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*ABV*

Marilyn K. Nitteberg  
Burlington City Attorney  
900 E. Fairhaven Avenue  
Burlington, WA 98233

## USE AND MAINTENANCE AGREEMENT

GRANTOR: THE CITY OF BURLINGTON, a Washington municipal corporation  
GRANTEE: SKAGIT VALLEY YOUTH SOCCER ASSOCIATION

LEGAL DESCRIPTION: Tracts 77 & 82 of Burlington Acreage, NE 1/4 of the SE 1/4 of Section 5, Township 34 North, Range 4 East, W.M. Situate in Skagit County.

ASSESSOR'S PROPERTY TAX PARCEL OR ACCOUNT NO.: 3867-000-077-0004 / P62806 & 3867-000-082-0007 / P62480

REFERENCE NOS. OF DOCUMENTS ASSIGNED OR RELEASED: N/A

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax  
JAN 17 2001

Amount Paid \$  
SKagit Co. Treasurer  
By *M.M. Deputy*



**USE AND MAINTENANCE AGREEMENT**

This is an Agreement entered into on this \_\_\_\_\_ 11th day of \_\_\_\_\_ January \_\_\_\_\_, 2001,

by and between the **CITY OF BURLINGTON**, (hereinafter referred to as "**City**"), a Washington municipal corporation, and **SKAGIT VALLEY YOUTH SOCCER ASSOCIATION**, (hereinafter referred to as "**Association**").

**RECITALS:**

1. The **City** owns real property with a street address of 1100 S. Skagit Street, Burlington, Washington, and which property is legally described as follows:

Tracts 77 and 82 of Burlington Acreage located in the Northeast 1/4 of the Southeast 1/4 of Section 5, Township 34 North, Range 4 East, W.M. Situate in the County of Skagit, State of Washington.

2. The **City** desires to allow the **Association** to use a portion of the real property described hereinabove for soccer fields.

3. The **City** and the **Association**, in exchange of services, fees and use of the fields for soccer, shall enter into this Agreement.

**BASED UPON THE FOREGOING RECITALS, THE PARTIES HERETO AGREE AS FOLLOWS:**

1) The **City** agrees to allow the **Association** to use the property described above as soccer fields and hereafter referred to as the "premises."  
The **Association** acknowledges that it has no right to use any other portion of the property other than the premises and warrants that it will not utilize or attempt to utilize any other portion of such premises without written permission of the **City**.

2) The use of this property as soccer fields will be overseen by the Burlington Parks & Recreation Department.

3) The commercial sponsorship of the soccer complex shall be by the Burlington Parks & Recreation Department. The commercial sponsorship, of each league shall be determined

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by such league, but such sponsorship shall be subject to final approval by the Burlington Parks & Recreation Department.

4) In exchange for the services to be provided by the *Association* and payment of fees for soccer games by the *Association*, the *City* agrees to do the following:

- [a] Maintenance shall include, but not be limited to, mowing, watering, fertilizing, reseeding and other duties necessary and incidental in keeping the fields in good playing condition.
- [b] Line the soccer fields every two weeks, commencing September 1st through October 31st of each year of this Agreement.
- [c] Provide two (2) portable toilets at each *Association* event and maintain service of such portable toilets.
- [d] Provide one (1) garbage can per field at each *Association* event and dispose of the garbage from those garbage cans.
- [e] Provide adequate parking for fields.

5) In exchange for the use of the soccer fields, the *Association* agrees to do the following:

- [a] Sponsor a minimum of two (2) soccer tournaments per year until December 31, 2004. As of January 1, 2005, sponsor a minimum of two (2) soccer tournaments per year, *plus* co-sponsor with the *City* a third soccer tournament in which all revenues and expenditures would be shared equally every year thereafter throughout the term of this Agreement.
- [b] Rotate the soccer goals and configure the fields as necessary to maintain even wear.
- [c] Provide additional garbage cans in addition to those provided by the *City*, and dispose of the garbage from such cans, in accordance with the requirements of the *City*.
- [d] Provide additional portable toilets in addition to those provided by the *City*, and service such portable toilets, in accordance with the requirements of the *City*.

Recreation Department.



[e] Provide the lining of soccer fields as necessary beyond the lining provided by the City.

[f] Field fees for the Association are intended to offset maintenance costs of the fields. Fees shall change only as a result of a change in maintenance costs of the soccer complex. Fees will be evaluated on a biannual basis and are currently set as shown on the attached "EXHIBIT A."

[g] Abide by all rules set by the Burlington Parks & Recreation Department for the use of the fields, including access to the fields by way of Skagit Street and parking in designated areas only on the south and west sides of the soccer fields.

