

CLARK COUNTY  
STAFF REPORT



DEPARTMENT: Public Works / Parks Division

DATE: September 2, 2014

REQUEST: Approve the Development & Right of Use Agreements between Clark County, Vancouver Metro Senior Softball Association (VMSSA), and Miracle League of Vancouver (MLV).

CHECK ONE:  X  Consent   CAO

**BACKGROUND:** In 2008, Pacific Community Park represented the first Community Park to be built within the newly established Greater Clark Parks District (GCPD). At that time, Clark County lacked the funding necessary to construct the sports fields' component of the park within the initial phase of construction. The sports fields were prioritized, thereafter to be constructed in a future phase II development plan when funding became available and after the remaining GCPD parks were completed. In 2012, VMSSA and MLV, both non-profit agencies, individually approached Clark County with their respective proposals to fully self-fund the design and construction of three sports fields at Pacific Park. MLV will build two fields and will control the scheduling and maintenance of the fields at their expense. VMSSA will build one field and will share sports scheduling, maintenance duties and expenses with Clark County Parks' staff. In addition, VMSSA and MLV will share the cost of design and construction of a parking lot addition necessary to accommodate the expanded use of the park. Once constructed, Clark County Parks Maintenance will provide ongoing maintenance responsibility of the parking lot.

**COMMUNITY OUTREACH:** The Parks Advisory Board will be notified of this venture and news releases will be the primary means of notifying the citizens of Clark County.

**BUDGET AND POLICY IMPLICATIONS:** Clark County will utilize GCPD maintenance funds to support ongoing maintenance of the new infrastructure as noted above. This agreement is consistent with previous practices and agreements between Clark County and various non-profit sports associations, i.e. Harmony Sports Association and Vancouver Girls Softball Association.

**FISCAL IMPACTS:**  Yes (See Attached Fiscal Impacts Form)  No

**ACTION REQUESTED:** Approve the Development & Right of Use Agreements between Clark County, Vancouver Metro Senior Softball Association (VMSSA), and Miracle League of Vancouver (MLV).

**DISTRIBUTION:** Please forward a copy of the approved staff report to Public Works Administration.

\_\_\_\_\_  
Bill Bjerke  
Parks Division Manager

\_\_\_\_\_  
Heath H. Henderson, P.E.  
Public Works Director/County Engineer

APPROVED: Tom Melke  
CLARK COUNTY, WASHINGTON  
BOARD OF COMMISSIONERS

DATE: 9/2/14

SR#: 196-14

c: Lori Pearce, Bill Bjerke and Eric Christensen

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ok  
9/1*

PW14-086

# FISCAL IMPACT ATTACHMENT

## Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

Miracle League & Vancouver Metro Senior Softball Association Sports Fields at Pacific Park  
 Clark County Public Works - Parks Division will incur ongoing increased maintenance expenses at Pacific Community Park as a result of the new sports fields, parking lot, play structure and overall increased use of the park. Greater Clark Parks District funds will be utilized for maintenance expenses.

## Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total 2016	GF	Total
1032/GCPD Fund Balance				\$17,695.00		\$35,090.00
Total:	\$0.00	\$0.00	\$0.00	\$17,695.00	\$0.00	\$35,090.00

II.A - Describe the type of revenue (grant, fees, etc.)

Revenue to support maintenance expenses of the newly added infrastructure will come from the GCPD maintenance fund balance.

## Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total 2016	GF	Total
1032 / GCPD Fund	0.15				\$17,695.00		\$35,090.00
Total:		\$0.00	\$0.00	\$0.00	\$17,695.00	\$0.00	\$35,090.00

III.B = Expenditure by object category

Fund #/Title	1032 GCPD	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total 2016	GF	Total
Salary/Benefits					\$7,645.00		\$15,290.00
1032/Contractual Obj.419					\$1,200.00		\$2,100.00
Supplies					\$3,400.00		\$6,800.00
Equipment Rental ER&R					\$1,600.00		\$3,200.00
Other controllables					\$3,850.00		\$7,700.00
Capital Outlays							
Inter-fund Transfers							
Debt Service							
Total:		\$0.00	\$0.00	\$0.00	\$17,695.00	\$0.00	\$35,090.00

After recording return to:  
Clark County Public Works  
Real Property Services  
PO Box 9810  
Vancouver, WA 98666-9810

Document Title: Development and Use Agreement  
By and between Clark County Public Works, Washington,  
and Vancouver Metro Senior Softball Association  
Legal Description:  
Serial #:

PW 14-39

## DEVELOPMENT & RIGHT OF USE AGREEMENT

This Development & Right of Use Agreement is entered into by and between Clark County, a political subdivision of the State of Washington (the "County"); and the Vancouver Metro Senior Softball Association ("VMSSA"), a non-profit organization, for the purpose of establishing the terms and conditions for the use by VMSSA of certain land owned by the County.

