1. Ordinance 14509 authorizes the department of natural resources and  
7           parks to create new public recreational opportunities by empowering user  
8           groups, sports associations, and community organizations to operate,  
9           maintain and program mutually agreed upon capital improvements for  
10          public recreation facilities on King County land, and thereby address  
11          regional and rural recreation needs without encumbering new tax funded  
12          operations and maintenance costs.
- 13          2. In accordance with K.C.C. 4.56.150.E, the King County council may  
14          adopt an ordinance permitting the county to enter into agreements for the  
15          use of county property with bona fide nonprofit organizations if the  
16          property is to be used by the nonprofit organization to make improvements  
17          to the county property or to provide services that will benefit the public.  
18          The agreements are exempt from the requirements of fair market value,  
19          appraisal and notice.

20 3. Ordinance 15704, adopted in March 2007, authorized the executive to  
21 execute a forty-year use agreement ("the agreement") with the Eastside  
22 Football Club ("EFC") for the use, construction, development,  
23 programming and supplemental maintenance of a soccer facility ("the  
24 soccer facility") that was defined as including two synthetic soccer fields,  
25 one natural grass soccer field, related amenities, parking and site-wide  
26 infrastructure at the Preston fields and community park; and committed  
27 the county's community partnerships and grants ("CPG") program to  
28 contribute one million five hundred thousand dollars to the development  
29 of the soccer facility.

30 4. EFC began the work of developing the soccer facility.

31 5. Section 2.7 of the agreement required EFC to pay the county a  
32 guaranteed rental fee for the use of the soccer facility following the  
33 completion of its development, of one million two hundred thousand  
34 dollars at a rate of one hundred twenty thousand dollars per year for ten  
35 years, in consideration for the county's investment of one million five  
36 hundred thousand dollars.

37 6. Ordinance 15975, adopted in November 2007, allocated an additional  
38 four hundred thousand dollars of county capital funds to the project, and,  
39 in addition, the council approved an additional three hundred thousand  
40 dollars in CPG program funds, for a total additional investment of seven  
41 hundred thousand dollars, increasing the county's investment in the soccer

42 facility to a total of two million two hundred thousand dollars, to provide  
43 additional assistance to EFC with the development of the soccer facility.

44 7. In February 2008, EFC and the county executed the first amendment to  
45 the agreement, amending Section 2.5 of the agreement to acknowledge the  
46 county's investment of an additional seven hundred thousand dollars in the  
47 soccer facility; and amending Section 2.7 of the agreement to increase the  
48 guaranteed rental fee to be paid by EFC to one million five hundred  
49 thousand dollars at a rate of one hundred fifty thousand dollars per year  
50 for ten years in consideration of the county's investment of an additional  
51 seven hundred thousand dollars in the soccer facility.

52 8. The soccer facility's two synthetic soccer fields were completed and  
53 opened to the public in March 2008. Numerous youth soccer teams have  
54 since been able to use the soccer facility for practices and games. The  
55 natural grass soccer field that was included in the definition of the soccer  
56 facility in the agreement was not constructed, pending additional  
57 fundraising by EFC. The agreement was not amended to reflect this  
58 change in schedule.

59 9. Ordinance 16245, adopted in September 2008, authorized the executive  
60 to negotiate a second amendment to the agreement, amending Section 2.7  
61 to change the term of the required rental fee of one million five hundred  
62 thousand dollars EFC would pay King County from a rate of one hundred  
63 fifty thousand dollars a year for ten years to a rate of one hundred  
64 thousand dollars per year for fifteen years, and to begin those payments in

65 2008. Those changes were made to provide EFC with greater flexibility in  
66 its fundraising efforts.

67 10. Ordinance 16932, adopted in September 2010, allocated an additional  
68 two hundred thousand dollars in county capital funds to the project, and, in  
69 addition, the council approved an additional fifty thousand dollars in youth  
70 sports facility grant program funds, for a total additional investment of two  
71 hundred fifty thousand dollars, increasing the county's investment in the  
72 soccer facility to a total of two million four hundred fifty thousand dollars,  
73 to provide additional assistance to EFC with the development of the soccer  
74 facility.

75 11. In July 2011, EFC and the county executed the third amendment to  
76 the agreement, amending Section 2.7 of the agreement to reflect the  
77 additional investment of two hundred fifty thousand dollars from the  
78 county.

79 12. Following additional fundraising efforts, EFC has successfully  
80 secured sufficient funding, including cash or cash equivalents of donated  
81 materials, in kind services, and other consideration to EFC, including  
82 vendor discounts or concessions on products, to be used toward  
83 construction of a picnic shelter and the third soccer field and has proposed  
84 constructing the third field as a synthetic field rather than a natural grass  
85 field.

86 13. The executive and EFC now wish to amend the agreement a fourth  
87 time to reflect the change to the plans for the soccer facility with the

88 construction of the third soccer field as a synthetic soccer field rather than  
89 a natural grass soccer field, and to specify the intention that EFC will  
90 receive three thousand hours of first priority use of the three soccer fields  
91 for EFC use each year during the term of the agreement.

92 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

93 SECTION 1. The executive is hereby authorized to execute the fourth  
94 amendment to the existing use agreement with the Eastside Football Club as attached in

95 Attachment A to this ordinance, to implement the terms of that amendment and to  
96 execute any documents necessary to carry out the amendment.  
97

Ordinance 17838 was introduced on 6/16/2014 and passed by the Metropolitan King  
County Council on 6/23/2014, by the following vote:

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

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 24 day of JUNE, 2014.



Dow Constantine, County Executive

RECEIVED  
2014 JUN 24 PM 4:18  
CLERK  
KING COUNTY COUNCIL

**Attachments:** A. Fourth Amendment to Use Agreement with Eastside Football Club for Soccer Facility  
at Preston Park

**FOURTH AMENDMENT TO USE AGREEMENT WITH  
EASTSIDE FOOTBALL CLUB FOR SOCCER FACILITY AT PRESTON PARK**

RECITALS

- A. King County, a home rule charter county and political subdivision of the State of Washington ("the County"), and Eastside Football Club ("EFC"), a not-for-profit, tax-exempt 501(c)(3) corporation organized under the laws of the State of Washington entered into a, forty-year Use Agreement ("Agreement") with an effective date of August 7, 2007, for the construction and long term use of a Soccer Facility ("Soccer Facility") at the County-owned Preston Athletic Fields and Community Park ("Site"). This Agreement was amended by the First Amendment on February 26, 2008, by the Second Amendment on October 23, 2008, and by the Third Amendment on July 28, 2011.
- B. EFC is a not-for-profit Washington corporation that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. EFC is a community-based, open membership club organized to provide public opportunities for youth soccer, and is a member in good standing with Eastside Youth Soccer Association ("EYSA") and Washington State Youth Soccer Association ("WSYSA").
- C. Synthetic soccer fields have been identified as a regional or rural recreation need in King County. EFC has demonstrated the experience, ability, and resources to develop synthetic sports fields and associated facilities at the Site.
- D. King County Ordinance 14509 authorizes the Department of Natural Resources and Parks ("DNRP") to create new public recreational opportunities by empowering user groups, sports associations, and community organizations to operate, maintain and program mutually agreed upon capital improvements for public recreation facilities on King County land, and thereby address regional and rural recreation needs without encumbering new tax funded operations and maintenance costs.
- E. In accordance with K.C.C. 4.56.150.E, the King County Council may adopt an ordinance permitting the County to enter into agreements for the use of County property with bona fide nonprofit organizations if the property is to be used by the nonprofit organization to make improvements to the County property or to provide services that will benefit the public. The agreements are exempt from the requirements of fair market value, appraisal and notice.
- F. Ordinance 15704, adopted in March 2007, authorized DNRP to execute the Agreement with EFC for the use, construction, development, programming and supplemental maintenance of the Soccer Facility that was defined as including two synthetic soccer fields, one natural grass soccer field, related amenities, parking and site-wide infrastructure at the Site. Ordinance 15704 also committed the County's Community Partnerships and Grants ("CPG") program to contribute \$1,500,000 to the development of the Soccer Facility. For reference, the Agreement is attached as Exhibit A to this Fourth Amendment.
- G. In 2007 EFC began the work of developing the Soccer Facility.

