



1
2 **USE AGREEMENT**

3 between

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

5 and

6 **Kirkland Youth Lacrosse**

7 for the

8 **Synthetic Lacrosse/Soccer Field**

9 at

10 **Big Finn Hill Park**

11
12 This Agreement (“Agreement”) is entered into by and between King County Department of
13 Natural Resources and Parks, Parks and Recreation Division (hereinafter “Parks” or “Division”)
14 and Kirkland Youth Lacrosse (hereinafter “KYL”) (collectively, the “Parties”) for the design,
15 installations, and use of a synthetic turf lacrosse/soccer field (hereinafter “Facility”) at Big Finn
16 Hill Park (hereinafter “Site”).

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

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21 **ARTICLE 1. BACKGROUND**

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25 1.1. County, a home rule charter county and political subdivision of the State of Washington,
26 is the owner of the Site, located at NE 138th and Juanita Drive NE Kirkland WA 98028,
27 and described and depicted with greater particularity in Attachment A to this Agreement.
28
29 1.2. KYL is a not-for-profit Washington corporation that is tax-exempt under section
30 501(c)(3) of the Internal Revenue Code. KYL is a community-based, open-membership
31 club organized to provide public opportunities for youth lacrosse.
32
33 1.3. KYL has the experience, ability, and resources to develop a synthetic sports field and
34 associated facilities at the Site and intends to develop a facility for lacrosse, soccer, and
35 other athletic and recreational uses at the Site.
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37 1.4. Parks has determined that synthetic lacrosse/soccer field located at the Site will have
38 significant regional and/or rural public recreation value.
39
40 1.5. King County Ordinance 14509 authorized the Department of Natural Resources and
41 Parks to create new public recreation opportunities by empowering user groups, sports
42 associations, and community organizations to develop mutually agreed upon capital
43 improvements for public recreation facilities on King County land, and thereby address
44 regional and/or rural recreation needs without increasing tax-funded operations and

45 maintenance costs.

46
47 1.6. Allowing KYL to develop certain mutually-agreed upon capital improvements, including
48 a synthetic lacrosse/soccer field at the Site, will serve to implement the authority
49 provided in Ordinance 14509, and to achieve the goals set forth in Section 1.5 above.

50
51 1.7. King County Code 4.56.150(E) and Revised Code of Washington 35.21.278 authorize
52 King County to enter into agreements with non-profit organizations that provide a service
53 to the public and make improvements to King County property.

54
55 1.8. Parks is willing to allow KYL to develop the Facility at the Site under the terms and
56 conditions set forth in this Agreement, and to give KYL scheduling priority over a term
57 of 30 years pursuant to the terms and conditions as set forth in Attachment B to this
58 Agreement.

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60 **ARTICLE 2. CONSIDERATION**

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62 2.1. The effective date ("Effective Date") of this Agreement is the date of execution by the
63 last party to execute this Agreement.

64
65 2.2. KYL agrees to design and construct the Facility on the Site consistent with the terms and
66 conditions set forth in this Agreement. The Facility will include one (1) synthetic
67 lacrosse/soccer field and related infrastructure, all as set forth in Attachment A to this
68 Agreement.

69
70 2.3. KYL agrees to assume responsibility for design, permitting, and construction for the
71 Facility as set forth in this Agreement.

72
73 2.4. KYL has inspected and knows the condition of the Site, and agrees to accept the Site in
74 AS IS condition.

75
76 2.5. Parks does not make and specifically disclaims any warranties, express or implied,
77 including any warranty of merchantability or fitness for a particular purpose, with respect
78 to the Site, and no official, employee, representative, or agent of King County is
79 authorized to represent otherwise.

80
81 2.6. For the Term of this Agreement, as defined in Section 2.7, Parks agrees that KYSA shall
82 have first priority of use of the Soccer Facility pursuant to the terms and conditions set
83 forth in Attachment B. KYSA acknowledges and agrees that substantial public access to
84 and use of the Soccer Facility is a material consideration for Parks' execution of this
85 Agreement.

86
87 2.7. In light of KYL's substantial investment in the Facility, the term ("Term") of this
88 Agreement will be thirty (30) years. Provided that KYL is then in compliance with the
89 terms and conditions of this Agreement, KYL will notify Parks in writing at least twelve
90 (12) months prior to the expiration of this Agreement whether KYL desires to negotiate

91 renewal or extension of the Agreement (including any proposed modifications). KYL
92 and Parks may renew or extend this Agreement, contingent upon KYL's full compliance
93 with the terms and conditions of this Agreement and Parks' written commitment to renew
94 or extend. The Parties may modify this Agreement during the Term, as a condition of
95 renewal, extension, or during a renewal or extension term.
96

97 2.8 King County shall retain ownership of the Site and the Facility, including all
98 improvements, permanent fixtures, and county-purchased equipment.
99

100 2.9 In recognition that the design, development, and construction of the Facility and Site will
101 benefit the Division and its park users upon completion, Parks agrees to coordinate with
102 KYL and to use its best efforts to assist with and facilitate the issuance of any federal,
103 state, county, or local permits or approvals necessary for construction at the Facility and
104 Site to begin. KYL understands, acknowledges, and agrees that the Division's assistance
105 and facilitation shall not and does not constitute King County's official endorsement or
106 approval of KYL's plans, drawings, design documents, or construction for purposes of
107 any applicable laws, regulations, codes, ordinances, guidelines, or industry standards
108 (collectively, "authorities"). As between KYL and the Division, KYL will be solely
109 responsible to comply with all applicable authorities and to obtain all necessary permits,
110 approvals, and endorsements.
111

112 2.10 Parks personnel or agents may inspect the Facility construction project at any time
113 provided that such persons observe due regard for workplace safety and security. Parks
114 may require KYL or its contractors to stop work if the Division deems work stoppage
115 necessary to remedy construction defects or to address risks to health, safety, or welfare.
116 KYL specifically understands, acknowledges, and agrees that at a minimum, Parks will
117 inspect the Facility construction project and approve work progress at the following
118 milestones:
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120 A. Completed set of construction plans, drawings, specifications, and related design
121 documents for the Facility construction project;
122

123 B. Preconstruction meeting with KYL and primary contractor when all permits and
124 approvals are in hand;
125

126 C. Demolition, excavation of Site complete;
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128 D. Site plumbing complete and Site prepared for installation of base material;
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130 E. Initial compaction of each and every lift of base material installed on Site;
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132 F. Final compaction of base material;
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134 G. Installation of synthetic turf carpet surface prior to fill;
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136 H. G-max or equivalent shock test of synthetic turf carpet with completed fill; and

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I. Installation of Facility amenities other than playing surface (fencing, paving, bleachers, etc.).

2.11 When KYL considers that all work or work associated with the Facility is substantially complete, KYL shall give written notice to Parks. Parks will promptly inspect the work and, if it does not agree that the work is substantially complete, Parks will prepare a list of items to be completed or corrected ("Punch List"). KYL or its contractor shall promptly complete or correct all Punch List items at the sole cost of KYL or its contractor, as they may decide between them. For purposes of this Agreement, "substantially complete" means that:

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

2.12 WARRANTIES.

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

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

2.12.2 If, within an applicable warranty period, any part of the Facility or work performed to construct the Facility is found not to conform to specifications, permit requirements, or industry standards, KYL shall correct it promptly after receipt of written notice from Parks to do so. If Parks determines that KYL's corrective action is not satisfactory and/or timely performed, then the Division

182 may either correct the problem itself or procure the necessary services,
183 recommendations, or guidance from a third party, and invoice KYL for the cost
184 to remedy the problem. KYL shall promptly reimburse the Division for all
185 costs, expenses, or damages incurred by Parks, including but not limited to the
186 cost to remedy the problem. An invoice is deemed received by KYL three (3)
187 days after deposit in the U.S. mail with proper address and postage. Invoices
188 must be paid within sixty (60) days. Parks will add a late fee of five percent
189 (5%) to any invoice not timely paid. Any invoice outstanding sixty (60) days
190 after receipt will be sent to collections.

191
192 2.12.3 The warranty-related remedies provided in this Section 2.11 are in addition to
193 any other rights or remedies provided elsewhere in this Agreement or by
194 applicable law.

195 **ARTICLE 3. CONSTRUCTION OF FACILITY**

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198 3.0 CAPITAL IMPROVEMENTS. KYL will raise and invest \$1.8 million in expenditures
199 for the development and construction of the Facility on the Site. KYL will serve as the
200 supervisory not-for-profit corporation for development and construction of the Facility.
201 KYL shall design, develop, and construct facilities, features, and amenities in accordance
202 with all applicable design(s), timelines, restrictions, environmental considerations,
203 permitting determinations, mitigations, and all other requirements in coordination with
204 King County Parks CPG staff. KYL understands, acknowledges, and agrees that it may
205 not undertake or commence any construction activities on the Site until KYL can
206 demonstrate to Parks' satisfaction that KYL has obtained and has in hand all \$1.8 million
207 of cash or cash equivalents. For purposes of this Section 3.0, "construction activities" do
208 not include preliminary activities such as surveying, mapping, drainage test pits,
209 installation of temporary fencing, or other low-impact or readily reversible actions.