### Field

The property, which is the subject of this Agreement, is at Pacific Community Park ("the Park"). The area to be developed, utilized, maintained, and improved ("Field") by VMSSA pursuant to this Agreement is shown as the softball fields with future softball field light pole/s, and future scoreboard on the Overall Site Improvement Plan, which is attached as Exhibit "A". The area shall also include any dugouts, fencing, bleachers, and any other fixtures, field amenities, support areas, and spectator areas which are developed as a part of this Agreement.

### I. Term

1. The term of the agreement shall be an initial twenty-five (25) year term commencing September 15, 2014, and ending December 31, 2039.
2. At the end of the first twenty-five (25) year term, upon VMSSA request to the County, this Agreement may be reviewed and extended at the discretion of the County for up to three (3) additional, ten (10) year terms on a rolling basis at the end of the twenty-fifth (25), thirty-fifth (35), and forty-fifth (45) contract years.
3. The overall term of this Agreement shall not exceed fifty-five (55) years, with an ending date of no later than December 31, 2069.
4. VMSSA shall notify the County of its request for extension on or before September 1st

Use Agreement between Clark County and Vancouver Metro Senior Softball Association  
Pacific Community Park

prior to the expiration of the initial or extended term; provided the County may waive such notice for good cause shown.

## **II. Periods of Use**

1. VMSSA is hereby granted a period of non-exclusive use of the Field for practice and league play during its primary softball season of April 1 to September 30 of each year.
2. Definition of Non-exclusive: A status in which the rights this Agreement grants to VMSSA are available to others, reserving to the County the right to give the same or similar rights to other Field users.
3. VMSSA shall provide a preliminary schedule of practice and game times to the County by February 28 of each year. A final schedule shall be submitted no later than April 1 of each year.
4. Upon approval of the final schedule, VMSSA shall have the right to use said Field consistent with the approved schedule and the most current County policies, procedures, and park code.
5. Subject to the County's right to possess for maintenance as set forth in Article IV, VMSSA will receive use of the Field during the primary softball season.
6. When VMSSA is not actively using the Field, it shall remain open for use by the general public, and for use by other organizations that have been approved by the County during those times not on the approved VMSSA schedule.
7. The County reserves the right to enter into use agreements or permit use of the Field by other groups when VMSSA is not using the Field during its primary softball season of April 1 to September 30.
8. The County reserves the right to enter into use agreements or permit use with other organizations at any time outside of VMSSA's primary softball season of April 1 to September 30.
9. VMSSA field use and maintenance equipment may be stored on-site providing it is stored in a secured location approved by the County. VMSSA shall be responsible for on-site storage of all VMSSA equipment. The County bears no liability for any VMSSA equipment, vehicles or personal property lost or stolen from the site.
10. VMSSA shall be responsible for off-site storage of all such other equipment. The County assumes no responsibility for any equipment stored off-site. All equipment shall be securely stored and locked when not in use.

## **III. Development**

1. VMSSA shall have twelve (12) months after the execution of this agreement to secure all

permits and approvals necessary to begin construction of the Field.

2. VMSSA shall be responsible for obtaining all permits and paying all fees and costs related to the development and construction of the Field.
3. VMSSA shall have twelve (12) months after all permits have been secured and fees have been paid to complete construction of the Field. Failure to complete construction of the Field within this period of time may result in the immediate termination of this Agreement.
4. VMSSA shall improve and develop the Field to a condition that is exclusively to be used for adult softball, youth softball, and youth baseball.
5. All improvements and developments must be constructed, installed, and maintained in compliance with the Pacific Community Park Master Plan and all applicable Federal, State, and County laws, rules, regulations, codes and specifications.
  - a. Construction of the parking lot must be completed either before, or simultaneously with, construction of the Field.
  - b. Fencing must be installed around the construction site without restricting access to the Park.
  - c. Field lights shall be included in the design of the Field.
  - d. County shall maintain parking lot after certificate of occupancy is issued.
6. If any of VMSSA's improvements trigger obligation under the Americans with Disabilities Act (ADA, 42 U.S. C. 12-101) to remove barriers to travel to such improvements, VMSSA shall be responsible for such barrier removal at its own expense within a timeline set by the County.
7. VMSSA shall consult with the County and obtain the County's written authorization prior to developing and/or improving the Field.
8. VMSSA shall provide monthly written progress reports to the County during the design, development, construction, and maintenance phases of the Field.
9. MLVW agrees to set up a reimbursable account with Clark County to pay for Project Management and inspection during the course of the design and construction phases of the project. Total amount paid to Clark County is not to exceed 1% of total project costs.
10. The construction project contractor must be approved by the County's Parks Manager, or his designee, prior to construction.
11. If another league proposes to develop shared infrastructure of the Field and incurs costs to develop the Field, a latecomer fee shall be assigned to the organization that develops the shared infrastructure of the Field. These development costs shall include but not be limited to:
  - a. Parking lot design and construction
  - b. Demolition