[h] Association will retain all scheduling responsibilities for all clubs under Association. Scheduling priority for use of the soccer fields shall be as follows:

- 1st: Burlington-Edison Youth Soccer;
- 2nd: Skagit Valley Youth Soccer Association; and then
- 3rd: Other activities scheduled through the City.

6) TERM. This Agreement shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, and shall expire on March 31, 2010, unless sooner terminated or renewed ("the term").

7) INSPECTION. The Association acknowledges and agrees that it has made a full and complete inspection of the premises herein and that the City shall not be held to any covenant inspecting the condition of the said premises, nor has the City made any warranty or guarantee concerning the same, as to the condition or use thereof, and the Association accepts same, "as is," without any such warranty, guarantee or inducement by the City as to the condition or usage of said premises.

8) MAINTENANCE OF PREMISES. The Association shall not commit, permit or allow waste on the premises. The Association, shall at all times during its use hereof, keep the premises in good repair, condition and order.

9) ALTERATIONS AND IMPROVEMENTS. The Association shall not make any alterations, additions or improvements on said premises without the written consent of the City first had and obtained; all alterations, additions and improvements which shall be made shall



comply with the City permit requirements and said improvements shall be made at the sole cost and expense of the *Association*. All improvements made by the *Association* shall remain a part of said premises; and upon termination of this lease, said improvements shall become the absolute property of the *City* without cost or obligation on the part of the *City* to reimburse the *Association* in any regard.

10) VACATION OF PREMISES. The *Association* shall promptly vacate the premises on or before the last day of the term of this Agreement, leaving the premises and all improvements thereon in the state of repair and cleanliness required to be maintained by the *Association* during the term of the Agreement and shall peacefully and quietly surrender the same to the *City*.

11) OWNERSHIP. The premises are, and shall at all times be and remain, the sole and exclusive property of the *City*; and the *Association* shall have no right, title or interest therein or thereto except as expressly set forth in this Agreement. However, if the *City* converts the premises subject to this Agreement, to any use that does not allow the *Association* to continue the use of the premises in accordance with this Agreement, then the *City* shall provide a reasonable alternate location of a like size and similar character suitable for the parties to carry out the intent of this Agreement.

12) ACCIDENTS AND INDEMNITY. Except to the extent due to the *City's* gross negligence or willful misconduct, the *Association* shall keep, save and hold harmless the *City* from any and all damages and liability, including attorney fees and costs, for anything and everything whatever arising from, connected with, or out of, the *Association's* use of the premises, personal property on said premises, or the conduct of the *Association*, the *Association's* agents, employees, servants, or persons directly or indirectly in the performance of this Agreement and from any loss or damage arising from any fault or negligence by the *Association*, or any failure on the *Association's* part to comply with any of the covenants, terms, and conditions contained herein, and the *Association* shall repair, at its sole cost and expense, any damage or injury to the premises herein occasioned by or through its use thereof.



13) INSURANCE. The *Association* agrees to procure, prior to and maintain in force throughout the duration of this Agreement, comprehensive general liability insurance with a minimum coverage of One Million (\$1,000,000.00) Dollars per occurrence, including bodily and property damage. Said policy shall name the *City of Burlington* as an additional named insured as follows: "It is agreed that the *City of Burlington*, its elected officials and employees are additional insureds" and shall include a provision prohibiting cancellation of said policy, except upon 30 days prior written notice to the City Clerk of the *City of Burlington*. The *Association* shall deliver a copy of the Certificate of Insurance to the *City* prior to the commencement of the term of this Agreement, and immediately any renewals thereof.

14) THE CITY'S PAYMENT. In the event of the *Association's* failure to procure or maintain insurance as aforesaid, or to pay said fees, assessments and charges as aforesaid, the *City* shall have the right, but not the duty, to obtain such insurance, or pay such fees, assessments, charges and taxes, as the case may be. In that event, the cost thereof, including reasonable attorney's fees, shall be immediately repayable to the *City*.

15) ASSIGNMENT. The *Association* shall not sell, assign, transfer or mortgage the premises, or any estate or interest therein, nor let or sublet the whole or any portion thereof. The *Association* shall do no act, nor make any contract that may create or be the foundation for any lien, charge, claim or encumbrance upon the present or other estate or reversion to the *City* in the premises or upon any buildings now or hereinafter erected upon it. Should any lien, charge, claim or encumbrance be claimed or filed against said premises, the *Association* shall solely defend or otherwise discharge the same and hold the *City* harmless from any and all such actions.

16) FIRE AND OTHER CASUALTY. In the event the premises are destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable in whole or in any part thereof, this Agreement shall terminate and the *Association* shall be required to immediately vacate the subject premises.