- H. Section 2.7 of the Agreement, attached as Exhibit A to this Fourth Amendment, required EFC to pay the County a guaranteed rental fee of \$1,200,000 for the use of the Soccer Facility following the completion of its development, at a rate of \$120,000 per year for ten years, in consideration for the County's investment of \$1,500,000 in the Soccer Facility.
- I. King County Ordinance 15975, adopted in November 2007, allocated an additional \$400,000 of County capital funds to the project, and, in addition, the County Council approved an additional \$300,000 in CPG program funds, for a total additional County investment of \$700,000, increasing the County's investment in the Soccer Facility to a total of \$2,200,000, to provide additional assistance to EFC with the development of the Soccer Facility.
- J. In February 2008, EFC and the County executed the First Amendment to the Agreement, amending Section 2.5 of the Agreement to acknowledge the County's investment of an additional \$700,000 in the Soccer Facility; and amending Section 2.7 of the Agreement to increase the guaranteed rental fee to be paid by EFC to \$1,500,000 at a rate of \$150,000 per year for ten years in consideration of the County's investment of an additional \$700,000 in the Soccer Facility. For reference, the First Amendment is attached as Exhibit B to this Fourth Amendment.
- K. The Soccer Facility's two synthetic soccer fields were completed and opened to the public in March 2008. Numerous youth soccer teams have since been able to use these improvements to the Soccer Facility for practices and games. The natural grass soccer field portion of the Soccer Facility was not constructed, pending additional fundraising by EFC. The Agreement was not amended to reflect this change in schedule for the development of the third natural grass field.
- L. King County Ordinance 16245, adopted in September 2008, authorized the County Executive to negotiate a Second Amendment to the Agreement, amending Section 2.7 to change the term of the required rental fee of \$1,500,000 EFC would pay King County from a rate of \$150,000 a year for ten years to a rate of \$100,000 per year for fifteen years, and to begin those payments in 2008. The purpose of this amendment was to provide EFC greater flexibility in its fundraising efforts to complete the Facility. For reference, the Second Amendment is attached as Exhibit C to this Fourth Amendment.
- M. King County Ordinance 16932, adopted in September 2010, allocated an additional \$200,000 in County capital funds to the project, and, in addition, the County Council approved an additional \$50,000 in Youth Sports Facility Grant ("YSFG") Program funds, for a total additional investment of \$250,000, increasing the County's investment in the Soccer Facility to a total of \$2,450,000, providing EFC with additional funds to complete the Soccer Facility.
- N. In July 2011, EFC and the County executed the Third Amendment to the Agreement, amending Section 2.7 of the Agreement to reflect the additional investment of \$250,000 from the County. For reference, the Third Amendment is attached as Exhibit D to this Fourth Amendment.



- O. Following additional fundraising efforts, EFC has successfully secured sufficient funding, including cash or cash equivalents of donated materials, in kind services, and other consideration to EFC (including vendor discounts or concessions on products) to be used toward construction of the Soccer Facility's third soccer field and has proposed developing the third field as a synthetic field rather than as a natural grass field.
- P. King County and EFC now wish to amend the Agreement a fourth time to reflect the change to the plans for the Soccer Facility with the construction of a picnic shelter and the third soccer field as a synthetic soccer field and to specify that during the remaining term of this Agreement, as amended, annually EFC will have first priority to 3,000 hours of use that can be applied across the three soccer fields.

NOW, THEREFORE, King County and EFC agree as follows:

1. The text of Section 2.1 of the Agreement is deleted in its entirety and replaced with:

"EFC agrees to design and construct the Soccer Facility on the Site consistent with the terms and conditions set forth in this Agreement and as contemplated by the Phases of Construction set forth in Exhibit E to this Agreement. The Soccer Facility will include three synthetic soccer fields, related amenities, plus parking and other required site-wide infrastructure, all as set forth in the Phases of Construction document, updated June 2014, which is attached as Exhibit E and by this reference incorporated into the Agreement."

2. The texts of Section 2.5 of the Agreement as may have been modified by Amendments 1, 2 and 3, are deleted in their entirety and replaced with:

"King County has provided a total \$2.45 million toward the capital cost to construct the Soccer Facility at the Site. This funding was disbursed as follows:

<b>Amount</b>	<b>Date of Disbursement</b>
\$750,000	August 27, 2007
\$750,000	September 19, 2007
\$300,000	March 4, 2008
\$400,000	March 4, 2008
\$50,000	September 6, 2011
\$200,000	September 6, 2011
<b>\$2,450,000</b>	<b>TOTAL</b>

More detail on these disbursements can be found in the FMD Milestone Review Grid, which is attached as Exhibit F and by this reference incorporated into the Agreement. EFC will be solely responsible to secure and provide all other funding needed to design and construct the Soccer Facility, as contemplated through Phase 3 of construction and detailed in Exhibit E to this Agreement. The present total estimated cost to construct the Soccer Facility is \$4.38 million, including anticipated donated services and materials.

With the exception of any CPG and YSFG grants that may independently be awarded to EFC, Issaquah Little League ("ILL") and Preston Community Club ("PCC"), King County will be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the Site or the Soccer Facility in excess of the \$2.45 million investment outlined above. EFC will, upon request, inform any inquiring person or entity that King County has no further financial obligations associated with the construction of the Site or the Soccer Facility."

3. The text of Section 2.6 of the Agreement is deleted in its entirety and replaced with:

"For the Term of this Agreement, King County agrees that EFC shall have first priority of use of the three soccer fields that are part of the Soccer Facility pursuant to the terms and conditions set forth in this Agreement, and EFC acknowledges and agrees that substantial public access to and use of the Soccer Facility is a material consideration for King County's execution of this Agreement. EFC shall have first priority to 3,000 hours of use to be allocated among the three soccer fields."

4. The texts of Section 2.7 of the Agreement, including all modifications made to the Section by Amendments 1 and 2, are deleted in their entirety and replaced with:

"Beginning in 2008, EFC will pay King County a guaranteed rental fee of \$100,000 per year for 15 years (Years 1-15) inclusive of electricity costs. For years 16-20, EFC will pay an hourly rental fee rate for synthetic field usage at the Soccer Facility to King County that is \$20 per hour less than the public hourly rental fee rate charged by King County, exclusive of electricity costs, for synthetic soccer fields for youth sports. This rate reduction is consideration for the substantial in-kind goods and services donated toward field construction by EFC's volunteers and general contractor, and the supplemental maintenance provided by EFC under this Agreement. During years 21-40, EFC will pay the public hourly rental fee to King County for synthetic field usage."

5. The text of Section 2.8 of the Agreement is deleted in its entirety and replaced with:

"Not used."

6. The text of Section 3.0 of the Agreement is deleted in its entirety and replaced with:

"CAPITAL IMPROVEMENTS. EFC will serve as the supervisory not-for-profit corporation for development and construction of the Soccer Facility through Preston Park LLC, a limited liability corporation formed exclusively to design and construct the improvements contemplated by this Agreement with LLC members ILL and PCC. EFC shall design, develop, and construct facilities, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, neighborhood impact mitigations, and all other requirements in coordination with King County Parks and Facilities Management Division's project management staff. EFC shall be responsible for all costs related to the development and construction of the Soccer Facility improvements contemplated by this Agreement. All

contracted work by EFC, its agents, affiliates, representatives, or subcontractors, shall be bonded and properly insured to ensure the complete and safe design and construction of all facilities, features, and amenities."

7. The text of Section 3.1 of the Agreement is deleted in its entirety and replaced with:

"POSSESSION DURING CONSTRUCTION. The parties acknowledge that EFC jointly developed with ILL and PCC portions of the Site to provide for a youth baseball field, picnic and play areas, and other related amenities at the Site during Phase 1 of the project. EFC constructed the warm-up area during Phase 2. These Phases are more fully described in Exhibit E and they are now complete. During Phase 3, it is contemplated that EFC shall jointly be developing with PCC a picnic shelter and EFC shall be developing the third synthetic soccer field. As between the parties, EFC shall have exclusive possession and use of that portion of the Site designated for development and construction of the improvements contemplated for Phase 3 during the design, development and construction phases. However, this right of exclusive possession and use by EFC is subject to King County's entry, inspection and audit rights under Article 5 of this Agreement and the following:

3.1.1 When EFC considers that all work or work associated with the Phase 3 is substantially complete, EFC 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"). EFC or its contractor shall promptly complete or correct all Punch List items at the sole cost of EFC or its contractor, as they may decide between them. For purposes of this Agreement, "substantially complete" means that:

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

3.1.2 WARRANTIES.

- A. With respect to all warranties, express or implied, for work performed or materials supplied in connection with the Soccer Facility, EFC shall:
  - 1. Obtain all warranties, express or implied, that would be given in normal commercial practice from suppliers, manufacturers, contractors, or installers;

- 2. Require all warranties be executed, in writing, for benefit of King County;
- 3. Enforce all warranties for the benefit of King County; and
- 4. Be responsible to enforce any warranty of a contractor, subcontractor, manufacturer, or supplier.

- B. If, within an applicable warranty period, any part of the Soccer Facility or work performed to construct the Soccer Facility is found not to conform to specifications, permit requirements, or industry standards, EFC shall correct it promptly after receipt of written notice from Parks to do so. If Parks determines that EFC's corrective action is not satisfactory and/or timely performed, then the Division may either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party, and invoice EFC for the cost to remedy the problem. EFC shall promptly reimburse the Division for all costs, expenses, or damages incurred by Parks, including but not limited to the cost to remedy the problem. An invoice is deemed received by EFC three days after deposit in the U.S. mail with proper address and postage. Invoices must be paid within sixty days. Parks will add a late fee of five percent to any invoice not timely paid. Any invoice outstanding sixty days after receipt will be sent to collections.
- C. The warranty-related remedies provided in this *Section 3.1.2* are in addition to any other rights or remedies provided elsewhere in this Agreement or by applicable law."

- 8. The text of Section 3.5 of the Agreement is deleted in its entirety and replaced with:

"CONSTRUCTION DEADLINES. EFC is required to complete the development and construction of Phase 3 within one year from obtaining the permits necessary to commence construction."

- 9. The text of Section 3.7 of the Agreement is deleted in its entirety and replaced with:

"ALTERATION OF SITE OR SOCCER FACILITY AFTER CONSTRUCTION. After Phase 3 is completed and accepted by EFC and King County as defined herein, EFC will not make any material alteration to the Site or to the Soccer Facility, including any changes to the landscaping. King County hereby consents to the development of a third synthetic turf field at the Site, consistent with Exhibit E and the Agreement, as amended."