- c. Grading
- d. Electrical
- e. Sewer
- f. Irrigation
- g. Hardscape
- h. Landscape

12. The County will require the latecomer organization to pay 50% of the parking lot development costs incurred by VMSSA if they are the first user group to construct. VMSSA will keep track of costs through invoice and receipt for design, permitting and construction to the parking lot and Clark County Public Works Director or staff will review final costs to verify the amount is accurate.
13. Undertaking any improvement or development without prior written authorization from the County may result in the immediate termination of this Agreement.
14. VMSSA shall directly supervise the construction of the Field and any associated facilities.
15. VMSSA shall be responsible for cleaning up in a timely manner all construction materials resulting from its developments and improvements.
16. VMSSA may propose to the County additional improvements to the Park and the Field, but shall not make any improvements without prior written authorization from the County.
17. All improvements and additions to the Park shall be deemed property of the County upon expiration or termination of this Agreement.
18. The County will not carry insurance of any kind on VMSSA's improvements installed under this Agreement. The County shall not be obligated to repair any damage thereto or replace same.
19. VMSSA will not pay any rent for use of the facility, for the duration of this agreement, up to 55 years.

#### **IV. Maintenance**

Upon completion of the improvements, on-going maintenance of the field shall be apportioned between the parties as follows:

1. The County shall maintain the Field at a level equal to other fields within the County. This level of maintenance shall be determined annually at the time the County's operating budget is adopted.
2. The County shall be responsible for routine maintenance of the Field, including but not limited to mowing, aeration, fertilization, over-seeding, top dressing, and irrigation.
3. The County will care for parking lot areas, once developed, to County standards.

4. VMSSA shall be responsible for daily maintenance during their use of the base paths, infield skin, pitcher's mounds, home plate and bullpen areas of the Field, including, but not limited to: infield dragging and raking, compaction or tamping of the batters boxes and pitcher's mounds, field lining, base installation and removal, pre/post game irrigation of skinned areas and baselines, tarp installation and removal, sweeping and cleaning dugouts, and disposal of trash found in and around infield, outfield, and spectator areas.
5. VMSSA may request that the County provide additional maintenance services outside the routine maintenance schedule. VMSSA must fully reimburse the County for the cost of such services.
6. If VMSSA requests additional maintenance or improvement services, VMSSA must provide a list of requested services by January 31 of each year.
7. VMSSA may also request additional services during the year as needed. The County, in turn, must provide VMSSA a cost for those services within thirty (30) calendar days of receiving the list. VMSSA may choose to accept or not accept the services. If services are accepted and provided, VMSSA shall pay the County for the services within thirty (30) calendar days of invoicing.
8. Each year the County shall have the right to exclusive possession of the Field for an annual rest, maintenance, and re-conditioning period. The times and durations of this period shall be determined by the County. The rest and maintenance periods shall not take place during VMSSA's primary softball season.
9. During the annual rest and maintenance period, the County and VMSSA shall not schedule or allow practice, league, or tournament play activity on the fields.
10. No renovations or modifications of the Field may be conducted during each VMSSA season as defined by Article II.1., unless necessitated by an emergency or to remedy a hazardous condition.
11. If at any time the condition of the fields requires maintenance or rest, the County may notify VMSSA of this fact and may require VMSSA to suspend its use of the Field for a period determined by the County to be necessary.
12. VMSSA shall regularly inspect the Field during its season for any hazard or nonconformity with league, County standards and shall notify the County within 72 hours of discovery. VMSSA shall not use the facility for its activities until such hazard or nonconformity is remedied. A remedy is defined as a temporary or permanent solution so that the field of play is safe for use and in full operating condition.
13. Upon discovery by the County or notice from VMSSA of any hazards or nonconformities with league standards, the County may at its option either remedy the hazard or nonconformity and bill VMSSA for the costs or require VMSSA to remedy the hazard or nonconformity at VMSSA's cost if the hazards or nonconformities are the result of VMSSA use.