210
211 3.1 EXCLUSIVE POSSESSION DURING CONSTRUCTION. KYL shall be entitled to
212 exclusive possession and use of that portion of the Site designated for development and
213 construction of the Facility during the design, development, and construction phases.
214 This right of exclusive possession and use by KYL is subject to King County's entry,
215 inspection, acceptance, and audit rights under Sections 2.10, 2.11, 4.13, 5.11, and 5.12 of
216 this Agreement.

217
218 3.2 DESIGN. KYL has retained a licensed architect and/or licensed professional engineer,
219 registered in the State of Washington, who will prepare a design for the Site and the
220 Facility and exterior landscaping, which visually blends with the setting. Parks shall
221 review the design plans for the Site in concept and reserves the right to approve the final
222 design of the Site and the Facility, consistent with established King County zoning,
223 design code, or both.

224
225 3.3 CONSTRUCTION/SITE WORK/FENCING. KYL will be solely responsible for the site
226 work, required permits, and grading at the Facility. KYL will ensure the work area is
227 properly barricaded, and will ensure that signage is installed directing unauthorized

228 persons not to enter onto the construction site during any phase of development or
229 construction. Unless otherwise agreed by the Parties in writing, fencing will be placed
230 around work areas. In addition, construction sites will be kept clean and organized during
231 development periods. KYL will be responsible for site security, traffic, and pedestrian
232 warnings at the Facility during the development and construction phases.
233

234 3.4 CONSTRUCTION DEADLINES. KYL is required to complete the development and
235 construction of the Facility within one (1) year from the date that KYL receives all
236 funding, in-kind contributions, and the permits necessary to commence construction on
237 the Facility.
238

239 3.5 RELOCATION OF UTILITY LINES. KYL will be responsible to relocate and improve
240 storm drains, sewers, water lines, and other utilities, if any, as required to complete
241 development and construction of the Facility.
242

243 3.6 ALTERATION OF SITE OR FACILITY AFTER CONSTRUCTION. After the Facility
244 is completed and accepted by KYL and Parks, as defined herein, KYL will not make any
245 material alteration to the Site or to the Facility, including any changes to the landscaping,
246 without express, written consent by Parks.
247

248 3.7 DEVELOPMENT AND CONSTRUCTION FEES AND EXPENSES. KYL will be
249 responsible to obtain and pay for all necessary permits, fees, and expenses associated
250 with the development and construction of the Facility.
251

252 3.8 PUBLIC WORKS LAWS. To the extent applicable, KYL will comply with all public
253 works laws, regulations, and ordinances, including but not limited to those related to
254 prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW
255 39.08), use of licensed contractors (see RCW 39.06), and competitive bidding (see RCW
256 36.32 and RCW 35.21.278). KYL will indemnify and defend King County should it be
257 sued or made the subject of an administrative investigation or hearing for a violation of
258 such laws, regulations, and ordinances in connection with the improvements. Without
259 limiting the foregoing, KYL understands, acknowledges, and agrees that before
260 beginning construction of the Facility on the Site, KYL must execute and deliver to King
261 County a performance and payment bond in an amount equal to one hundred percent
262 (100%) of the estimated full value of the Facility construction contract (\$1.8 million), on
263 a form acceptable to King County with an approved surety company and in compliance
264 with RCW Ch. 39.08. King County must be named as the beneficiary of the payment and
265 performance bond. KYL must notify the surety of any changes in the work. KYL must
266 promptly furnish additional bond security to protect King County and persons supplying
267 labor or materials required to construct the Facility if (a) King County has a reasonable
268 objection to any surety; (b) any surety fails to furnish reports on its financial condition
269 pursuant to King County's request; or (c) the estimated cost of the Facility increases
270 beyond the bond amount.
271

272 3.9 CONTRACTOR INDEMNIFICATION AND HOLD HARMLESS. KYL will require its
273 construction contractors and subcontractors to defend, indemnify and hold King County,

274 its officers, officials, employees, and volunteers harmless from any and all claims,
275 injuries, damages, losses, or suits including attorney's fees and costs, arising out of or in
276 connection with the design, development, and construction of the Facility (hereinafter
277 "Design and Construction Phase"), except for injuries and damages caused by the
278 negligence of King County.
279

280 3.10 COMMERCIAL GENERAL LIABILITY INSURANCE. KYL will require its
281 construction contractors to procure and maintain, for the duration of construction of the
282 Facility, insurance against claims for injuries to persons or damage to property, which
283 may arise from or in connection with the performance of the work hereunder by the
284 construction contractors and subcontractors, their agents, representatives, or employees.
285 All said policies will name King County as an additional named insured and will include
286 a provision prohibiting cancellation or reduction in the amount of said policies except
287 upon 45 days prior written notice to Parks. KYL will require its construction contractors
288 to maintain minimum commercial general liability insurance limits of no less than
289 \$1,000,000 each occurrence; \$2,000,000 general aggregate and a \$2,000,000 products-
290 completed operations aggregate limit; business automobile coverage for a limit of not less
291 than \$1,000,000 combined single limit per occurrence; and workers' compensation
292 coverage as required by the Industrial Insurance Act of the State of Washington, statutory
293 limit.
294

295 3.11 BUILDER'S RISK INSURANCE. KYL will require its construction contractors to
296 procure and maintain, for the duration of the Design and Construction Phase of the
297 Facility, builder's risk insurance covering interests of King County and the construction
298 contractor in the work. The builders risk insurance will be in the amount of the completed
299 value of the Facility with no coinsurance provisions. builder's risk insurance will be on
300 an all-risk policy form and will insure against the perils of fire and extended coverage
301 and physical loss or damage including flood and earthquake, theft, vandalism, malicious
302 mischief, collapse, temporary buildings, and debris removal. This builder's risk insurance
303 covering the work will have a deductible of \$5,000 for each occurrence, which will be the
304 responsibility of the construction contractor. Higher deductibles for flood and earthquake
305 perils may be accepted by King County upon written request by KYL and written
306 acceptance by King County. Any increased deductibles accepted by King County will
307 remain the responsibility of the construction contractor. The Builders Risk insurance will
308 be maintained until final acceptance of the work by KYL and Parks.
309

310 3.12 PROFESSIONAL ERRORS AND OMISSIONS. KYL must require its professional
311 service providers to carry insurance meeting all requirements set forth in Section 3.10 of
312 this Agreement. In addition, KYL must require its professional service providers to carry
313 professional liability errors and omissions insurance in an amount of not less than
314 \$1,000,000 per claim/aggregate. KYL must require its professional service providers to
315 provide copies of all insurance certificates or insurance policies to King County upon
316 request.
317

318 3.13. SUBCONTRACTORS. KYL will require its construction contractors during the Design
319 and Construction Phase to include all subcontractors as insured under its policies or will

320 furnish separate certificates and endorsements for each subcontractor. All coverage for
321 subcontractors will be subject to all of the same insurance requirements as stated herein
322 for the construction contractor.
323

324 3.14 INSURANCE COVERAGE TYPE AND DURATION. Each insurance policy must be
325 written on an "occurrence" form; except that insurance on a "claims made" form may be
326 acceptable with prior approval by King County Office of Risk Management. If coverage
327 is approved and purchased on a "claims made" basis, KYL warrants continuation of
328 coverage, either through policy renewals or the purchase of an extended discovery period,
329 if such extended coverage is available, for not less than three (3) years from the date of
330 contract termination or expiration, and/or conversion from a "claims made" form to an
331 "occurrence" coverage form.
332

333 3.13 VERIFICATION OF COVERAGE. KYL will furnish Parks with original certificates
334 and a copy of the amendatory endorsements, including but not necessarily limited to the
335 additional insured endorsement, evidencing the commercial general liability insurance of
336 the construction contractor before commencement of the work. Before any exposure to
337 loss may occur, KYL will file with Parks a copy of the builder's risk insurance policy that
338 includes all applicable conditions, exclusions, definitions, terms, and endorsements
339 related to work under this Agreement.
340

341 3.14 ACCEPTABILITY OF INSURERS. Unless otherwise approved by Parks, the following
342 provisions apply exclusively during the Design and Construction Phase:
343

344 3.14.1 Insurance is to be placed with insurers with a Best's rating of no less than
345 A:VIII, or, if not rated by Best's, with a rating in one of the two highest
346 categories maintained by Standard & Poor's Rating Group and Moody's Investor
347 Service.
348

349 3.14.2. If at any time any of the foregoing policies fail to meet the above minimum
350 standards, then KYL will, upon notice to that effect from King County,
351 promptly obtain a new policy, and submit the same to Parks with certificates and
352 endorsements, for approvals.
353

354 3.14.3. The required liability insurance policies (except Workers Compensation) are to
355 be endorsed to:

- 356 • Name "King County, its officers, officials, agents and employees" as
357 additional insured with respect to use of the Site as outlined in this
358 Agreement (Form CG 2026 or its current equivalent);
- 359 • Such coverage shall be primary and non-contributory insurance as
360 respects King County;
- 361 • State that KYL's or its contractor's insurance shall apply separately to
362 each insured against whom claim is made or suit is brought except with
363 respect to the limits of the insurer's liability;

- 364 • State that coverage shall not be suspended, voided, canceled, reduced in
365 coverage or in limits except after forty-five (45) days prior written notice
366 to King County.