17) THE CITY'S REMEDIES ON DEFAULT BY THE ASSOCIATION.

If for any reason either party fails to comply with any material provision of this Agreement or any material obligation assumed hereunder, the parties shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach, the other party shall provide to the defaulting party a written notice ("default notice") detailing the nature of the default and the steps required to cure such default and may terminate this Agreement, upon written notice, if the defaulting party fails to cure such default or commence and diligently pursue a cure to completion within thirty (30) days after receiving the default notice.

[a] Further, upon termination of this Agreement, the City shall have the right to remove all properties from the premises and the right to store in a public warehouse, at the Association's expense, all property so removed.

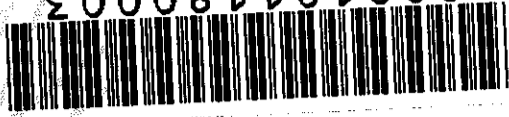
[b] In addition to any remedy provided hereunder, the City may seek any other remedy available under applicable law.

[c] The Association hereby indemnifies and agrees to hold harmless the City from all loss, injury or liability arising from the Association's failure to surrender the premises upon the expiration or termination of this Agreement.

18) NON-WAIVER OF BREACH. The failure of the City to insist upon strict

performance of any of the covenants and agreements in this Agreement or to exercise any options herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such or any other covenants and/or agreements that the same shall be and remain in full force and effect.

19) FULL FORCE AND EFFECT. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.



20) VENUE AND JURISDICTION. In the event any dispute arises over this

Agreement, the jurisdiction and venue of any legal action shall be that of Skagit County,

Washington.

21) APPLICABLE LAW. This Agreement shall be governed by and interpreted in

accordance with the laws of the state of Washington. The *Association* shall conform to any and all applicable laws and regulations of any public authority affecting the premises and the use thereof, and correct at their own expense any failure of compliance created through the *Association's* fault or by reason of the *Association's* use.

22) NOTICES. Any notice required to be served in accordance with the terms of

this Agreement shall be personally served or shall be sent by Certified Mail. Notices shall be sent to the parties at the addresses stated hereinbelow or at such other place as the parties may designate in writing:

CITY OF BURLINGTON

ATTN: City Clerk

900 E. Fairhaven Avenue

Burlington, WA 98233

(360) 755-0531

Any notices sent to the *Association* shall be sent to:

SKAGIT VALLEY YOUTH SOCCER ASSOCIATION

c/o Sue Thees, President

1256 S. County Club Dr.

Camano Island, WA 98292

(360) 387-1737

23)

COSTS AND ATTORNEYS' FEES.

In the event it becomes necessary for either

the *City* or the *Association* to employ an attorney to enforce the provisions of this Agreement or bring an action for the breach of terms of this Agreement, then the non-prevailing party agrees to pay all costs, expenses and attorney's fees expended or incurred by or to the *City* or the *Association* in connection therewith.



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24) ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the *City* and the *Association*; and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

25) AUTHORITY. Each individual executing this Agreement on behalf of the *City* and the *Association* represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the *City* or the *Association*.

26) BINDING EFFECT. The terms, conditions and covenants contained in this Agreement shall apply to and bind the heirs, successors and assigns of the parties (subject to the limitations on assignment contained herein).

27) TITLES. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

28) TIME. Time is of the essence of this Agreement and each and all of its provisions. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year written hereinabove.

**THE ASSOCIATION:**

SKAGIT VALLEY YOUTH  
SOCCER ASSOCIATION

By: [Signature]  
President SKVUSA  
By: [Signature]  
Select Representative

**THE CITY:**

CITY OF BURLINGTON

By: [Signature]  
Mayor  
By: [Signature]  
Finance Director



OFFICIAL COPY

[1] Exhibit A - fee schedule

**ATTACHMENT:**

Approved as to Content:

By: Marilyn K. Nitteberg, City Attorney

Approved as to Form:

By: Loren Cavanaugh, Director  
Burlington Parks and Recreation

Skagit River Park  
Soccer Complex  
**Use Fees**

Field fees for S.V.Y.S.A. are intended to offset maintenance costs of the fields. Fees shall change only as a result of a change in maintenance cost of the soccer complex. Fees will be evaluated on a biannual basis.

Tournaments operated solely or jointly by Skagit Valley Youth Soccer Association are subject to the following fees.

Micro Soccer	\$2.50/game
Mod Fields	\$5.00/game
Full Size	\$10.00/game
Select	\$20.00/game

Tournaments operated by those other than Skagit Valley Youth Soccer Association are subject to the following fees.

Mod Fields	\$15.00/game
Full Size	\$30.00/game
Adult Full Size	\$35.00/game



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