14. The County shall pay, and not be reimbursed by VMSSA, for Field maintenance and/or repairs which are necessary as a result of use by other Field users authorized by the County.
15. VMSSA shall assume the maintenance and repair of all equipment constructed or installed by VMSSA if damages occurred through use by VMSSA.
16. After each daily use, and at the expiration or termination of this Agreement, VMSSA shall inspect the premises and ensure that it is left in a clean and presentable condition with all rubbish and debris removed.
17. If after being informed by the County of its determination of unsafe conditions caused by VMSSA, VMSSA shall rectify the unsafe conditions immediately.
18. Equipment and facilities which are not maintained in a safe and presentable condition by VMSSA may be removed from the site by the County. VMSSA shall be responsible for the costs of such removal and shall pay the County within thirty (30) days of invoicing.
19. VMSSA shall remove all non-permanent storage containers at the conclusion of this Agreement.
20. VMSSA will meet with the County no less than one time annually to review yearly maintenance plans and progress.

#### **V. Right of Entry**

1. The County shall have the right to enter and inspect the Field, or any other structure that is erected as a part of this Agreement, during reasonable hours.

#### **VI. Use Limitations**

1. VMSSA is limited to such uses that are necessary for it to improve, maintain and use the Field in accordance with this Agreement.
2. VMSSA shall provide all equipment necessary for the safe operation of its softball activities.
3. The Field will be used and occupied by participants in VMSSA only for the purpose of softball activities sanctioned by VMSSA.
4. VMSSA shall not use or permit the Field to be used for any other purpose without prior written approval of the County.
5. Field lights must be turned off no later than 30 minutes prior to the Park's posted hours of closing, and must be turned off after each day's use has completed.
  - a. VMSSA shall pay the field lighting costs for all field use time scheduled to VMSSA.
  - b. County shall pay the field lighting costs for all non-VMSSA field use.

6. VMSSA acknowledges and agrees to the most current Operation and Use Policy for County Sports Fields. VMSSA is responsible for ensuring that all players, parents, officials, volunteers and operations persons in the VMSSA program follow the most current Operation and Use Policy.
7. VMSSA may not charge park admission fees or parking fees for VMSSA hosted or sponsored activities. Tournament or league entry fees are permitted.
8. All parking available at the Park shall be available equally to all site users and no stalls shall be specifically reserved during the term of this Agreement.
9. VMSSA will adhere to any restrictions placed upon the County in connection with the development and use of the Property.
10. Concession sales may be allowed at the Park. VMSSA must receive written authorization from the County prior to engaging in concessions sales at the Park.
11. If engaging in concession sales, VMSSA must meet all applicable federal, state, and County health and food handling standards and must secure any food handling permits required by law.
12. VMSSA may offer advertising banners, in return for donations, to be placed on the outfield fencing of the Field. All banners must follow the County Banners/Signage/Advertising policy that is current as of the time of their placement or display.
13. VMSSA may offer donor bricks in return for donations. Engraving of bricks must be by an approved vendor and performed with approval of County staff. All verbiage must be reviewed by County and follow current County standards.
14. VMSSA may offer advertising space, in return for donations, on the scoreboard of the Field.
15. All advertisements and their location at the Field, in any form must be approved by the County prior to posting at the Property.
16. VMSSA shall not sublease the fields. VMSSA shall not schedule other uses of the Field and Park amenities. VMSSA shall not allow the Field to be used as a home field for anyone other than teams within VMSSA without the prior written permission of the County.
17. During any period of approved use of the Field, VMSSA shall schedule all league games and practices with at least thirty (30) minutes between the end of one game and the start of the next to ensure adequate parking capacity or as otherwise provided subject to County approval.
18. VMSSA shall not permit vehicles to be driven off of the entry road or parking lot area within the park.

## VII. Reservation of the Field

1. Requests for reservations of the Field by non-VMSSA groups will be accepted twice yearly, beginning the third Tuesday of January and the third Tuesday of June. VMSSA shall provide the County with all needed field time for the spring/summer season by February 28 of each year. VMSSA shall provide the County with all needed field time for the fall/winter season by July 31 of each year.
2. If VMSSA decides to relinquish some of its reserved use, the VMSSA representative shall contact County, and County will make the unreserved times available for reservations by other groups.
3. Reserved time may be canceled and/or rescheduled as needed by VMSSA unless a time requested for rescheduling has been reserved by others.