- 10. The text of Section 3.10 of the Agreement is deleted in its entirety and replaced with:

"CONTRACTOR INDEMNIFICATION AND HOLD HARMLESS. EFC will require its construction contractors and subcontractors to defend, indemnify and hold King County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees and costs, arising out of or in connection with the design, development and construction of the Soccer Facility,

including the development of Phase 3 (hereinafter "Design and Construction Phase"), except for injuries and damages caused by the negligence of King County. The indemnification and hold harmless language will be at least as broad as that set forth in Section 5.19 of this Agreement."

11. The text of Section 4.9 of the Agreement is deleted in its entirety and replaced with:

"SITE MAINTENANCE PLAN. Once Phase 3 is completed, the Preston Fields and Community Park Site Maintenance Plan ("SMP") shall be updated and agreed to by King County (maintenance manager, CPG project manager, and DNRP management), EFC, PCC, and ILL and reviewed by the Labor Management Committee ("LMC"). The SMP shall be developed in a manner to ensure King County does not incur any new aggregate operating and maintenance costs requiring additional public funds for any part of the Soccer Facility, which includes Phases 1 through 3 (except as may be otherwise provided in this Agreement)."

All other terms, conditions, specifications and requirements of the Agreement shall remain unchanged and in full effect, except as amended herein.

By executing this amendment, each person signing below affirms that he or she is duly authorized to legally bind the entity that he or she represents.

List of Attachments:

- Exhibit A: Use Agreement between King County Department of Natural Resources and Parks, Parks and Recreation Division and Eastside Football Club for the Soccer Facility at Preston Fields and Community Park
- Exhibit B: First Amendment to the Use Agreement
- Exhibit C: Second Amendment to the Use Agreement
- Exhibit D: Third Amendment to the Use Agreement
- Exhibit E: Phases of Construction, Updated June 2014
- Exhibit F: FMD Milestone Grid

Approved by:

**KING COUNTY**

**EASTSIDE FOOTBALL EFC**

\_\_\_\_\_  
Kevin Brown, Director  
King County Parks and Recreation Division

\_\_\_\_\_  
Eastside Football EFC (EFC)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**USE AGREEMENT**

between

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

and

**Eastside Football Club (EFC)**

for the

**Soccer Facility**

at

**Preston Fields and Community Park**

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This Agreement ("Agreement") is entered into by and between King County Department of Natural Resources and Parks, Parks and Recreation Division (hereinafter "King County") and Eastside Football Club (hereinafter "EFC") (collectively, the "Parties") for the use, development, programming, and supplemental maintenance of synthetic and grass soccer fields (hereinafter "Soccer Facility") at Preston Fields and Community Park (hereinafter "Site").

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

**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 Preston Fall City Rd. SE and SE 87th Pl., Preston, WA, 98027, as described and depicted with greater particularity in Attachment A to this Agreement.
- 1.2 EFC is a not-for-profit Washington corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. EFC is a community-based, open-membership club organized to provide public opportunities for youth soccer, and is a member in good standing with Eastside Youth Soccer Association (EYSA) and Washington State Youth Soccer Association (WSYSA).
- 1.3 Synthetic soccer fields are identified as a regional or rural recreation need in King County. EFC has the experience, ability, and resources to develop synthetic sports fields and associated facilities at the Site and intends to develop a regional facility for soccer and other athletic and recreational uses at the Site.
- 1.4 King County has determined that synthetic soccer fields located at the Site will have significant and unique 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 operate, maintain, and program mutually

agreed upon capital improvements for public recreation facilities on King County land, and thereby address regional and/or rural recreation needs without encumbering new tax funded operations and maintenance costs.

- 1.6 Allowing EFC to develop certain mutually agreed upon capital improvements, including synthetic soccer fields at the Site, as well as providing certain mutually agreed upon supplemental maintenance for the Soccer Facility 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) authorizes the Department of Natural Resources and Parks to enter into agreements for the use of King County land by non-profit organizations that provide a service to the public or make improvements to the land.
- 1.8 King County is willing to allow EFC to develop and provide certain supplemental maintenance for the Soccer Facility at the Site under the terms and conditions set forth in this Agreement.

## 2. CONSIDERATION

- 2.1 EFC agrees to design and construct the Soccer Facility on the Site consistent with the terms and conditions set forth in this Agreement. The Soccer Facility will include two synthetic soccer fields, one natural grass soccer field, related amenities, plus parking and other required Site-wide infrastructure, all as set forth in Attachment A to this Agreement.
- 2.2 EFC agrees to assume responsibility for design, construction and certain supplemental maintenance for the Soccer Facility as set forth in this Agreement.
- 2.3. EFC has inspected and knows the condition of the Site, and agrees to accept the Site in *as is* condition.
- 2.4 King County 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.
- 2.5 King County will provide a total of \$1.5 million towards the capital cost to construct the Soccer Facility at the Site pursuant to the Parks FMD Milestone Review Grid, attached hereto as Ex. \_\_\_\_\_. Except as may be hereafter provided by amendment, EFC will be solely responsible to secure and provide all other funding needed to design and construct the Soccer Facility. The present total estimate cost to construct Phase I of the Soccer Facility is \$3.7 million dollars, excluding anticipated donated services and materials. With the exception of any CPG and YSFG grants that may independently be awarded to EFC, Issaquah Little League ("ILL") and Preston Community Club ("PCC"), King County will be under no obligation directly or indirectly to pay for any labor, material, or

improvement associated with the Site or the Soccer Facility in excess of the \$1.5 million dollar capital grant outlined above. EFC will, upon request, inform any inquiring person or entity that King County has no further financial obligations associated with the construction of the Site or the Soccer Facility.

- 2.6 For the Term of this Agreement, King County agrees that EFC shall have first priority of use of the Soccer Facility pursuant to the terms and conditions set forth in this Agreement, and EFC acknowledges and agrees that substantial public access to and use of the Soccer Facility is a material consideration for King County's execution of this Agreement. The parties anticipate that EFC will use the Soccer Facility for approximately 2000-2200 hours annually, exclusive of the grass field.
- 2.7 EFC will pay King County a guaranteed rental fee of \$120,000 per year for 10 years starting from the date of the Soccer Facility's completion (Years 1-10), inclusive of electricity costs. For Years 11-20, EFC will pay an hourly rental fee for synthetic field usage at the Soccer Facility to King County at \$20 less than the public hourly rental fee charged by King County, exclusive of electricity costs, for synthetic and/or grass soccer fields for youth sports. The reduction is in recognition for the substantial in-kind goods and services donated by EFC's volunteers and general contractor, and the supplemental maintenance provided by EFC under this Agreement. EFC shall not be required to pay an hourly fee for use of the unlit grass field.
- 2.8 At least twelve months before the expiration of EFC's obligations under Section 2.7, King County and EFC will begin negotiations regarding EFC's hourly rental fee for the next ten-year period under this Agreement. The new hourly rental fee will take into account EFC's substantial investment in the Soccer Facility and EFC's ongoing supplemental maintenance responsibilities under this Agreement. The Parties will renegotiate EFC's hourly rental fee at least every ten years during the Term of this Agreement.
- 2.9 In light of EFC's substantial investment in the Soccer Facility, as well as EFC's ongoing supplemental maintenance responsibilities under this Agreement, the Term of this Agreement will be 40 years. Provided that EFC is then in compliance with the terms and conditions of this Agreement, EFC will notify King County in writing at least 12 months prior to the expiration of this Agreement whether EFC desires to negotiate renewal the Agreement (including any proposed modifications). EFC and King County may renew this Agreement, contingent on EFC's full compliance with the terms and conditions of this Agreement and King County's written commitment to renew. The Parties may modify this Agreement during the Term, as a condition of renewal, or during a renewal term.
- 2.10 King County reserves to itself all rights to naming and advertising at the Site and Soccer Facility, and further reserves to itself the right to keep and retain all revenue from naming or advertising agreements. King County agrees to consult with EFC in seeking and obtaining naming rights and advertising agreements and further agrees that EFC may



engage in soccer-related fund raising activities at the Site for the benefit of its teams during hours that EFC uses the Soccer Facility.

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

- 3.0 **CAPITAL IMPROVEMENTS.** EFC will raise and invest \$1.0 million in capital expenditures for the development and construction of the Soccer Facility on the Site, and contribute an estimated \$ 800,000 in donated professional services, management services, manpower and materials. EFC will serve as the supervisory not-for-profit corporation for development and construction of the Soccer Facility through Preston Park LLC, a limited liability corporation formed exclusively to design and construct the Site with LLC members ILL and PCC. EFC shall design, develop, and construct facilities, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, neighborhood impact mitigations, and all other requirements.
- 3.1 **EXCLUSIVE POSSESSION DURING CONSTRUCTION.** King County acknowledges that ILL and PCC are jointly developing portions of the Site to provide for a youth baseball field, picnic and play areas, and other related amenities at the Site such that EFC will not have exclusive possession and use of the Site during the development and construction of the Soccer Facility. EFC shall be entitled, however, to exclusive possession and use of that portion of the Site designated for development and construction of the Soccer Facility during the design, development and construction phases. This right of exclusive possession and use by EFC is subject to King County's entry, inspection and audit rights under Article 5 of this Agreement.
- 3.2 **DESIGN.** EFC has retained a licensed architect and/or licensed professional engineer, registered in the State of Washington, who has prepared a design for the Site and the Soccer Facility and exterior landscaping, which visually blends with the setting. King County has already reviewed the design plans for the Site in concept and reserves the right to approve the final design of the Site and the Soccer Facility, consistent with established King County zoning, design code, or both.
- 3.3 **BUILDING AND SITE PLANS.** EFC has retained a licensed architect and/or licensed professional engineer, registered in the State of Washington, who has prepared building and site plans for the Site and the Soccer Facility, which reference structures, utilities generally, and landscape plans. King County reserves the right to approve the final building and site plans.
- 3.4 **CONSTRUCTION/SITE WORK/FENCING.** EFC will be solely responsible for the site work, required permits and grading at the Soccer Facility. EFC 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. EFC will be responsible for site security, traffic and pedestrian warnings at the Soccer Facility during the development and construction phases.