367
368 3.15 WAIVER OF SUBROGATION. KYL will cause its contractors and subcontractors and
369 their insurance carriers to release and waive all rights of subrogation against King County
370 during the Design and Construction Phase to the extent a loss is covered by property
371 insurance in force. Except as otherwise provided in Article 3 of this Agreement, KYL
372 hereby releases from liability and waives all right of recovery against King County for
373 any loss from perils insured against or under the respective fire insurance policies of its
374 contractors, subcontractors, or any of them, including any extended coverage
375 endorsements thereto; provided, that this provision shall be inapplicable if it would have
376 the effect of invalidating any insurance coverage of KYL or King County.

377
378 3.16 INSURANCE PROVISIONS ARE MATERIAL TERMS. By requiring such minimum
379 insurance as described in this Article 3, King County shall not be deemed or construed to
380 have assessed the risks that may be applicable to KYL under this Agreement. KYL shall
381 assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits
382 and/or broader coverage. Nothing contained within this Article 3 shall be deemed to
383 limit the scope, application, and/or limits of the coverage afforded by the policies
384 specified herein, which coverage will apply to each insured to the full extent provided by
385 the terms and conditions of the policies. Nothing contained within this Article 3 shall
386 effect and/or alter the application of any other provision contained within this Agreement.
387 Failure by KYL, its agents, employees, officers, and/or subcontractors to comply with
388 these insurance requirements shall constitute a material breach of this Agreement.

389 **ARTICLE 4. USE OF FACILITY**

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392 4.0 NON-EXCLUSIVE LICENSE. In recognition that KYL shall invest substantial funds to
393 design, develop, construct, and provide supplemental maintenance for the Facility at the
394 Site, for the duration of the Term KYL is granted a non-exclusive license to use the
395 Facility by Parks on a first priority basis consistent with the terms and conditions set forth
396 in Attachment B.

397
398 4.1 STEWARDSHIP. KYL must be a good steward of the Facility and Site. All approved
399 activities and use by KYL shall be considerate of the capital, programmatic, and
400 environmental value of the Facility and Site to the greatest extent possible. All approved
401 construction, maintenance, and other modifications by KYL shall strictly adhere to all
402 applicable environmental laws and regulations at all times.

403
404 4.2 FACILITY USE POLICY. Parks and KYL shall mutually develop and implement a Good
405 Neighbor/Facility Use Policy (Attachment C) (hereinafter "Use Policy") in coordination
406 with other users of the Site to ensure positive relations with the surrounding community,
407 as well as other current or future Site users. The Use Policy shall be posted in clear view
408 at the Facility and/or integrated into print materials or websites pertaining to facility use.

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

411
412 4.4 FACILITY PROGRAMMING. KYL shall have first priority for use of the Facility. All
413 costs associated with KYL's programming and use of the Facility will be the
414 responsibility of KYL. All non-KYL use of the Facility shall be scheduled by and
415 through Parks, the cost of which shall be Parks' responsibility. By January 15 of each
416 calendar year, KYL shall provide Parks with a master schedule (hereinafter "KYL Master
417 Schedule") of its anticipated use for that year (e.g., hours and days of use) in order that
418 Parks may schedule Facility use by others around KYL's reserved use. The Parties
419 recognize that the KYL Master Schedule may require periodic supplementation to
420 accommodate KYL's changing practice needs and game schedules. At the beginning of
421 each month (or earlier, if the need for schedule changes is known), KYL shall timely
422 provide Parks with a revised monthly schedule if KYL's anticipated field use will deviate
423 from the KYL Master Schedule. Any requested modifications to the KYL Master
424 Schedule shall be approved by Parks unless (i) the request is unreasonable or (ii) the time
425 requested by KYL is already scheduled by Parks for non-KYL use and cannot be
426 reasonably re-scheduled. The Parties agree to coordinate in good faith with respect to all
427 scheduling of the Facility.

428
429 4.5 USE. Use of the Facility shall be limited to providing programming and other activities
430 for approved users as follows:

- 431
432 A. Lacrosse;
433 B. Soccer;
434 C. Other approved sports that are appropriate for synthetic fields; and
435 D. Other approved activities that are appropriate for synthetic fields.

436
437 4.6 OPERATING HOURS. The availability of recreational opportunities for King County
438 residents is a material consideration for Parks' execution of this Agreement. Hours of
439 operations shall be limited to 7 a.m. to 11 p.m. All field use other than lacrosse or soccer
440 shall be scheduled and approved by Parks in consultation with KYL.

441
442 4.7 INCIDENTAL USES. KYL may conduct tax-exempt fundraising activities to support the
443 Site, the Facility, and KYL's own beneficial or charitable mission as a not-for-profit
444 Washington corporation, provided that such fundraising activities shall not displace
445 public use of the Site or the Facility. Such activities shall be shown on KYL's Master
446 Schedule.

447
448 4.8 SECURITY AND NUISANCE DURING USE. KYL will take reasonable precautions to
449 secure the Facility during use by KYL. KYL will use the Site and the Facility for no
450 unlawful purposes and will not use or occupy the Site in any manner which would
451 constitute a public nuisance or otherwise violate federal, state, or local laws.

452
453 4.9 SITE MAINTENANCE PLAN. Parks shall operate and maintain the Site upon final
454 acceptance of the Facility improvements that KYL will construct.

- 455
456 4.10 PERFORMANCE REPORT. At the end of each calendar year during the Term, KYL
457 shall furnish the CPG project manager with a summary of the prior year's use by KYL
458 for approved activities on the Site or at the Facility.
459
- 460 4.11 LIMITED USE. KYL shall use the Facility for no business or purpose other than as
461 explicitly provided in this Agreement or as otherwise generally permitted to members of
462 the public. Other KYL activities may be allowed on a case-by-case basis with prior
463 written approval of Parks, which shall not be unreasonably withheld.
464
- 465 4.12 SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed,
466 painted, or affixed by KYL nor allowed by KYL to be exhibited, inscribed painted, or
467 affixed on any part of the Facility without the prior written approval of Parks, which shall
468 not be unreasonably withheld. All new Facility and/or Site signs shall follow the King
469 County Sign System Guide and shall be manufactured and installed by King County,
470 unless KYL receives prior written approval from Parks to do otherwise. Written approval
471 shall be requested through Parks' liaison. If KYL violates this provision, Parks may
472 remove the sign without any liability and may charge the expense incurred by such
473 removal to the KYL. All signs erected or installed pursuant to Parks' prior written
474 approval shall also comply with any applicable federal, state, or local statutes, ordinances
475 or regulations.
476
- 477 4.13 RIGHT TO INSPECT. King County at its discretion reserves the right to review and
478 approve KYL's use of the Facility and compliance with this Agreement. If Parks does
479 not approve of KYL's use and compliance, Parks will timely notify KYL in writing of the
480 specific items that Parks deems objectionable. KYL agrees to undertake reasonable
481 corrective action within a time period agreed to by the Parties, or if no time period is
482 agreed, within sixty (60) days.
483
- 484 4.14 MINIMUM SCOPE OF INSURANCE FOR KYL. In addition to insurance requirements
485 set forth in Article 3 that are applicable to the Design and Construction Phase, KYL will
486 at a minimum maintain insurance during the post-Design and Construction Phase that
487 covers KYL's activities and usage of the Facility and Site as follows:
488
- 489 4.14.1 COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general
490 liability insurance (Insurance Services Office form number (CG00 001),
491 covering commercial general liability with a limit of not less than \$1,000,000
492 combined single limit per occurrence; \$2,000,000 aggregate.
493
- 494 4.15 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured
495 retentions must be declared to and approved by King County. The deductible and/or self-
496 insured retention of the policies will not limit or apply to King County and will be the
497 sole responsibility of KYL.
498

499 4.16 OTHER INSURANCE PROVISIONS. The insurance policies required by Article 4 of
500 this Agreement shall also contain or be endorsed to contain the following provisions
501 where applicable:
502

503 4.16.1 LIABILITY POLICIES.

504 4.16.1.1 Each insurance policy will be written on an "occurrence" form.
505

506 4.16.1.2 King County, its officers, officials, employees, and agents are to be
507 covered as additional insureds as respects liability arising out of
508 activities and usage by KYL of the Facility and Site.
509

510 4.16.1.3. KYL's comprehensive general liability insurance coverage will be
511 primary insurance as respects King County, its officers, officials,
512 employees, and agents. Any insurance and/or self-insurance
513 maintained by King County, its officers, officials, employees or agents
514 will not contribute with KYL's insurance or benefit KYL in any way.
515

516 4.16.2 Coverage will not be suspended, voided, canceled, reduced in coverage or in
517 limits except by the reduction of the applicable aggregate limits by claims paid,
518 until after forty-five (45) days' prior written notice has been given to KYL and
519 Parks.
520

521 4.17 ACCEPTABILITY OF INSURERS. Unless otherwise approved by Parks, the following
522 provisions apply exclusively to KYL's activities and usage of the Facility and Site during
523 the post-Design and Construction Phase:
524

525 4.17.1 Insurance is to be placed with insurers with a Best's rating of no less than
526 A:VIII, or, if not rated by Best's, with a rating in one of the two highest
527 categories maintained by Standard & Poor's Rating Group and Moody's Investor
528 Service.
529

530 4.17.2 If at any time any of the foregoing policies fail to meet the above minimum
531 standards, then KYL will, upon notice to that effect from King County,
532 promptly obtain a new policy, and submit the same to King County with
533 certificates and endorsements, for approvals.
534

535 4.18 WAIVER OF SUBROGATION. KYL and its insurance carriers will release and
536 waive all rights of subrogation against King County to the extent a loss is covered by
537 property insurance in force. KYL hereby releases from liability and waives all right
538 of recovery against King County for any loss from perils insured against or under
539 their respective fire insurance policies, including any extended coverage
540 endorsements thereto; provided, that this provision shall be inapplicable if it would
541 have the effect of invalidating any insurance coverage of KYL or King County.
542

543
544

545 4.19. INSURANCE LIMITS AND DOCUMENTATION.