## **VIII. Gender Non-Discrimination Policy**

1. Clark County comply with Washington's Fair Play and Community Sports Act. This Act prohibits discrimination against any person in a community athletics program on the basis of gender. All programming and activities scheduled under this Agreement will comply with County current policies prohibiting discrimination and the County Gender Equity Statement. This Statement and the Fair Play and Community Sports Act are attached as Exhibit B.

## **IX. Indemnification/Hold Harmless/Defense**

1. VMSSA shall exercise its privileges hereunder at its own risk. VMSSA shall indemnify, hold harmless, and defend the County, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind of nature, arising out of, or in connection with, or incident to, the exercise of the Property by VMSSA.
2. In the event that any suit based on such a claim, demand, loss, damage, cost or cause of action is brought against VMSSA, the County retains the right to participate in and defend against said suit, and VMSSA shall notify the County in writing within 7 days after it learns of such suit.
3. This indemnity, hold harmless and defense provision shall include any claim made against the County by an employee, subcontractor or agent of the VMSSA even if VMSSA is otherwise immune from liability pursuant to the worker's compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole gross negligence of the County. VMSSA specifically acknowledges that the parties have mutually negotiated the provisions contained herein and it is the intent of the parties that VMSSA provides the broadest scope of indemnity permitted by RCW 4.24.115.

## **X. Insurance**

1. VMSSA shall obtain and maintain throughout the first five years of the Term insurance coverage with a Best's minimum rating of A-VII and minimum liability limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for its liability exposures, annually renewing occurrence based coverage, including commercial general liability (CGL), no fault Med Pay of \$5,000, completed operations, property damage, and auto liability for all vehicles used by VMSSA. The deductible for any one liability coverage shall be no more than \$5,000 unless otherwise agreed.
2. VMSSA must give the County seven (7) days' advance notice of cancellation of insurance coverage required by this Agreement, and the cancellation of required insurance coverage, without simultaneous coverage under a replacement policy that meets those requirements of this section IX constitutes a material breach of this Agreement.
3. Such insurance shall name the County, and their officers, employees, and agents as additionally insured under policy endorsement CG 20 11 01 96. No less coverage under the additional insured endorsement will be provided to the County and their officers, employees and agents than exists in the underlying insurance contract. Before VMSSA has access to the Pacific Community Park, County shall have a complete policy set, including the underlying policy and the additional insured endorsement.
4. The County and VMSSA shall review the amounts of the insurance limits specified herein prior to the end of the first five years of the term of this Agreement. The County may determine to adjust such limits as necessary and appropriate to a reasonable amount in light of changes in market and/or operational conditions. Thereafter, the County may similarly adjust such insurance limits as necessary and appropriate during the Term. Insurance carried by VMSSA on the County's behalf shall be primary in all cases and not seek contribution from any other insurance held by the County.
5. A copy of the Certificate of Insurance must be provided to the County, annually and prior to the start of the primary playing season and the initial use of the premises. The certificate must be provided, after that, on an annual basis by the renewal date of the policy. Failure to submit evidence of coverage will constitute a breach of contract.

#### **XI. Termination**

1. Either party may terminate this Agreement for any reason upon giving the other party a minimum of three hundred and sixty five (365) days' written notice in advance of the date sought for such termination. Such termination will not affect VMSSA's practice, game, or postseason schedules that have been submitted by April 1.
2. If for any cause either party fails to fulfill its obligations under this Agreement in a timely and proper manner, or if either party violates the terms and conditions of this Agreement, then the aggrieved party will give the other party written notice of such failure or violation. Except for a breach of section X of this Agreement, the responsible party will be given the opportunity to correct the failure or violation. If the failure or violation is not corrected within fifteen (15) business days of such notice, this

Agreement may be terminated immediately by written notice from the aggrieved party to the other. In the case of a breach of section X, the County may terminate the Agreement immediately.

3. The County reserves the right to terminate this Agreement at any time without prior written notice if it becomes necessary to end operations of the park, either temporarily or permanently. If the County exercises this right, County shall pay a pro rata share of the development and construction costs incurred by VMSSA based on the initial term of the lease.

## **XII. Notices**

1. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

Clark County Public Works  
Attn: Parks Manager  
PO Box 9810  
Vancouver, WA 98666-9810

Vancouver Metro Senior Softball Association  
Attn: President  
P.O. Box 61936  
Vancouver, WA 98666

2. The name and address to which notices shall be directed may be changed by either party by giving the other one notice of such change as provided in this section.