- 3.5 **CONSTRUCTION DEADLINES.** EFC is required to complete the development and construction of the Soccer Facility within one year from the date that EFC receives all funding from King County and the permits necessary to commence construction on the Soccer Facility.
- 3.6 **RELOCATION OF UTILITY LINES.** EFC will be responsible to relocate storm drains, sewers, water lines, and other utilities, if any, as required to complete development and construction of the Soccer Facility.
- 3.7 **ALTERATION OF SITE OR SOCCER FACILITY AFTER CONSTRUCTION.** After the Soccer Facility is completed and accepted by EFC and King County as defined herein, EFC will not make any material alteration to the Site or to the Soccer Facility, including any changes to the landscaping.
- 3.8 **DEVELOPMENT AND CONSTRUCTION FEES AND EXPENSES.** EFC will be responsible to obtain and pay for all necessary permits, fees and expenses associated with the development and construction of the Soccer Facility.
- 3.9 **PUBLIC WORKS LAWS.** To the extent applicable, EFC 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). EFC 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.
- 3.10 **CONTRACTOR INDEMNIFICATION AND HOLD HARMLESS.** EFC will require its construction contractors and subcontractors to defend, indemnify and hold King County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees and costs, arising out of or in connection with the design, development and construction of the Soccer Facility (hereinafter "Design and Construction Phase"), except for injuries and damages caused by the negligence of King County.
- 3.11 **COMMERCIAL GENERAL LIABILITY INSURANCE.** EFC will require its construction contractors to procure and maintain, for the duration of construction of the Soccer Facility, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the construction contractors and subcontractors, their agents, representatives, or employees. All said policies will name King County as an additional named insured and will include a provision prohibiting cancellation or reduction in the amount of said policies except upon 30 days prior written notice to King County. EFC will require its construction

contractors to maintain minimum commercial general liability insurance limits of no less than \$1,000,000 each occurrence; \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit; business automobile coverage for a limit of not less than \$1,000,000 combined single limit per occurrence; and workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limit.

- 3.12 **BUILDERS RISK INSURANCE.** EFC will require its construction contractors to procure and maintain, for the duration of the Design and Construction Phase of the Soccer Facility, Builder Risk insurance covering interests of King County and the construction contractor in the work. Builders Risk insurance will be on an all-risk policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the construction contractor. Higher deductibles for flood and earthquake perils may be accepted by King County upon written request by EFC and written acceptance by King County. Any increased deductibles accepted by King County will remain the responsibility of the construction contractor. The Builders Risk insurance will be maintained until final acceptance of the work by EFC. EFC will require its construction contractors to maintain Builders Risk insurance in the amount of the completed value of the Soccer Facility with no coinsurance provisions.
- 3.13 **SUBCONTRACTORS.** EFC 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 coverages for subcontractors will be subject to all of the same insurance requirements as stated herein for the construction contractor.
- 3.14 **VERIFICATION OF COVERAGE.** EFC will furnish King County 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, EFC will file with King County a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to work under this Agreement.
- 3.15 **ACCEPTABILITY OF INSURERS.** Unless otherwise approved by King County, the following provisions apply exclusively during the Design and Construction Phase:
- 3.15.1 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.

- 3.15.2. If at any time any of the foregoing policies fail to meet the above minimum standards, then EFC 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.
- 3.16 **WAIVER OF SUBROGATION.** EFC will cause its contractors and subcontractors and their insurance carriers to release and waive all rights of subrogation against King County during the Design and Construction Phase to the extent a loss is covered by property insurance in force. Except as otherwise provided in Article 3 of this Agreement, EFC 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 EFC or King County.
- 3.17 **INSURANCE PROVISIONS ARE MATERIAL TERMS.** Failure by EFC, its agents, employees, officers, and/or subcontractors to comply with these insurance requirements shall constitute a material breach of this Agreement.

**4. USE, MAINTENANCE, AND OPERATION OF SOCCER FACILITY**

- 4.0 **NON-EXCLUSIVE LICENSE.** In recognition that EFC shall invest substantial funds to design, develop, construct, and provide supplemental maintenance for the Soccer Facility at the Site, EFC is granted a non-exclusive license to use the Soccer Facility by King County on a first priority basis on terms and conditions as set forth more fully in this Agreement.
- 4.1 **STEWARDSHIP.** EFC must be a good steward of the Soccer Facility and Site. All approved activities and use by EFC shall be considerate of the capital, programmatic, and environmental value of the Soccer Facility and Site to the greatest extent possible. All approved construction, maintenance, and other modifications by EFC shall strictly adhere to all applicable environmental laws and regulations at all times.
- 4.2 **GOOD NEIGHBOR/FACILITY USE POLICY.** King County and EFC shall mutually develop and implement a Good Neighbor/Soccer Facility Use Policy (Attachment B) (hereinafter "Use Policy") in coordination with ILL and PCC to ensure positive relations with the surrounding community, as well as other current or future Site users. The Use Policy shall be posted in clear view at the Soccer Facility and/or integrated into posted or otherwise distributed use rules for the Site. Mitigation efforts for traffic, noise, parking, or other neighborhood impacts shall be thorough, ongoing, and in good faith.
- 4.3 **FACILITY REVENUE AND BUDGET.** Revenue associated with the programming, scheduling, renting, on-site advertising, naming rights, or other programmatic uses will be managed according to the terms set forth in the Soccer Facility Revenue Plan (Attachment E). All fees charged for the use of the Soccer Facility by the public shall be

established and approved by King County in consultation with EFC prior to being implemented; provided, however, that membership fees in the EFC's organization need not be approved by King County.

- 4.4 **SOCCKER FACILITY PROGRAMMING.** EFC shall have first priority to use of the Soccer Facility. All costs associated with the programming and use of the Soccer Facility by EFC will be the responsibility of EFC. All non-EFC use of the Soccer Facility shall be scheduled by and through King County, the cost of which shall be King County's responsibility. By January 15 of each year, EFC shall provide King County with a master schedule (hereinafter "EFC Master Schedule") of its anticipated use for that year (e.g., hours and days of use) in order that King County may schedule activities during periods of non-EFC use. The Parties recognize that the EFC Master Schedule may require periodic supplementation to accommodate EFC's changing practice needs and game schedules. At the beginning of each month (or earlier, if the need for schedule changes is known), EFC shall timely provide King County with a revised monthly schedule if EFC's anticipated field use will deviate from the EFC Master Schedule. Any requested modifications to the EFC Master Schedule shall be approved by King County unless (i) the request is unreasonable or (ii) the time requested by EFC is already scheduled by King County for non-EFC use and cannot be reasonably re-scheduled. The Parties agree to coordinate in good faith with respect to all scheduling of the Soccer Facility.
- 4.5 **USE.** Use of the Soccer Facility shall be limited to providing programming and other activities for approved users as follows:
- A. Soccer (youth);
  - B. Other approved sports that are appropriate for synthetic or natural grass fields
  - C. Other approved activities that are appropriate for synthetic or natural grass fields
- 4.6 **OPERATING HOURS.** The availability of recreational opportunities for King County residents is a material consideration for this Agreement. Hours of operations shall be limited to 7 a.m. to 10 p.m. All field use other than youth soccer shall be approved by King County in consultation with EFC.
- 4.7 **INCIDENTAL USES.** EFC may conduct tax-exempt fundraising activities to support the Site, the Soccer Facility, and EFC's own beneficial or charitable mission as a not-for-profit Washington corporation, provided that such fundraising activities shall not displace public use of the Site or the Soccer Facility.
- 4.8 **SECURITY AND NUISANCE DURING USE.** EFC will take reasonable precautions to secure the Soccer Facility during use by EFC. EFC will use the Site and the Soccer Facility for no unlawful purposes and will not use or occupy the Site in any manner which would constitute a public nuisance or otherwise violate federal, state or local laws.
- 4.9 **SITE MAINTENANCE PLAN.** Once capital improvements are completed, a Preston Fields and Community Park Site Maintenance Plan ("SMP") shall be developed and

agreed to by King County, EFC, PCC, and ILL and reviewed by the Labor Management Committee ("LMC"). The SMP shall be developed in a manner as to ensure King County does not incur any new aggregate O&M costs requiring additional public funds (except as may be otherwise provided in this Agreement).

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

insured retention of the policies will not limit or apply to King County and will be the sole responsibility of EFC.

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

4.16.1 LIABILITY POLICIES.

4.16.1.1 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 EFC of the Soccer Facility and Site.

4.16.1.2 EFC'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 EFC's insurance or benefit EFC in any way.

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

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

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

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

4.18 WAIVER OF SUBROGATION. EFC 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. EFC 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 EFC or King County.

#### 4.19. OTHER INSURANCE MATTERS.

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

4.19.2 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. EFC will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.