546

547 4.19.1. By requiring such minimum insurance as specified herein, neither party is
548 deemed to, or construed to, have assessed the risks that may be applicable to the
549 other party to this Agreement. KYL will assess its own risks and, if it deems
550 appropriate or prudent, or both, maintain greater limits or broader coverage.

551

552 4.19.2. KYL will furnish Parks with certificates of insurance and endorsements as
553 required by this Agreement. The certificates and endorsements for each policy
554 are to be signed by a person authorized by that insurer to bind coverage on its
555 behalf. The certificates and endorsements for KYL's insurance are to be on
556 forms approved by King County and are to be received and approved by King
557 County prior to the Effective Date of this Agreement. Parks reserves the right to
558 require complete certified copies of all required policies at any time.

559

560 4.20. KING COUNTY INSURANCE.

561

562 4.20.1 LIABILITY EXPOSURE. KYL acknowledges, agrees, and understands that
563 King County is self-insured for all of its liability exposures, including but not
564 limited to worker's compensation. King County agrees, at its own expense, to
565 maintain through its self-insurance program coverage for its liability exposures
566 for the duration of this Agreement, or, at King County's sole discretion, to
567 purchase equivalent insurance coverage through an insurance policy or policies,
568 or through a risk sharing pool. King County agrees to provide KYL with at least
569 thirty (30) days prior written notice of any change in its self-insured status and
570 will upon request provide KYL with a letter of self-insurance as adequate proof
571 of insurance.

572

573 **ARTICLE 5. GENERAL TERMS AND CONDITIONS**

574

575 5.1 NOTICE. Notice will be given as follows:

576

577 If to Parks:

578

579 **T.J. Davis, CPG Manager**
580 **King County Department of Natural Resources and Parks**
581 **201 South Jackson St, Suite 701**
582 **Seattle, WA 98104-3855**
583 **Email: tj.davis@kingcounty.gov**
584 **Phone: (206) 263-6214**

585

586 If to KYL:

587

588 **Steve Lytle**
589 **Address**
590 **City, State ZIP**

Email:
Phone:

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5.2 NONDISCRIMINATION. KYL will comply with King County Code ("K.C.C.") Chapter 12.16 regarding nondiscrimination in employment, K.C.C. Chapter 12.17 regarding nondiscrimination in contracting, and K.C.C. Chapter 12.18 regarding fair employment practices.

5.2.1 EMPLOYMENT. KYL does not anticipate hiring any employees to develop the Facility or otherwise perform its obligations under this Agreement. If KYL should elect to do so, however, KYL agrees not to discriminate against any employee or applicant for employment because of sex, 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. KYL shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.

5.3 ASSIGNMENT. KYL may not assign this Agreement or any interest therein without King County's prior approval, which shall not be unreasonably withheld. King County will have the right to sell or otherwise transfer or dispose of the Site or the Facility, or to assign this Agreement or any interest of the County hereunder, provided that in the event of sale or transfer of the Site or the Facility, King County will arrange for the purchaser or transferee to assume the Agreement and King County's obligations hereunder. King County will not otherwise assign this Agreement or any interest of King County hereunder unless the assignee or purchaser agrees to assume Parks' obligations hereunder.

- 636 5.4 ADVERTISING RESTRICTIONS. KYL understands that the advertising of tobacco
637 products as defined in King County Ordinance No. 10615 and spirits as defined in King
638 County Ordinance No. 14509 is strictly prohibited. KYL further understands that
639 pursuant to Ordinance No. 14509, additional subject-matter restrictions on advertising
640 may be imposed by the Director of the County Parks and Recreation Division
641 ("Director"). If the Director imposes additional restrictions, a copy of the restrictions will
642 be included in an attachment hereto over time. Therefore, KYL expressly covenants that
643 neither it nor any of its sponsors or concessionaires will at any time display, promote, or
644 advertise any tobacco products, spirits, or other subject matter expressly prohibited by the
645 Director. KYL further agrees that any violation of this Section 5.4 by it will be a material
646 breach of its contractual obligations to Parks pursuant to this Agreement.
647
- 648 5.5 SOLICITING. Except as otherwise provided in this Agreement, canvassing, soliciting,
649 or peddling in the Site, the Facility, or in adjacent areas are each prohibited without the
650 prior written approval from Parks.
651
- 652 5.6 POWERS OF THE COUNTY. Nothing contained in this Agreement will be considered
653 to diminish the governmental or police powers of King County.
654
- 655 5.7 FORCE MAJEURE. The performance of this Agreement by either party is subject to
656 acts of God, war, government regulation or advisory, disasters, fire, accidents or other
657 casualty, strikes or threat of strikes, civil disorder, acts and/or threats of terrorism, or
658 curtailment of transportation services or facilities, cost or availability of power, or similar
659 causes beyond the control of either party making it illegal, impossible, or impracticable to
660 hold, reschedule, or relocate the KYL's use of the Site or the Facility as contemplated
661 herein. Either party may terminate or suspend its obligations under this Agreement if
662 such obligations are prevented by any of the above events to the extent such events are
663 beyond the reasonable control of the party whose reasonable performance is prevented.
664
- 665 5.8 AGREEMENT IS PUBLIC DOCUMENT. This Agreement will be considered a public
666 document and will be available for inspection and copying by the public.
667
- 668 5.9 TAXES. KYL agrees to pay on a current basis all applicable taxes or assessments levied
669 on its activities; PROVIDED, however, that nothing contained herein will modify KYL's
670 right to contest any such tax, and KYL will not be deemed to be in default as long as it
671 will, in good faith, be contesting the validity or amount of any such taxes.
672
- 673 5.10 NO KYL LIENS. KYL acknowledges and agrees that it has no authority, express or
674 implied, to create or place any lien or encumbrance of any kind or nature whatsoever
675 upon, or in any manner to bind, the interest of King County in the fee interest in the Site
676 or in the Facility, or to charge fees for any claim in favor of any person or entity dealing
677 with KYL, including those who may furnish materials or perform labor for any
678 construction or repairs. If any such liens are filed, King County may, without waiving its
679 rights and remedies for breach, and without releasing KYL from its obligations under this
680 Agreement, require KYL to post security in form and amount reasonably satisfactory to
681 King County or to cause such liens to be released by any means King County deems

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

692 5.11 RECORDS, AUDITS AND INSPECTIONS. During this Term of this Agreement,
693 KYL's books, records and other materials related to any matters covered by this
694 Agreement and not otherwise privileged shall be subject to inspection, review, and/or
695 audit by King County at King County's sole expense. Such books, records and other
696 materials shall be made available for inspection during regular business hours within a
697 reasonable time of the request.

698
699 5.12 ENTRY BY KING COUNTY. King County may enter the Site or the Facility during
700 KYL's usage for any reason. Any person or persons who may have an interest in the
701 purposes of King County's visit may accompany King County. King County has the right
702 to use any and all means that King County deems proper to open doors and gates to
703 obtain entry to the Site or to the Facility.

704
705 5.13 COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Facility, KYL
706 and its members shall comply with all applicable laws, ordinances, and regulations from
707 any and all authorities having jurisdiction and, specifically, the requirements of the
708 Washington Industrial Safety and Health Act (WISHA). KYL specifically agrees to
709 comply and pay all costs associated with achieving such compliance without notice from
710 King County, and further agrees that King County does not waive this provision by
711 giving notice of demand for compliance in any instance.

712
713 5.14 INTERPRETATION OF COUNTY CODE AND RULES. If there is any question
714 regarding the interpretation of any provision of King County Code or any King County
715 rule or regulation, King County's decision will govern and will be binding upon KYL.

716
717 5.15 PERMITS AND LICENSES. KYL will obtain and maintain, at its own costs and
718 expense, all necessary permits, licenses, and approvals required for the activities
719 contemplated under this Agreement.

720
721 5.16 RISK OF LOSS. All personal property of any kind or description whatsoever on the Site
722 or the Facility shall be at KYL's sole risk, and King County will not be liable for any
723 damage done to, or loss of, such personal property. However, KYL will not be
724 responsible for losses or claims of stolen property during King County-scheduled use of
725 the Site or the Facility by persons or entities other than KYL.