## **XIII. Coordination**

1. VMSSA will meet with the County no less than semi-annually in March and September to review yearly scheduling and maintenance plans and progress.
2. Each party grants the other full access to its records and plans during reasonable hours, to the extent that such access is needed for any phase of planning, operations, or administration of this Agreement or any project carried out pursuant to this agreement.

## **XIV. Miscellaneous**

1. This Agreement constitutes the entire agreement among the County and VMSSA and supersedes all prior agreements and proposals, oral or written, and all other communications between the parties, in relation to the subject matter of this Agreement. No other agreement or understanding exists among the County and VMSSA regarding this matter, except as expressly put forth in this instrument.

2. Any modification of this Agreement must be in writing and executed by both parties.
3. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision. No waiver shall be construed to be a modification of the terms and conditions of this Agreement.
4. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement, and the remainder of the Agreement shall continue in full force and effect.
5. This Agreement will be construed in accordance with the law of the State of Washington.
6. Venue for any litigation arising from or related to this Agreement shall be in the Superior Court for the State of Washington in Clark County.
7. The prevailing party in any litigation arising from or related to this Agreement shall be entitled to recover from the other party or parties its reasonable costs and attorney fees, including costs and attorney fees on appeal.

Dated this 2<sup>nd</sup> day of September, 2014.

**Board of County Commissioners  
Clark County, Washington**

By: Tom Mielke  
Tom Mielke, Chair

By: \_\_\_\_\_  
David Madore, Commissioner

By: \_\_\_\_\_  
Ed Barnes, Commissioner

**Clark County Public Works Department**

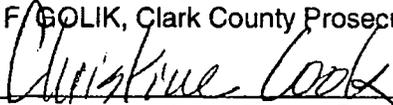
By: Heath Henderson  
Heath Henderson, Director

**Vancouver Metro Senior Softball Association**

By: \_\_\_\_\_  
John Aarhus, Chair

**Approved as to form only**

ANTHONY F. BOLIK, Clark County Prosecuting Attorney

By:  \_\_\_\_\_  
Christine Cook, Deputy Prosecuting Attorney

**NOTARIAL ACKNOWLEDGEMENT**

STATE OF WASHINGTON

COUNTY OF CLARK

I certify that I know or have satisfactory evidence that **John Aarhus** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as Chairman of the Vancouver Metro Senior Softball Association, to be the free and voluntary act and deed of such party for the uses and purposes therein mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_

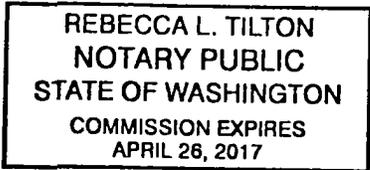
Notary Public in and for the State of WA  
residing at:  
My commission expires:

STATE OF WASHINGTON

COUNTY OF CLARK

I certify that I know or have satisfactory evidence that, **Tom Mielke**, duly elected, qualified and acting County Commissioner(s) of Clark County, Washington, who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Clark County, for the uses and purposes therein mentioned, and on oath stated that he/they is/are authorized to execute said instrument by resolution of the Board of County Commissioners of Clark County and that the seal affixed is the official seal of Clark County.

Dated 9/2/14



Rebecca L. Tilton

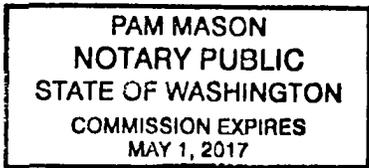
Notary Public in and for the State of Washington, residing at Vancouver  
My commission expires: 4/26/17

STATE OF WASHINGTON

COUNTY OF CLARK

I certify that I know or have satisfactory evidence that **Heath Henderson** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Director of the Clark County Public Works Department, to be free and voluntary act and deed of such party for the uses and purposes therein mentioned in the instrument.

Dated: 9-4-14



Pam Mason

Notary Public in and for the State of WA  
residing at Vanc WA  
My commission expires: 5-1-17

PW 14-40

## DEVELOPMENT & RIGHT OF USE AGREEMENT

This Development & Right of Use Agreement is entered into by and between Clark County, a political subdivision of the State of Washington (the "County"), and the Miracle League of Vancouver ("MLVW"), a non-profit organization, for the purpose of establishing the terms and conditions for the use by MLVW of certain land owned by the County.

### Field

The property, which is the subject of this Agreement, is at Pacific Community Park ("the Park"). The area to be developed, utilized, maintained, and improved ("Field") by MLVW pursuant to this Agreement is shown on the Overall Site Improvement Plan, which is attached as Exhibit "A". The area shall also include any dugouts, fencing, bleachers, and any other fixtures, field amenities, support areas, and spectator areas which are developed as a part of this Agreement.