4.19.3. EFC will furnish King County 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 EFC'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. King County reserves the right to require complete certified copies of all required policies at any time.

#### 4.20. KING COUNTY INSURANCE.

4.22.1. NATURE OF COVERAGE. King County will maintain commercial general liability coverage or will maintain liability coverage via King County's self-insurance program for the liabilities contractually assumed by King County in this Agreement, and arising out of the activities pertaining to this Agreement. By requiring such liability coverage, EFC will not be deemed to, or construed to, have assessed the risks that may be applicable to King County in the Agreement. King County will assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

4.22.2 SCOPE AND LIMITS OF LIABILITY COVERAGE. Coverage will be at least as broad as:

4.22.2.1. General Liability. Insurance Services Office from number CG00 01 Ed 11-88) Covering Commercial General Liability, with a limit of not less than: \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate.

The policy or coverage agreement will include but not be limited to:

- (a) coverage for premises and operations;
- (b) contractual liability (including specifically liability assumed herein);
- (c) Employers Liability or "Stop Gap" coverage.

4.22.2.2 Automobile Liability. Insurance Services Office from number (CA 00 01 Ed.12 90). Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8 & 9 for a limit of not less than \$1,000,000 combined single limit per occurrence.



- 4.22.2.3 **Workers' Compensation.** Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.
- 4.22.3 **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductible and/or self-insured retention will be the sole responsibility of King County.
- 4.22.4 **OTHER PROVISIONS.** The coverage required by this Agreement are to contain or be endorsed to contain the following provisions where applicable.
- 4.22.4.1 **Liability Coverage.** To the extent of King County's negligence as herein assumed, King County's liability coverage will be primary coverage as respects the EFC, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by EFC, its officers, officials, employees, and agents will not contribute with King County's coverage or benefit the County in any way.
- 4.22.4.2 **All Policies and Coverage Agreements.** Coverage shall not be suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice, sent by registered mail, has been given to EFC.
- 4.22.5 **ACCEPTABILITY OF INSURERS.** Unless otherwise accepted by EFC, insurance coverage is to be placed with a Risk Pool authorized by Chapter 39.34 RCW or insurers with a Best's rating of no less than A: VIII, or, if not rated by Best's, with minimum surplus the equivalent of Best's surplus size VIII.
- 4.22.6 **VERIFICATION OF COVERAGE.** King County shall furnish EFC with certificates of coverage. The certificates for each policy or coverage agreement are to be signed by a person authorized to bind coverage. The certificates are to be received and accepted by EFC prior to the commencement of activities associated with this Agreement. Acceptance hereunder shall be presumed unless otherwise notified by EFC. EFC reserves the right to require complete certified copies of the pertinent parts of applicable policies at any time.

## 5. GENERAL TERMS AND CONDITIONS

5.1 **NOTICE.** Notice will be given as follows:

5.1.1. If to King County:

**T.J. Davis, ADOP Project Manager  
King County Department of Natural Resources and Parks  
201 South Jackson St, Suite 701  
Seattle, WA 98104-3855**

**Email: tj.davis@metrokc.gov**  
**Phone: (206) 263-6214**

5.1.2 If to EFC:

**Ken Karlberg, President**  
**Eastside FC**  
**P.O. Box 14**  
**Mercer Island, WA 98040**  
**ken@karlberglaw.com**  
**(206) 817-4202**

5.2 **NONDISCRIMINATION.** EFC will comply with King County Code 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.** EFC does not anticipate hiring any employees to develop, program, and maintain the Soccer Facility or otherwise perform its obligations under this Agreement. If EFC should elect to do so, however, EFC agrees not to discriminate against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification. This requirement shall apply without limitation to all aspects of employment (including lay-offs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship) and advertisement.

5.2.2 **Services and activities.** No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for termination or suspension in whole or in part of this Agreement by King County and may result in ineligibility for further King County agreements.

5.2.3 **Other nondiscrimination laws.** EFC shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.

5.3 **ASSIGNMENT.** EFC 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 King County's obligations hereunder.

- 5.4 **ADVERTISING RESTRICTIONS.** EFC 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. EFC 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 Recreations Department ("Director"). If the Director imposes additional restrictions, a copy of the restrictions will be included in an attachment hereto. Therefore, EFC 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. EFC further agrees that any violation of this Section by it will be a material breach of its contractual obligations to King County pursuant to this Agreement.
- 5.5 **SOLICITING.** Except as otherwise provided in this Agreement, canvassing, soliciting and distribution of handbills or any other written material, or peddling in the Site, the Soccer Facility or in adjacent areas are each prohibited without the prior written approval from King County.
- 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 Show as set forth. 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.** EFC agrees to pay on a current basis all applicable taxes or assessments levied on its activities; PROVIDED, however, that nothing contained herein will modify EFC's right to contest any such tax, and EFC 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 EFC LIENS.** EFC 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 EFC, 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 EFC from its obligations under this Agreement, require EFC 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. EFC will pay to King County upon demand any sum paid by King County to remove the liens. Further, EFC 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 paragraph. Additionally, it is mutually understood and agreed that this paragraph is intended to be a continuing provision applicable to future repairs and improvements after the initial development and construction of the Site and the Soccer Facility.
- 5.11. **RECORDS, AUDITS AND INSPECTIONS.** During this Term of this Agreement, EFC's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by King County at King County's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.
- 5.12 **ENTRY BY KING COUNTY.** King County may enter the Site or the Soccer Facility during EFC's usage for any reason. Any person or persons who may have an interest in the purposes of King County's visit may accompany King County. King County has the right to use any and all means that King County deems proper to open doors and gates to obtain entry to the Site or to the Soccer Facility.
- 5.13 **COMPLIANCE WITH ALL LAWS AND REGULATIONS.** In using the Soccer Facility, EFC 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). EFC 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 EFC.

- 5.15 **PERMITS AND LICENSES.** EFC will obtain and maintain, at its own costs and expense, all necessary permits, licenses and approvals required for the activities contemplated under this Agreement.
- 5.16 **RISK OF LOSS.** All personal property of any kind or description whatsoever on the Site or the Soccer Facility shall be at EFC's sole risk, and King County will not be liable for any damage done to, or loss of, such personal property. However, EFC will not be responsible for losses or claims of stolen property during King County-scheduled use of the Site or the Soccer Facility persons or entities other than EFC.
- 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 EFC shall not, without first obtaining King County's 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. 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 EFC 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. EFC may not, however, assert such a claim to the extent that EFC creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of EFC performing construction activities on the Site, changing the configuration of the Site, or changing the use of the Site.
- 5.17.4 If EFC 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 King County in writing. Such notice shall in no event be provided more than 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, EFC is an independent Contractor, and neither it nor its officers, agents, employees, or

subcontractors are employees of King County for any purpose. EFC 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 EFC, its employees, subcontractors and/or others by reason of this Agreement.

#### 5.19 INDEMNIFICATION AND HOLD HARMLESS.

5.19.1 EFC shall protect, indemnify, and save 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) EFC's failure to pay any such compensation, wages, benefits, or taxes as set forth in Paragraph 5.19 above, and/or (2) work, services, materials, or supplies to EFC employees or other EFC suppliers in connection with or support of the performance of this Agreement.

5.19.2 EFC 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 EFC, 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 EFC 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 EFC's use of the Soccer Facility under this Agreement. EFC'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 EFC's expense for claims that fall within this section;

5.19.3.2 Indemnification of claims, including those made by EFC's own employees and/or agents for this purpose, for claims that fall within this section;

5.19.3.3 In the event King County incurs any judgment, award and/or cost arising from claims that fall within this section, including attorney's fees to successfully enforce the section, all such fees, expenses, and costs shall be recoverable from EFC.

5.19.3.4 EFC 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 EFC's subcontractor(s), its officers, employees, and/or agents in connection with or in support of this Agreement.

- 5.19.3.5 EFC expressly and specifically agrees that its obligations under this paragraph 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, EFC, hereby expressly and specifically waives, with respect to King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County.
- 5.20 **WAIVER OF BREACH.** Waiver of any breach of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by King County, which shall be attached to the original Agreement.
- 5.21 **ADDITIONAL TERMS.** The Parties reserve the right to modify this Agreement as necessary to equitably address unforeseen circumstances that may arise. The Parties agree to cooperate in good faith and in the spirit of this Agreement with respect to any such requested modifications. Any such amendments or addendums to this Agreement shall be in writing and executed with equal formality as this Agreement.
- 5.22 **DISPUTE RESOLUTION.** The Parties agree to use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the purposes of this Agreement. In the event that a dispute arises between EFC and King County, they 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 on the Site is not delayed or interrupted. Provided, that nothing in this Agreement shall otherwise limit the Parties; legal, equitable, or other rights or remedies.
- 5.23 **TERMINATION/NOTICE/CURE.** In recognition that EFC shall invest substantial funds to develop, program, and provide supplementary maintenance for the Soccer Facility at the Site and in appreciation that King County has fiduciary responsibilities to its residents and taxpayers that may change over time, the Parties agree that this Agreement may be terminated as follows:
- 5.23.1 **FAILURE TO PERFORM.**
- 5.23.1.1 **OBLIGATION TO PERFORM.** Nothing herein shall imply any duty upon King County to do any work required to be performed by EFC in this Agreement, and the performance thereof by King County will not constitute a waiver of EFC'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 permit a loss of business or other damage to EFC by reason of King County's actions pertaining to the Site or the Soccer Facility.