726

727 5.17 ENVIRONMENTAL LIABILITY.
728

729 5.17.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or
730 toxic wastes, materials, or substances as defined in state or federal statutes or
731 regulations as currently adopted or hereafter amended.

732
733 5.17.2 KYL shall not, without first obtaining Parks' written approval, apply, store,
734 deposit, transport, release, or dispose of any hazardous substances, petroleum
735 products, sewage, medicinal, bacteriological, or toxic materials, or pollutants,
736 on the Facility or Site. All approved application, storage, deposit, transportation,
737 release, and disposal shall be done safely and in compliance with applicable
738 laws.

739 5.17.3 Nothing in this Agreement shall be deemed to waive any statutory claim for
740 contribution that KYL might have against King County under federal or state
741 environmental statutes that arises from hazardous materials deposited or
742 released on the Site by King County. KYL may not, however, assert such a
743 claim to the extent that KYL creates the need for or exacerbates the cost of
744 remediation upon which a statutory claim for contribution is based as a result of
745 KYL performing construction activities on the Site, changing the configuration
746 of the Site, or changing the use of the Site.

747 5.17.4 If KYL discovers the presence of hazardous materials at levels that could give
748 rise to a statutory claim for contribution against King County it shall
749 immediately notify Parks in writing. KYL shall provide such notice not more
750 than ten (10) days after discovery. The Parties shall make their best efforts to
751 reach agreement as to which party is responsible for remediation under the
752 terms of this Agreement prior to undertaking any remediation.

753 5.17.5 In no event shall King County be responsible for any costs of remediation that
754 exceed the minimum necessary to satisfy the state or federal agency with
755 jurisdiction over the remediation.

756
757 5.18 NO EMPLOYMENT RELATIONSHIP. In providing services under this Agreement,
758 KYL is an independent contractor, and neither it nor its officers, agents, employees, or
759 subcontractors are employees of King County for any purpose. KYL shall be responsible
760 for all federal and/or state tax, industrial insurance, and Social Security liability that may
761 result from the performance of and compensation for these services and shall make no
762 claim of career service or civil service rights which may accrue to a County employee
763 under state or local law. King County assumes no responsibility for the payment of any
764 compensation, wages, benefits, or taxes by, or on behalf of KYL, its employees,
765 subcontractors, and/or others by reason of this Agreement.

766
767 5.19 INDEMNIFICATION AND HOLD HARMLESS.
768

769 5.19.1 KYL shall protect, indemnify, and hold harmless King County, its officers,
770 agents, and employees from and against any and all claims, costs, and/or losses

771 whatsoever occurring or resulting from (1) KYL's failure to pay any
772 compensation, wages, benefits, or taxes in connection with or support of the
773 performance of this Agreement, and/or (2) KYL's failure to pay for work,
774 services, materials, or supplies to KYL employees or other KYL suppliers in
775 connection with or support of the performance of this Agreement.
776

777 5.19.2 KYL further agrees that it is financially responsible for and will repay King
778 County all indicated amounts following an audit exception which occurs due to
779 the negligence, intentional act, and/or failure for any reason to comply with the
780 terms of this Agreement by KYL, its officers, employees, agents,
781 representatives, or subcontractors. This duty to repay King County shall not be
782 diminished or extinguished by the prior termination of the Agreement.
783

784 5.19.3 KYL expressly agrees to protect, defend, indemnify, and hold harmless King
785 County, its elected and appointed officials, officers, employees, and agents from
786 and against liability for any claims (including all demands, suits, and judgments)
787 for damages arising out of injury to persons or damage to property where such
788 injury or damage is caused by, arises out of, or is incident to KYL's use of the
789 Site or Facility under this Agreement. KYL's obligations under this section
790 shall include, but not be limited to:
791

792 5.19.3.1 The duty to promptly accept tender of defense and provide defense to
793 the King County at KYL's expense for claims that fall within this
794 Section 5.19;
795

796 5.19.3.2 Indemnification of claims, including those made by KYL's own
797 employees and/or agents for this purpose, for claims that fall within
798 this Section 5.19;
799

800 5.19.3.3 In the event King County incurs any judgment, award, and/or cost
801 arising from claims that fall within this Section 5.19, including
802 attorney's fees to successfully enforce the section, all such fees,
803 expenses, and costs shall be recoverable from KYL.
804

805 5.19.3.4 KYL shall protect, defend, indemnify, and hold harmless King
806 County, its officers, employees, and agents from any and all costs,
807 claims, judgments, and/or awards of damages arising out of, or in any
808 way resulting from the performance or non-performance of the
809 obligations under this Agreement by KYL's subcontractor(s), its
810 officers, employees, and/or agents in connection with or in support of
811 this Agreement.
812

813 5.19.3.5 KYL expressly and specifically agrees that its obligations under this
814 Section 5.19 extend to any claim, demand, and/or cause of action
815 brought by or on behalf of any of its employees, or agents. For this
816 purpose, KYL, hereby expressly and specifically waives, with respect

817 to King County only, any immunity that would otherwise be available
818 against such claims under the Industrial Insurance provisions of Title
819 51 RCW, but only to the extent necessary to indemnify King County.
820

821 5.20 WAIVER OF BREACH. Waiver of any breach of this Agreement shall not be deemed
822 to be a waiver of any other or subsequent breach and shall not be construed to be a
823 modification of the terms of the Agreement unless stated to be such through written
824 approval by King County, which shall be attached to the original Agreement.
825

826 5.21 ADDITIONAL TERMS. The Parties reserve the right to modify this Agreement as
827 necessary to equitably address unforeseen circumstances that may arise. The Parties
828 agree to cooperate in good faith and in the spirit of this Agreement with respect to any
829 such requested modifications. Any such amendments or addendums to this Agreement
830 shall be in writing and executed with equal formality as this Agreement.
831

832 5.22 DISPUTE RESOLUTION. The Parties agree to use their best efforts to resolve disputes
833 regarding this Agreement in an economic and time efficient manner to advance the
834 purposes of this Agreement. In the event that a dispute arises and cannot be resolved
835 within two (2) days of the dispute occurring, the field development director of KYL and
836 the CPG manager from Parks shall meet in person, within four (4) days of the dispute
837 arising, and work to resolve the dispute. KYL and Parks shall attempt to resolve such
838 dispute as expeditiously as possible and will cooperate so that the express purposes of
839 this Agreement are not frustrated, and so that any design, planning, construction, or use
840 of the Facility or the Site is not delayed or interrupted. Provided, that nothing in this
841 Section 5.22 shall otherwise limit the Parties' legal, equitable, or other rights or remedies.
842

843 5.23 TERMINATION/NOTICE/CURE. In recognition that KYL shall invest substantial
844 funds to develop the Facility at the Site, and in appreciation that King County has
845 fiduciary responsibilities to its residents and taxpayers that may change over time, the
846 Parties agree that this Agreement may be terminated as follows:
847

848 5.23.1 FAILURE TO PERFORM.
849

850 5.23.1.1 OBLIGATION TO PERFORM. Nothing herein shall imply any duty
851 upon King County to do any work required to be performed by KYL
852 in this Agreement, and the performance thereof by King County will
853 not constitute a waiver of KYL's default. King County will not in any
854 event be liable for inconvenience, annoyance, and disturbance in its
855 activities on the Site or the Facility, provided that King County will
856 not intentionally permit a loss of business or other damage to KYL by
857 reason of King County's actions pertaining to the Site or the Facility.
858

859 5.23.1.2 PAYMENTS TO OTHER PARTIES. Except as expressly provided
860 hereunder, all obligations of KYL under this Agreement will be
861 performed by KYL at KYL's sole cost and expense. If KYL fails to
862 pay any sum of money owed to any party other than King County for

863 which KYL is liable hereunder, or if KYL fails to perform any other
864 act on its part to be performed hereunder, and such failure continues
865 for ten days (10) after notice thereof by King County, King County
866 may, without waving or releasing KYL from its obligations, make any
867 such payment or perform any such other act to be made or performed
868 by KYL. Thereafter, on written demand by King County, KYL shall
869 promptly pay to King County an amount equal to all sums so paid by
870 King County, together with all necessary incidental costs incurred by
871 King County, plus interest on the sum total of such sums and costs.
872 For purposes of this Section 5.23.1.2, interest will be calculated at the
873 lesser of 1 percent per month or the maximum rate permissible by law,
874 beginning on the date that King County first makes a payment on
875 behalf of KYL. KYL understands, acknowledges, and agrees that King
876 County is under no obligation to make any payment on behalf of KYL.
877

878 5.23.2 DEFAULT.