### I. Term of Lease Agreement

1. The term of the lease agreement, at the cost of \$1.00 per year, shall be an initial thirty (30) year term commencing September 15, 2014, and ending September 15, 2044.
2. At the end of the first thirty (30) year term, upon MLV request to the County, this lease Agreement may be reviewed and extended at the discretion of the County for up to three (3) additional, ten (10) year terms on a rolling basis at the end of the thirtieth, fortieth, and fiftieth contract years.
3. The overall term of this Agreement shall not exceed Sixty (60) years, with an ending date of no later than September 15, 2074. MLVW will have the first right to ask for another 60 years at the end of first agreement
4. MLV shall notify the County of its request for extension on or before June 1st prior to the expiration of the initial or extended term; provided the County may waive such notice for good cause shown.

### II. Periods of Use

1. MLV is hereby granted exclusive use of the fields for practice and league play during each year of contract January 1<sup>st</sup> to December 31<sup>st</sup>.
2. Definition of exclusive: A status in which the rights of this Agreement grants to MLVW full rights to the use of the fields. MLVW will offer usage/rental of the fields during non-scheduled MLVW events to qualified users..
3. Upon written approval of schedules by County MLVW shall have the right to use said Fields consistent with the most current County policies, procedures, and park code, subject to the County's right to possess for maintenance as set forth in Article IV.
4. If other organizations or the general public are interested in using the field the County will pass on the information to MLV.
5. MLV field use and maintenance equipment may be stored on-site providing it is stored in a secured location approved by the County. MLV shall be responsible for on-site storage of all MLV equipment. The County bears no liability for any MLV equipment, vehicles or personal property that is damaged, or lost or stolen from the site. All equipment shall be securely stored and locked when not in use.
6. MLV shall be responsible for off-site storage of all other equipment. The County assumes no responsibility for any equipment stored off-site.

### **III. Development**

1. MLVW shall have twelve (12) months after the execution of this agreement to secure all permits and approvals necessary to begin construction of the Field.
2. MLVW shall be responsible for obtaining all permits and paying all fees and costs related to the development and construction of the Field.
3. MLVW shall have Twenty Four (24) months after all permits have been secured and fees have been paid to complete construction of the Field. Failure to complete construction of the Field within this period of time may result in the immediate termination of this Agreement.
4. MLVW shall improve and develop the Field to a condition that is reasonably suitable for sports including but not limited to youth baseball, youth softball, and youth soccer.
5. All improvements and developments must be constructed, installed, and maintained in compliance with the Pacific Community Park Master Plan and all applicable Federal, State, and County laws, rules, regulations, codes, permits and specifications.
  - a. Construction of the parking lot must be completed either before, or simultaneously with, construction of the Field.
  - b. Fencing must be installed around the construction site without restricting access to the Park.
  - c. Field lights shall be included in the design of the Field.
6. If any of MLVW improvements trigger obligation under the Americans with Disabilities Act (ADA, 42 U.S. C. 12-101) to remove barriers to travel from such improvements, MLVW shall be responsible for such barrier removal at its own expense within a timeline set by the County.
7. MLVW shall consult with the County and obtain the County's written authorization prior to developing and/or improving the Field. MLVW may propose to the County additional improvements to the Park and the Field, but shall not make any improvements without prior written authorization from the County. Undertaking any improvement or development without prior written authorization from the County may result in the immediate termination of this Agreement.
8. MLVW shall provide written notice of project status updates to the County during the design, development, construction, and maintenance phases of the Field improvement.
9. MLVW agrees to set up a reimbursable account, in the amount of \$5,000, with Clark County to pay for Project Management and inspection during the course of the design and construction phases of the project. Total amount paid to Clark County is not to exceed 1% of total project costs.
10. The construction project contractor must be approved by the County's Parks Manager, or his designee, prior to construction.
11. If another league proposes to develop shared infrastructure of the Field and incurs costs to develop the Field, a latecomer fee shall be assigned to the organization that develops the shared infrastructure of the Field. These development costs shall include but not be limited to:
  - a. Parking lot design and construction
  - b. Demolition
  - c. Grading
  - d. Electrical
  - e. Sewer