**5.23.1.2 PAYMENTS TO OTHER PARTIES.** Except as expressly provided hereunder, all obligations of EFC under this Agreement will be performed by EFC at EFC's sole cost and expense. If EFC fails to pay any sum of money owed to any party other than King County for which EFC is liable hereunder, or if EFC fails to perform any other act on its part to be performed hereunder, and such failure continues for ten days after notice thereof by King County, King County may, without waving or releasing EFC from its obligations, make any such payment or perform any such other act to be made or performed by EFC. EFC will pay King County, on demand, all sums so paid by King County and all necessary incidental costs, together with interest thereon at the lesser of 1 percent per month or the maximum rate permissible by law, from the date of such payment by King County.

**5.23.2 DEFAULT.**

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

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

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



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

- 5.23.3 **TERMINATION FOR CHANGE IN EFC STATUS.** King County may terminate this Agreement without penalty or liability if, at any time during the Term of this Agreement, EFC loses or changes its status: (1) as an active Washington not-for-profit corporation; or (2) as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code as now or hereafter codified; or (3) as a soccer club affiliated with the Washington State Youth Soccer Association (WYSA), or any of them as now or hereafter constituted. Provided, that King County will not terminate the Agreement under this section if EFC seasonably cures any and all such loss or change of status.
- 5.23.4 **DEFAULT FOR OTHER CAUSE.** This Agreement may be immediately terminated for other cause by a party if the other party substantially fails to perform its obligations under this Agreement, through no fault of the terminating party, and the non-performing party does not commence correction of the failure of performance within sixty (60) days of the terminating party's sending notice to the non-performing party.
- 5.23.5 **OTHER EFC TERMINATION.** EFC may terminate this Agreement for any reason upon twelve (12) months notice in writing to King County. In this event EFC shall not be entitled to any compensation from King County for capital improvements made by EFC to the Site.
- 5.23.6 **OTHER KING COUNTY TERMINATION.** King County may terminate this Agreement without cause upon twelve (12) months notice in writing to EFC. In this event EFC shall be entitled to reasonable compensation from King County for capital improvements made by EFC to the Site with due regard for the funds invested by EFC, EFC 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 EFC has had use of the Soccer Facility.
- 5.23.7 **REMEDIES ARE CUMULATIVE.** Remedies under this Agreement are cumulative; the failure to exercise any right on any occasion will not operate to forfeit such remedy.
- 5.24. **DESTRUCTION OF PREMISES AND USE OF INSURANCE PROCEEDS.**
- 5.24.1 Unless otherwise mutually agreed by the Parties, if the Site or the Soccer Facility are destroyed or injured by fire, earthquake, or other casualty during the Design and Construction Phase, then EFC will proceed to rebuild and restore the Site and the Soccer Facility, or such part thereof as may be injured or destroyed. In the event of any loss covered by the insurance policies described and required under this Agreement, unless this Agreement is terminated as provided herein, EFC will use the proceeds of such insurance policies first to rebuild and then to restore the Site and the Soccer Facility and

replace the improvements, fixtures, and equipment, which may be damaged or destroyed by such casualty.

- 5.24.2 Unless otherwise mutually agreed by the Parties, if the Site or the Soccer Facility are destroyed by fire, earthquake or other casualty after completion of the Design and Construction Phase, then King County will proceed to rebuild and restore the Site and the Soccer Facility, or such part thereof as may be injured or destroyed. In the event of any loss covered by the insurance policies described and required under this Agreement, unless this Agreement is terminated as provided herein, King County will use the proceeds of such insurance policies first to rebuild and then to restore the Site and the Soccer Facility and replace the improvements, fixtures, and equipment, which may be damaged or destroyed by such casualty.
- 5.25. **DUTIES UPON TERMINATION.** Upon termination of this Agreement, and unless otherwise arranged, EFC will remove from the Site and the Soccer Facility all its personal property, goods, and effects. If EFC fails to perform this duty at termination, King County may cause such removal to be made and EFC's personal property, goods and effects to be stored, the cost and expense to be paid by EFC. It is understood and agreed that the real property constituting the Site and the Soccer Facility is the real property of King County and that all improvements to that real property will continue to belong to King County upon termination of this Agreement.
- 5.26. **EMINENT DOMAIN.** The following rules will govern the rights and duties of the Parties in the event of interference with EFC's design, construction, or use of the Site or the Soccer Facility as a result of the exercise of eminent domain or private purchase in lieu thereof.
- 5.26.1 **RIGHT OF TERMINATION.** If the whole of the Site or the Soccer Facility is taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Agreement will automatically terminate as of the date that title is taken. If more than twenty-five percent (25%) of the Site or the Soccer Facility is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then EFC 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 EFC.
- 5.26.2 **NON-TERMINATION.** If any part of the Site or the Soccer Facility is so taken and this Agreement is not terminated, then King County will, at its own cost and expense, restore the remaining portion of the Site and the Soccer Facility to the extent necessary to render it reasonably suitable for the purposes contemplated under this Agreement.
- 5.26.3 **COMPENSATION.** The compensation awarded or paid upon a total or partial taking of the Site or the Soccer Facility, or this Agreement, or any of them, will belong to and be

apportioned between EFC and King County in accordance with their respective interests under this Agreement as determined between them or by a court. Additionally, EFC 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 EFC. King County will have no claim to condemnation proceeds attributable to EFC's interest in the Soccer Facility, nor will EFC 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, EFC shall remove any and all of its portable improvements at the Soccer Facility. If improvements include non-portable fixtures, such improvements shall inure to the benefit of King County and shall remain at the Soccer Facility.
- 5.28 **HEADINGS NOT PART OF AGREEMENT.** The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
- 5.29 **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Washington.
- 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.** EFC will have the right to participate in any litigation, arbitration or dispute directly affecting the Site, the Soccer Facility or interest of EFC 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 EFC of the same.
- 5.32 **ATTACHMENTS.**
- A. Description and map of Site and Facility
  - B. CPG Facility Good Neighbor/Facility Use Policy
  - C. CPG Insurance Requirements and documentation of coverage
  - D. Capital Improvement Grant Award Contract
  - E. CPG Facility Revenue Plan
- 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 EFC. 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 first date written.

Eastside FC

By Kenneth J. Karlberg  
TITLE President  
Date July 19, 2007

King County

By Kevin R. Pinn  
TITLE Director  
Date 8/7/07



**Attachment B: Good Neighbor / Facility Use Policy**

Incorporated herein by Reference as established in original Agreement

## Attachment C: Insurance Requirements and Documentation

### Documentation Incorporated herein by Reference

- A. FOR ALL COVERAGES.** Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval. If coverage is approved and purchased on a "claims made" basis, the EFC 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 years from the date of Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under this Contract.
- The EFC shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.
- B. MINIMUM SCOPE AND LIMITS OF INSURANCE**  
Pursuant to the terms of this Contract, for the operations and maintenance of the facility the EFC shall maintain coverage and limits for no less than:
1. **General Liability:**  
Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY \$1 Million combined single limit per occurrence by bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a \$2 Million aggregate limit.
  2. **Automobile Liability:** If operations require vehicle usage.  
Insurance Services Office form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9. \$1 Million combined single limit per accident for bodily injury and property damage.
  3. **Workers' Compensation:** If EFC or Sub-contractor has employees  
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. Statutory requirements of the state of residency.
  4. **Stop Gap/Employers Liability:** If EFC or sub-contractor has employees  
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. Limit: \$1 Million
- C. DEDUCTIBLES AND SELF-INSURED RETENTIONS**  
Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the EFC's liability to the County and shall be the sole responsibility of the EFC.
- D. OTHER INSURANCE PROVISIONS**  
The insurance policies required in this Contract are to contain, or be endorsed to contain, the following provisions:
1. **Liability Policies Except Professional and Workers' Compensation**
    - a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the EFC in connection with this Contract. Such endorsement shall include Products-Completed Operations.
    - b. The EFC's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the EFC's insurance or benefit the EFC in any way.
    - c. The EFC's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
  2. **All Policies**  
Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the County.
- E. ACCEPTABILITY OF INSURERS.** Unless otherwise approved by the County, insurance is to be placed with insurers with Bests rating of no less than A:VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII. Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by King County. If, at any time, the foregoing policies shall fail to meet all requirements noted herein, or if a company issuing any such policy shall be or become unsatisfactory to the County, the EFC shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.
- F. VERIFICATION OF COVERAGE.** The EFC shall furnish the County with certificates of insurance and endorsements required by this Contract. Such certificates and endorsements, and renewals thereof, shall be attached as exhibits to the Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.
- G. SUBCONTRACTORS.** The EFC shall include all subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

**Attachment D: Capital Improvement Grant Disbursement Matrix**



Milestone(s)	Grants and Milestone Amount(s)	Encumbered and Invoice(s) Paid	Milestone Checkpoints	Documentation Requirements																				
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<p><b>A. Phase 1 Construction</b> <i>(Classroom and Corridor)</i></p>	<p><b>\$750,000</b> IFC CIP</p>		<p><b>Milestone #4:</b></p>	<p><b>King County Deliverables:</b></p>																				

**FIRST AMENDMENT TO USE AGREEMENT WITH EASTSIDE FOOTBALL CLUB  
FOR SOCCER FACILITY AT PRESTON PARK**

RECITALS

- A. King County, a home rule charter county and political subdivision of the State of Washington ("the County"), and Eastside Football Club (EFC), a not-for-profit, tax-exempt 501(c)(3) corporation organized under the laws of the State of Washington entered into a Use Agreement with an effective date of August \_\_, 2007 ("the Agreement"),
- B. Section 2.5 of the Agreement provides \$1.5 million towards the capital costs to construct the Soccer Facility.
- C. Section 2.7 of the Agreement requires EFC to Pay King County a guaranteed rental fee of \$120,000 per year for 10 years.
- D. King County Council appropriated an additional \$400,000 in 2008 capital funds and the CPG Program committed an additional \$300,000 in 2007 and 2008 CPG Grant funds towards the final costs to construct the park.
- E. EFC agrees to increase their annual rental fee from \$120,000 per year to \$150,000 per year.
- F. King County and EFC wish to amend Section 2.5 of the Agreement to reflect the additional funds provided.
- G. King County and EFC wish to amend Section 2.7 of the Agreement to reflect the additional rental payments required.