879
880 5.23.2.1 PARKS' DEFAULT. Parks will not be in default unless Parks fails to
881 perform an obligation within sixty (60) days after notice by KYL,
882 which notice must specify the alleged breach; provided that if the
883 nature of Parks' breach is such that more than sixty (60) days are
884 reasonably required for cure, then Parks will not be in default if Parks
885 commences to cure within sixty (60) days of KYL's notice and
886 thereafter diligently pursues completion and completes performance
887 within a reasonable time.
888

889 5.23.2.2 KYL'S DEFAULT. The occurrence of any one or more of the
890 following events constitutes a default by KYL under this Agreement:
891

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

902
903 (2) KYL will be adjudged bankrupt, make a general assignment for the
904 benefit of creditors, or take the benefit of any insolvency act, or if a
905 permanent receiver and trustee in bankruptcy is appointed for KYL's
906 estate and such appointment is not vacated within sixty (60) days; or
907

908 (3) if this Agreement is assigned or the Site or the Facility is used by
909 KYL for activities other than in accordance with the terms of this
910 Agreement, and such default is not cured within thirty (60) days after
911 written notice from King County to KYL; or
912

913 (4) KYL fails to make any payment when due, or fails to make any
914 other payment required hereunder when due, when that failure is not
915 cured within thirty (60) days after mailing of written notice thereof by
916 King County.
917

918 5.23.3 TERMINATION FOR CHANGE IN KYL STATUS. King County may
919 terminate this Agreement without penalty or liability if, at any time during the
920 Term of this Agreement, KYL loses or changes its status: (1) as an active
921 Washington not-for-profit corporation; or (2) as a tax-exempt organization under
922 section 501(c)(3) of the Internal Revenue Code as now or hereafter codified; that
923 King County will not terminate the Agreement under this Section 5.23.3 if KYL
924 reasonably cures any and all such loss or change of status.
925

926 5.23.4 DEFAULT FOR OTHER CAUSE. This Agreement may be immediately
927 terminated for other cause by a party if the other party substantially fails to
928 perform its obligations under this Agreement, through no fault of the terminating
929 party, and the non-performing party does not commence correction of the failure
930 of performance within sixty (60) days of the terminating party's sending notice to
931 the non-performing party.
932

933 5.23.5. OTHER KYL TERMINATION. KYL may terminate this Agreement for any
934 reason upon twelve (12) months notice in writing to King County. In this event
935 KYL shall not be entitled to any compensation from King County for capital
936 improvements made by KYL to the Site.
937

938 5.23.6 OTHER KING COUNTY TERMINATION.
939

940 5.23.6.1 King County may terminate this Agreement with cause upon twelve
941 (12) months notice in writing to KYL. In this event KYL shall be
942 entitled to reasonable compensation from King County for capital
943 improvements made by KYL to the Site with due regard for the funds
944 invested by KYL, KYL debts remaining to be paid relating to the
945 Facility, the fair market value of the Facility at the time of termination,
946 and the length of time KYL has had use of the Facility.
947

948 5.23.6.2 Any King County obligations under this Agreement beyond the current
949 appropriation year are conditioned upon the King County Council's
950 appropriation of sufficient funds to support such obligations. If the
951 Council does not approve such appropriation, then this Agreement will
952 terminate automatically at the close of the current appropriation year.
953

954 5.23.7 REMEDIES ARE CUMULATIVE. Remedies under this Agreement are
955 cumulative; the failure to exercise any right on any occasion will not operate to
956 forfeit such remedy.

957

958 5.24 DESTRUCTION OF PREMISES AND USE OF INSURANCE PROCEEDS.

959

960 5.24.1 Unless otherwise mutually agreed by the Parties, if the Site or the Facility are
961 destroyed or injured by fire, earthquake, or other casualty during the Design and
962 Construction Phase, then KYL will proceed to rebuild and restore the Site and the
963 Facility, or such part thereof as may be injured or destroyed. In the event of any
964 loss covered by the insurance policies described and required under this
965 Agreement, unless this Agreement is terminated as provided herein, KYL will
966 use the proceeds of such insurance policies first to rebuild and then to restore the
967 Site and the Facility and replace the improvements, fixtures, and equipment
968 which may be damaged or destroyed by such casualty.

969

970 5.24.2 Unless otherwise mutually agreed by the Parties, if the Site and/or the Facility are
971 destroyed by fire, earthquake, or other casualty after completion of the Design
972 and Construction Phase, then King County will proceed to rebuild and restore the
973 Site and the Facility, or such part thereof as may be injured or destroyed. In the
974 event of any loss covered by the insurance policies described and required under
975 this Agreement, unless this Agreement is terminated as provided herein, King
976 County will use the proceeds of such insurance policies first to rebuild and then
977 to restore the Site and the Facility and replace the improvements, fixtures, and
978 equipment which may be damaged or destroyed by such casualty.

979

980 5.25 DUTIES UPON TERMINATION. Upon termination of this Agreement, and unless
981 otherwise arranged, KYL will remove from the Site and the Facility all its personal
982 property, goods, and effects. If KYL fails to perform this duty at termination, Parks may
983 cause such removal to be made and KYL's personal property, goods and effects to be
984 stored, the cost and expense to be paid by KYL. It is understood and agreed that the real
985 property constituting the Site and the Facility is the real property of King County and that
986 all improvements to that real property will continue to belong to King County upon
987 termination of this Agreement.

988

989 5.26 EMINENT DOMAIN. The following rules will govern the rights and duties of the
990 Parties in the event of interference with KYL's design, construction, or use of the Site or
991 the Facility as a result of the exercise of eminent domain or private purchase in lieu
992 thereof.

993

994 5.26.1 RIGHT OF TERMINATION. If the whole of the Site or the Facility is taken for
995 any public or quasi-public use under any statute or by right of eminent domain, or
996 by private purchase in lieu thereof, then this Agreement will automatically
997 terminate as of the date that title is taken. If more than twenty-five percent (25%)
998 of the Site or the Facility is so taken and if the taking renders the remainder
999 thereof unusable for the purposes contemplated under this Agreement, then KYL

1000 and King County will each have the right to terminate this Agreement on thirty
1001 (30) days notice to the other, given within ninety (90) days after the date of such
1002 taking. Provided, however, that if King County is exercising its right of eminent
1003 domain, a fair value will be placed on this Agreement and the Facility with the
1004 compensation thereof awarded solely to KYL.
1005

1006 5.26.2 NON-TERMINATION. If any part of the Site or the Facility is so taken and this
1007 Agreement is not terminated, then King County will, at its own cost and expense,
1008 restore the remaining portion of the Site and the Facility to the extent necessary
1009 to render it reasonably suitable for the purposes contemplated under this
1010 Agreement.
1011

1012 5.26.3 COMPENSATION. The compensation awarded or paid upon a total or partial
1013 taking of the Site or the Facility, or this Agreement, or any of them, will belong
1014 to and be apportioned between KYL and Parks in accordance with their
1015 respective interests under this Agreement as determined between them or by a
1016 court. Additionally, KYL may prosecute any claim directly against the
1017 condemning authority for the costs of removal of the goodwill, stock, trade
1018 fixtures, furniture, and other personal property belonging to KYL. King County
1019 will have no claim to condemnation proceeds attributable to KYL's interest in the
1020 Facility, nor will KYL have any interest in King County's condemnation
1021 proceeds, if any.
1022

1023 5.27 SURRENDER. Within thirty (30) days of the time this Agreement expires or is
1024 terminated, KYL shall remove any and all of its portable improvements at the Facility. If
1025 improvements include non-portable fixtures, such improvements shall inure to the benefit
1026 of King County and shall remain at the Facility.
1027

1028 5.28 HEADINGS NOT PART OF AGREEMENT. The headings in this Agreement are for
1029 convenience only and shall not be deemed to expand, limit, or otherwise affect the
1030 substantive terms of this Agreement.
1031

1032 5.29 GOVERNING LAW. This Agreement shall be governed by the laws of the State of
1033 Washington, without regard to its conflicts of law rules or choice of law provisions.
1034

1035 5.30 JURISDICTION AND VENUE. The exclusive jurisdiction and venue for any disputes
1036 arising under this Agreement, including matters of construction, validity and
1037 performance, shall be in the Superior Court for King County in Seattle, Washington.
1038

1039 5.31 RIGHT TO PARTICIPATE IN LITIGATION. KYL will have the right to participate in
1040 any litigation, arbitration, or dispute directly affecting the Site, the Facility, or interest of
1041 KYL therein, including, without limitation, any suit, action, arbitration proceeding,
1042 condemnation proceeding, or insurance claim. King County, upon instituting or receiving
1043 notice of any such litigation, arbitration, or dispute will promptly notify KYL of the
1044 same.
1045

- 1046 5.32 ATTACHMENTS.
- 1047 A. Description and map of Site and Facility
- 1048 B. Facility Use Schedule
- 1049 C. Facility Use Rules / Good Neighbor Policy

1050

1051 5.33 ENTIRE AGREEMENT. This Agreement and any and all exhibits expressly
 1052 incorporated herein by reference and attached hereto shall constitute the whole agreement
 1053 between King County and KYL. There are no terms, obligations, allowances, covenants,
 1054 or conditions other than those contained herein.

1055

1056 5.34 SEVERABILITY. Should any provision of this Agreement be found to be invalid, illegal,
 1057 or unenforceable by any court of competent jurisdiction, such provision shall be stricken
 1058 and the remainder of this Agreement shall nonetheless remain in full force and effect
 1059 unless striking such provision shall materially alter the intention of the Parties.

1060

1061

1062 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date
 1063 written.