NOW, THEREFORE, King County and EFC agree to delete Paragraphs 2.5 and 2.7 of the Agreement and insert new Paragraphs 2.5 and 2.7 as follows :


- 2.5 King County will provide a total of \$2.2 million towards the capital cost to construct the Soccer Facility at the Site pursuant to the Parks FMD Milestone Review Grid, attached hereto as Ex. D. Except as may be hereafter provided by amendment, EFC will be solely responsible to secure and provide all other funding needed to design and construct the Soccer Facility. The present total estimate cost to construct the Soccer Facility is \$4.2 million dollars, excluding anticipated donated services and materials. With the exception of any CPG and YSFG grants that may independently be awarded to EFC, Issaquah Little League ("ILL") and Preston Community Club ("PCC"), King County will be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the Site or the Soccer Facility in excess of the \$2.2 million dollar capital grant outlined above. EFC will, upon request, inform any inquiring person or entity that King County has**

no further financial obligations associated with the construction of the Site or the Soccer Facility.

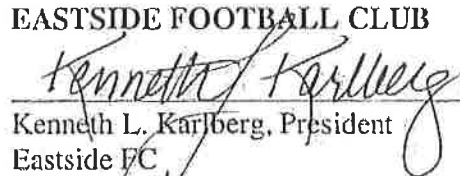
2.7 EFC will pay King County a guaranteed rental fee of \$150,000 per year for 10 years starting from the date of the Soccer Facility's completion (Years 1-10), inclusive of electricity costs. For Years 11-20, EFC will pay an hourly rental fee for synthetic field usage at the Soccer Facility to King County at \$20 less than the public hourly rental fee charged by King County, exclusive of electricity costs, for synthetic and/or grass soccer fields for youth sports. The reduction is in recognition for the substantial in-kind goods and services donated by EFC's volunteers and general contractor, and the supplemental maintenance provided by EFC under this Agreement. EFC shall not be required to pay an hourly fee for use of the unlit grass field.

All other terms, conditions, specifications and requirements of the Agreement shall remain unchanged and in full effect, except as amended herein.

Approved by:

KING COUNTY  
  
Kevin Brown, Director  
King County Parks and Recreation Division

2/26/08  
Date

EASTSIDE FOOTBALL CLUB  
  
Kenneth L. Karlberg, President  
Eastside FC

2/4/08  
Date

SECOND AMENDMENT TO USE AGREEMENT WITH EASTSIDE FOOTBALL CLUB FOR SOCCER FACILITY AT PRESTON PARK

RECITALS

- A. King County, a home rule charter county and political subdivision of the State of Washington ("the County"), and Eastside Football Club (EFC), a not-for-profit, tax-exempt 501(c)(3) corporation organized under the laws of the State of Washington, entered into a Use Agreement with an effective date of August 2nd, 2007 ("the Agreement").
B. Under Section 2.7 of the Agreement, EFC was required to pay the County a guaranteed use fee of \$1,200,000.00, at a rate of \$120,000.00 per year for ten years.
C. In 2007, the County and EFC amended Section 2.7 of the Agreement to require EFC to pay the County a guaranteed rental fee of \$1,500,000.00, at a rate of \$150,000.00 per year for ten years.
D. The County and EFC now wish to amend Section 2.7 of the Agreement for a second time, such that EFC will pay the County \$100,000.00 per year for fifteen years, beginning in 2008. The purpose of this amendment is to support the community's ongoing effort to secure private funds for the balance of construction costs.
E. The total guaranteed rental fee that EFC will pay to the County remains \$1,500,000.00. This amendment simply allows EFC to pay it over a longer period, in smaller increments.

NOW, THEREFORE, King County and EFC agree to amend Section 2.7 of the Agreement to read as follows [deleted text marked ((like-this)); inserted text marked like this]:

2.7 Beginning in 2008, EFC will pay King County a guaranteed rental fee of ((\$150,000)) \$100,000 per year for ((10)) 15 years ((starting from the date of the Soccer Facility's completion)) (Years 1 - ((10)) 15) inclusive of electricity costs. For years ((11)) 16-20, EFC will pay an hourly rental fee rate for synthetic field usage at the Soccer Facility to King County that is \$20 per hour less than the public hourly rental fee rate charged by King County, exclusive of electricity costs, for the synthetic soccer fields for youth sports. ((The)) This rate reduction is ((in recognition)) consideration for the substantial in-kind goods and services donated towards field construction by EFC's volunteers and general contractor, and the supplemental maintenance provided by EFC under this Agreement. EFC shall not be required to pay an hourly fee for use of the unlit grass field.

TEXT CONTINUES ON FOLLOWING PAGE

All other terms, conditions, specifications and requirements of the Agreement remain unchanged and in full effect.


By executing this amendment, each person signing below affirms that he or she is duly authorized to legally bind the entity that he or she represents.

**KING COUNTY**

  
\_\_\_\_\_  
Kevin Brown, Director  
King County Parks and Recreation Division

10/23/08  
Date

**EASTSIDE FOOTBALL CLUB**

  
\_\_\_\_\_  
Dan Phillips, Boardmember  
Eastside Football Club

10/20/08  
Date



**THIRD AMENDMENT TO USE AGREEMENT WITH EASTSIDE FOOTBALL CLUB  
FOR SOCCER FACILITY AT PRESTON PARK**

RECITALS

- A. King County, a home rule charter county and political subdivision of the State of Washington ("the County"), and Eastside Football Club (EFC), a not-for-profit, tax-exempt 501(c)(3) corporation organized under the laws of the State of Washington, entered into a Use Agreement with an effective date of August 2<sup>nd</sup>, 2007 ("the Agreement").
- B. Under Section 2.5 of the Agreement, King County provided \$1.5 million towards the capital cost to construct the facility.
- C. In recognition of successful fundraising efforts by EFC towards the completion of Phase 2 of Preston Athletic Fields, King County Parks has agreed to award an additional \$250,000 CPG Grant towards the completion of Phase 2
- D. King County Parks and EFC mutually agree to amend Section 2.5 to reflect the additional grant award in the amount of \$250,000.

NOW, THEREFORE, King County and EFC agree to amend Section 2.5 of the Agreement to read as follows [deleted text marked ((~~like this~~)); inserted text marked like this]:

2.5 King County will provide a total of ~~\$1.5 million~~ \$1.75million towards the capital cost to construct the Soccer Facility at the Site pursuant to the Parks FMD Milestone Review Grid: attached hereto as Ex. D. EFC will be solely responsible to secure and provide all other funding needed to design and construct the Soccer Facility. The present total estimate cost to construct the Soccer Facility is ~~\$3.7~~ \$4.38 million dollars, including anticipated donated services and materials. With the exception of any CPG and YSFG grants that may independently be awarded to EFC, Issaquah Little League ("ILL") and Preston Community Club ("PCC"), King County will be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the Site or the Soccer Facility in excess of the ~~\$1.5~~ \$1.75 million dollar capital grant outlined above. EFC will, upon request, inform any inquiring person or entity that King County has no further financial obligations associated with the construction of the Site or the Soccer Facility.

All other terms, conditions, specifications and requirements of the Agreement remain unchanged and in full effect.


By executing this amendment, each person signing below affirms that he or she is duly authorized to legally bind the entity that he or she represents.