1064

1065 **Kirkland Youth Lacrosse**

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

1066

1067

1068 By _____ By _____

1069

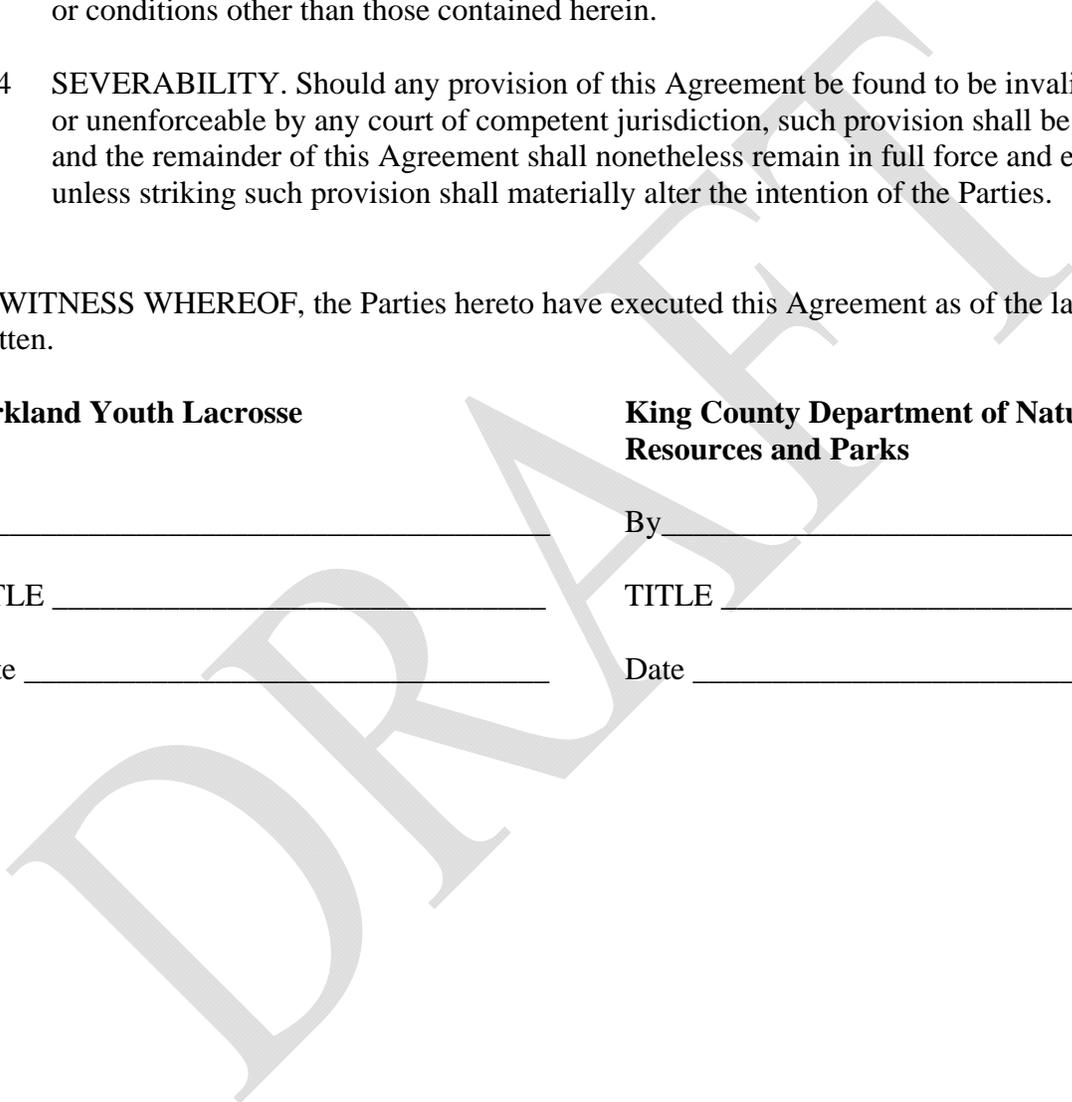
1070 TITLE _____ TITLE _____

1071

1072 Date _____ Date _____

1073 |

1074



1075
1076

Attachment A:
Description of Site and Map of Facility

DRAFT

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Attachment B:
Facility Use Schedule

DRAFT

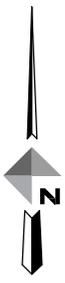
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Attachment C
Big Finn Synthetic Field Facility Use Policy

(To be developed and finalized after SEPA and permit conditions are finalized)

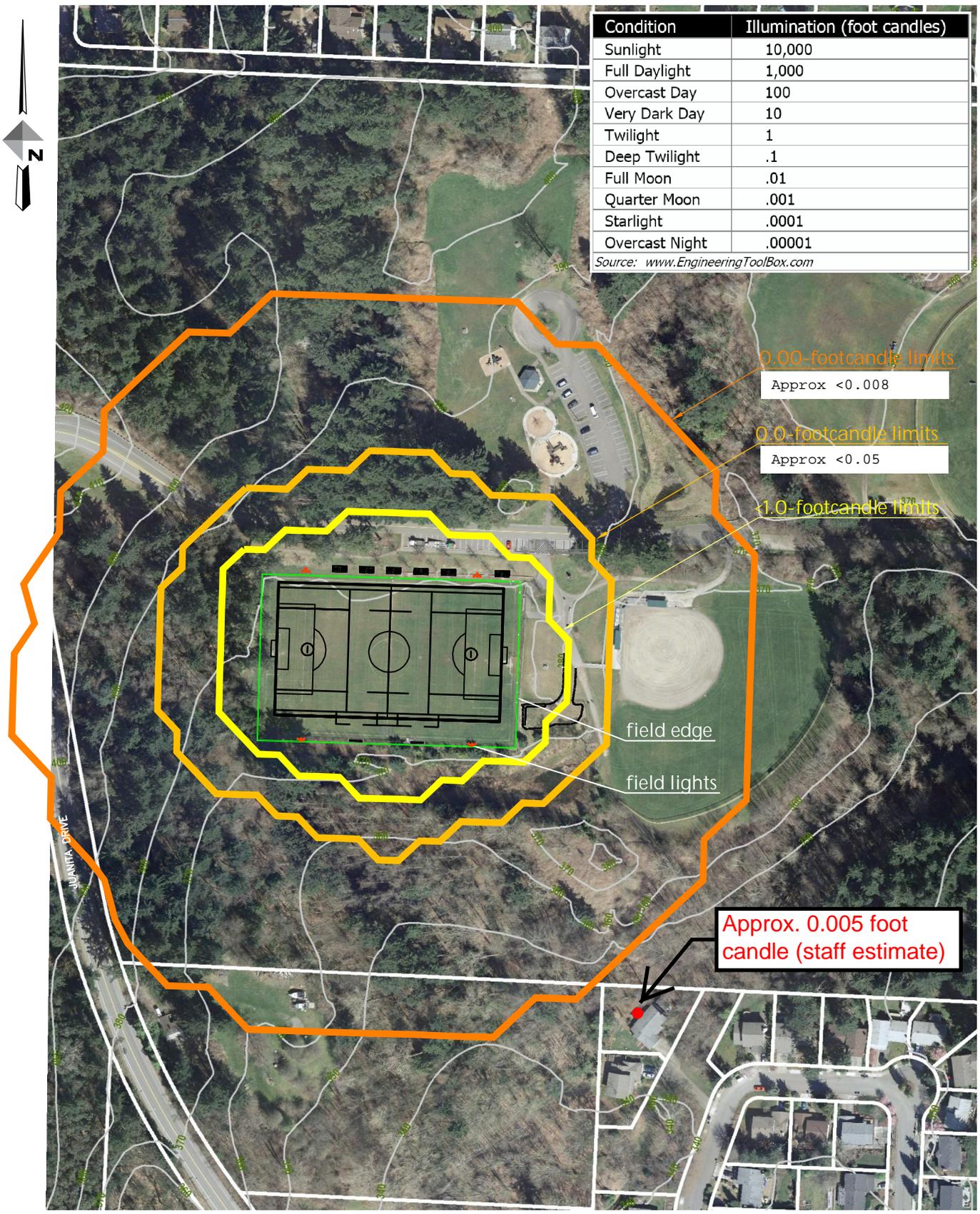
Items already required or agreed to:

- No airhorns
- No amplified sound
- No car stereos
- Field users must remain in the field area after dusk. Remainder of park is closed after dusk
- Field users are prohibited from accessing bioswale, pond, or other stormwater facilities
- Organized field use must be scheduled through the regional scheduling office, but drop-in use is allowed if there are no scheduled uses
- Lights are automated and will shut off after end of scheduled use time
- Parking in surrounding neighborhood is strictly prohibited, field user are required to use the parking adjacent the field or the public parking on other side of park
- Car pooling is strongly encouraged to reduce traffic in and around the park
- King County public park ordinance language will be added (no fireworks, no firearms, etc.)
- Synthetic Turf use language will be added (no metal cleats, no food or drink on field surface, no vehicles on field surface, no tent spikes, etc.)

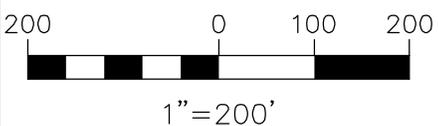


Condition	Illumination (foot candles)
Sunlight	10,000
Full Daylight	1,000
Overcast Day	100
Very Dark Day	10
Twilight	1
Deep Twilight	.1
Full Moon	.01
Quarter Moon	.001
Starlight	.0001
Overcast Night	.00001

Source: www.EngineeringToolBox.com

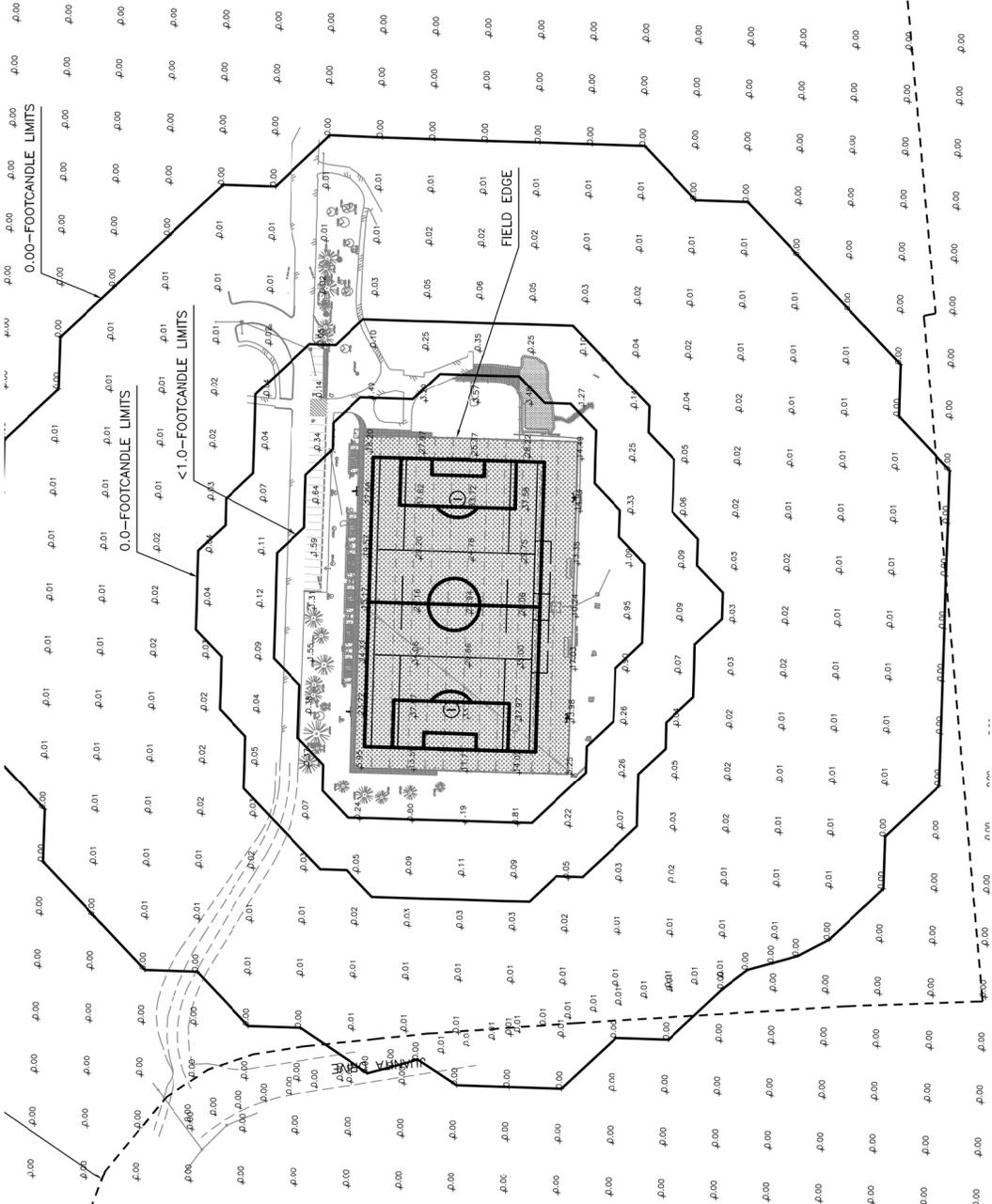


© 113360.01 V:\013360.01\013360-Photometrics-3.dwg FEB 02 2012 15:16:05 (RUC)

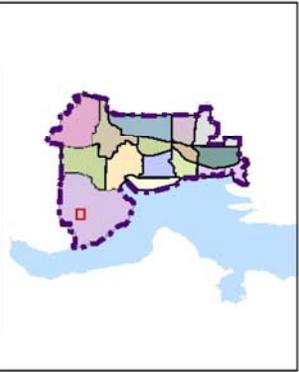
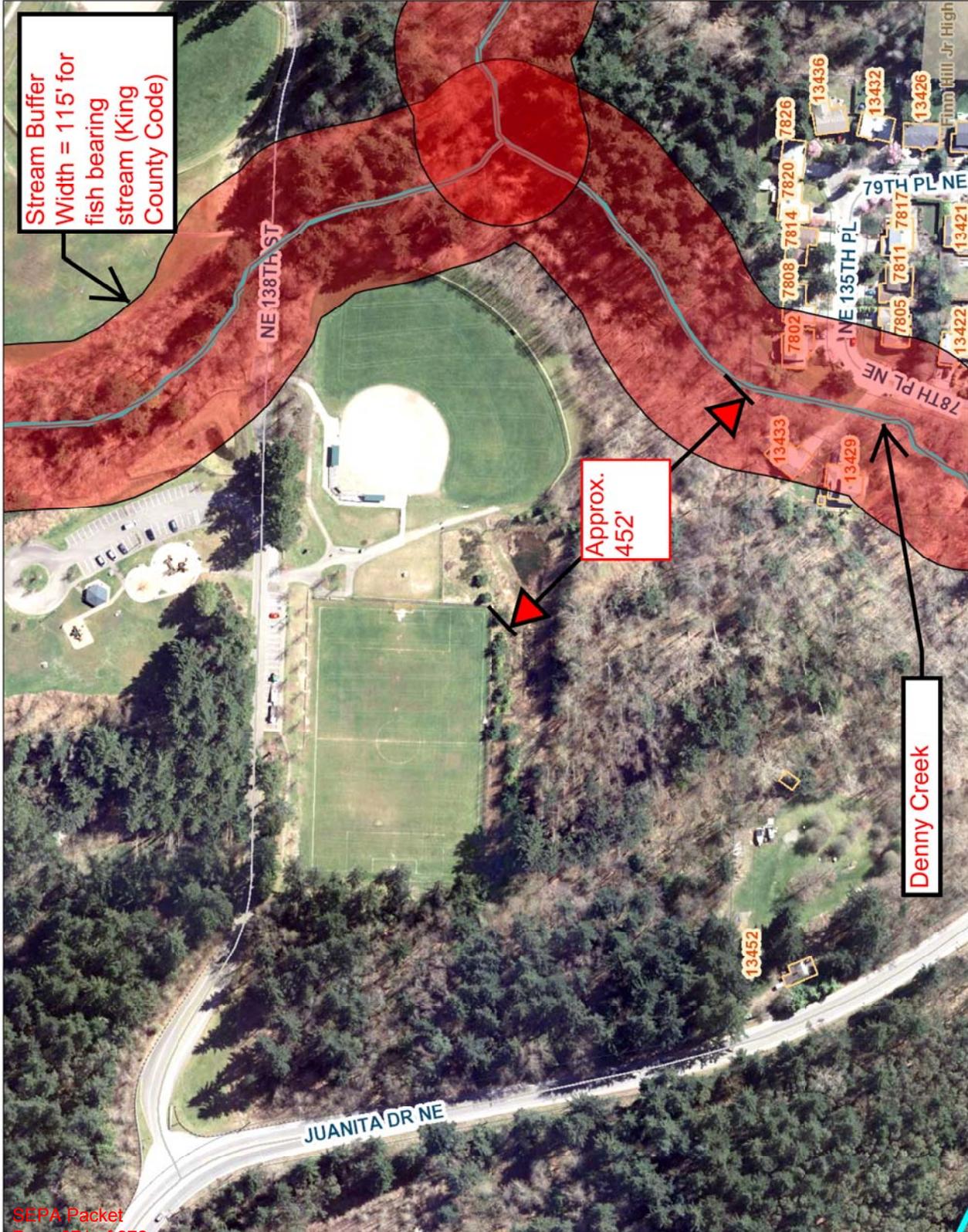


DOWL HKM
 8420 154TH AVENUE NE, REDMOND, WA 98052
 TEL: (425) 869-2670 FAX: (425) 869-2679

PHOTOMETRICS		
13360.01	02/02/12	EXHIBIT 1



GIS MAPPING PORTAL ~ City of Kirkland, Washington ~ Department of Information Technology



Legend

- Streams
- Open
- Pipe
- Bigd Concern Area
- Exposure C zone
- Melname
- Floodplain
- Landslide
- H
- M
- Address
- City Limits
- Streets
- Parcels
- Buildings
- Schools
- z_Image09
- Red: Band_1
- Green: Band_2
- Blue: Band_3

1:2,423



Notes

Denny Creek Stream Buffer - 115 feet

No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

0.1 0 0.04 0.08 Miles
NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet
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