**KING COUNTY**

  
Kevin Brown, Director  
King County Parks and Recreation Division

7/28/11  
Date

**EASTSIDE FOOTBALL CLUB**

  
Mike Racine, Director  
Eastside Football Club

3/21/11  
Date

**Phases of Construction 2007 –  
Eastside Football (EFC), Issaquah Little League, and Preston Community Club**

**Phase 2**

- Warm-up areas. (Completed by EFC in Spring 2011)

**Phase 3 (Current)**

- Third soccer synthetic field. ( To be completed by EFC Summer 2014)
- Picnic Shelter (To be completed by PCC in Summer 2014)

**Future Phase**

- Fieldhouse (TBD)

**Phase 1:**  
Starts: Spring 2007  
Completed: Summer 2008

- 2 synthetic soccer fields with lights (completed by EFC in Spring 2008)
- 1 youth baseball field (completed by ILL, Spring 2008)
- Restrooms (Completed by EFC, ILL, PCC in early 2006)
- Community park area, play area, and common areas. Completed by PCC in Summer 2008
- Parking lot (Completed by EFC, ILL, and PCC in Late 2007)
- All site-wide infrastructure drainage, infiltration, septic, utilities etc. (Completed by EFC, ILL, and PCC in early 2008)

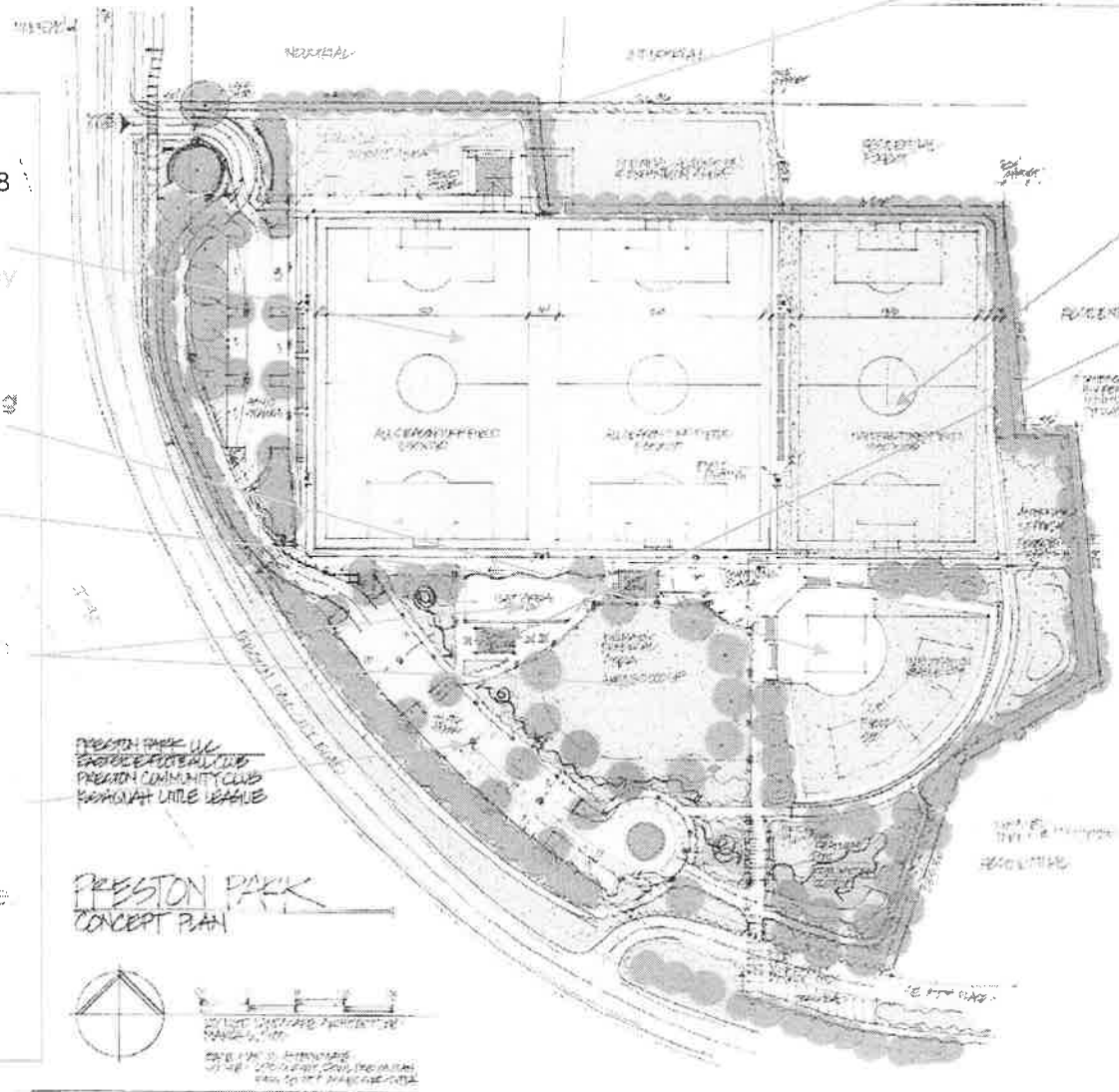






EXHIBIT F

Milestone(s)	Grants and Milestone Amount(s)		Encumbered and Invoice(s) Paid		Milestone Checkpoints	Documentation Requirements	FMD PM Hours	FMD PM Rate/Costs	Notes
	Total	Balance:	Encumb.	Paid					
<b>Total:</b>	\$3,512,245	\$2,199,892	\$1,400,000	\$1,212,253			\$150		
<b>Milestone #1</b> Pre-Design	\$300,000	PFLC	\$300,000	\$300,108	<b>Milestone #1:</b> X Use agreement X Insurance  <b>Completed and Approved</b>	<b>EFC Agreement Documentation:</b> X EFC CPG Agreement X EFC Insurance: CG-20 Form X EFC Affidavit and Certificate Of Compliance X EFC ADA/504 Assurance X EFC Personnel Inventory Report (PIR) X PFLC W-9			
	\$42,500	PFLC (amend.)	\$42,500	\$42,500					
<b>Milestone #2</b> Design / Permits	\$300,000	PFLC - PCC CPG	\$300,000	\$300,000	<b>Milestone #2:</b> X Review Milestone #2 Meeting(s) Held X FMD Schematic Design Review X Parks Schematic Design Review X F&G Application accepted by DDES X Establish Monthly FMD/Parks Review  <b>Completed and Approved</b>	<b>PCC Agreement Documentation (P):</b> X PCC Insurance: CG-20 Form X PCC Affidavit and Certificate Of Compliance X PCC Affidavit and Certificate Of Compliance X PCC Personnel Inventory Report (PIR)  <b>Final County Deliverables:</b> X PCC CPG Agreement  <b>PFLC Deliverables:</b> X F&G App. Acceptance Letter from DDES X Schematic Drawing Set X Selection Documentation: Landscape Arch. <b>Periodic Progress Report:</b> - Key Decisions and Items - Public Involvement & SEPA Status - Budget/Cost Status - Schedule Status			
	\$40,000	PFLC - PCC CIP	\$40,000	\$40,000					
<b>3. 100% Construction Documents</b>	\$242,500	ILL CPG/CIP #316715 #317009	\$242,500	\$242,500	<b>Milestone #3:</b> X Review Milestone #3 Meeting(s) Held X FMD Review X Parks Review  <b>Completed and Approved</b>	<b>ILL CPG Documentation:</b> X ILL Insurance: CG-20 Form X ILL Affidavit and Certificate Of Compliance X ILL Affidavit and Certificate Of Compliance X ILL Personnel Inventory Report (PIR)  <b>Final County Deliverables:</b> X ILL CPG Agreement  <b>PFLC Deliverables:</b> X Summary of Pre-construction volunteer hours <b>Documented Selection Processes:</b> -Turf Manufacturer-Installer -Field Lighting System Supplier <b>Periodic Progress Report:</b> X -Key Decisions and Items X -Budget/Cost Status X -Schedule Status			
	\$75,000	PCC (2007) YSFG	\$75,000	\$75,000					
	\$80,000	PCC (2008) YSFG	\$50,000	\$50,000					
	\$75,000	ILL (2007) YSFG	\$75,000	\$75,000					
	\$50,000	PFLC (2008) YSFG	\$50,000	\$50,000					
	\$75,000	PFLC (2007) YSFG	\$75,000	\$75,000					
<b>4. Phase 1 Construction (Clearing and Grading)</b>	\$750,000	EFC CIP			<b>Milestone #4:</b> X Review Milestone #4 Meeting(s) Held X FMD Review X Parks Review  <b>Completed and Approved</b>	<b>Final County Deliverables:</b> X EFC legislation approved by Council  <b>PFLC Deliverables:</b> X Fully Executed 40 Year Agreement <b>Documented Selection Processes:</b> -Prime Contractor X Construction Documents X Applicable contractor, builder's risk insurance, bonds, etc. X Pre-Construction Conference Minutes <b>Periodic Progress Report:</b> X -Key Decisions and Items -Budget/Cost Status -Schedule/Cost Status X Intent to Pay Prevailing Wage			
<b>5. Phase 2 Construction Synthetic Turf, Lights Restroom, etc.</b>	\$750,000	EFC CIP			<b>Milestone #5:</b> X Review Milestone #5 Meeting(s) Held X FMD Review X Parks Review  <b>Completed and Approved</b>	<b>PFLC Deliverables:</b> X Prime Contract X Synthetic Surface Contract X Light Supplier Contract <b>Periodic Progress Report:</b> X -Key Decisions and Items -Budget/Cost Status -Schedule Status X Intent to Pay Prevailing Wage - Field/Light			
<b>5a - 2007/2008 Award (per increased revenue payments to KC)</b>	\$708,000	EFC-CFG Amendment							
<b>6a Project Complete Ready for Occupancy</b>	\$62,245	August 2008 PFLC	\$62,245	\$62,245	<b>Milestone #6:</b> X FMD Review X Parks Review X Operating / Handoff  <b>Completed and Approved</b>	<b>PFLC Deliverables to KC Operations:</b> X Operation and Maintenance Manuals X Updated Punchlist X Museo Warranty X As-built			
	\$87,755	Sept 2008 PFLC	\$87,755			X CXI Warranty			
<b>7. Council Legislation</b>	Oct 2008 1.5 year fee change / loan	NA	NA	NA	<b>Completed and Approved</b>	X Field/Light Warranty X Final Budget Close-out			
<b>8. Phase 2 Construction</b>	2011 \$200,000 EFC CIP (2011) CIP \$50,000 CPG/YSFG (2011)		\$200,000 \$50,000	\$200,000 \$50,000	X FMD Review X Parks Review  <b>Completed and Approved</b>	X Final Plan X Permits			