- f. Irrigation
- g. Hardscape
- h. Landscape

12. The County will require the latecomer organization to pay 50% of the parking lot development costs incurred by MLVW if MLVW is the first user group to construct. MLVW will keep track of costs through invoice and receipt for design, permitting and construction of the parking lot and the Clark County Public Works Director or staff will review final costs to verify the amount is accurate.
13. MLVW shall directly supervise the construction of the Field and any associated facilities.
14. MLVW shall be responsible for cleaning up in a timely manner all construction materials, refuse and debris resulting from its developments and improvements.
15. MLVW must erect fencing to restrict access and to enhance safety around the Field areas under construction. The fencing may not restrict access to areas of the Park which are not under construction.
16. All improvements and additions to the Park shall be deemed property of the County upon expiration or termination of this Agreement.
17. If MLVW builds a playground structure as part of the area, once it is completed and all approvals have been received, it will be turned over to the County who will be responsible for maintaining it. The County shall be obligated to repair any damage thereto or replace same.
18. The County will not carry insurance of any kind on MLVW's improvements installed under this Agreement. Except as otherwise provided herein, the County shall not be obligated to repair any damage thereto or replace same. The County shall be obligated to repair damage or replace same caused by third parties contracted by County.

#### **IV. Maintenance**

Upon completion of the improvements, continued maintenance of the facilities shall be apportioned between the parties as follows:

1. MLVW shall maintain and repair all fences, backstops, goal posts, equipment, field lighting, bleachers, infields, and all buildings and equipment which are constructed or installed by MLVW whether damages occurred through use by MLVW or the general public. In addition, the maintenance, operation, and repair of the facilities not expressly assumed by the County shall be the responsibility of MLVW.
2. The County will maintain the park at a level equal to other community parks within the County. This level of maintenance shall be determined annually at the time the County operating budget is adopted and shall be communicated to the President of MLVW or the President's designee. The County will maintain the parking lot areas and open areas not part of MLVW field areas, once developed, to County standards.
3. MLVW will meet with the County no less than semi-annually to review yearly maintenance plans and progress.
4. MLVW may request that the County provide additional maintenance or improvement services, by providing a list of requested services prior to February 1 of each year. MLVW may also request in writing additional services during the year as needed. MLVW must fully reimburse the County for the cost of such services if part of the designated areas.
5. The County must provide MLVW a cost for those services within thirty (30) calendar days of receiving a list of requested services. MLVW must choose whether to accept the services. If services are accepted and provided, MLVW shall pay the County for the services within thirty (30) calendar days of invoicing.

6. Subject to the provisions of this Agreement, no renovations or modifications of the Field may be conducted during each MLVW season as defined by Article II.1., unless necessitated by an emergency, or to remedy a hazardous condition, or as previously requested or approved in writing by MLVW.

7. If at any time, as determined by the County, the condition of the Field is such that maintenance is required, the County may notify MLVW of this fact and may require MLVW to suspend its use of the Field for a period determined by the County to be necessary, and until the maintenance is performed. After being informed by the County of its determination of unsafe conditions caused by MLVW, MLVW shall rectify the situation immediately.

8. MLVW shall regularly inspect the Field during its season for any hazard or nonconformity with league or County standards and shall notify the County within 72 hours of discovery. MLVW shall not use the facility for its activities until such hazard or nonconformity is remedied. A remedy is defined as a temporary or permanent solution so that the field of play is safe for use and in full operating condition.

9. Upon discovery by the County or notice from MLVW of any hazards or nonconformities with league standards, the County may at its option either remedy the hazard or nonconformity and bill MLVW for the costs or require MLVW to remedy the hazard or nonconformity at MLVW's cost.

10. MLVW shall maintain and repair all equipment constructed or installed by MLVW, whether damages occurred through use by MLVW or the general public.

11. The County shall pay MLVW for Field maintenance and/or repairs which are necessary as a result of use by the County.

12. Equipment and facilities which are not maintained in a safe and presentable condition by MLVW may be removed from the site by the County. MLVW shall be responsible for the costs of such removal and shall pay the County within thirty (30) days of invoicing.

13. MLVW shall remove all non-permanent storage containers at the conclusion of this Agreement.

#### **V. Right of Entry**

The County shall have the right to enter and inspect the Field, or any other structure that is erected as a part of this Agreement, during reasonable hours.

#### **VI. Use Limitations**

1. The Field will be used and occupied by MLVW for the purpose of activities sanctioned by MLVW, and for such uses that are reasonably necessary for it to improve and maintain the Field in accordance with this Agreement.

2. MLVW shall provide all equipment necessary for the safe and reasonable operation of its use of the fields.

3. MLVW shall turn off Field lights after each day's use has completed, and no later than 30 minutes prior to the Park's posted hours of closing.

a. MLVW shall pay the field lighting costs for all Field use time scheduled by MLVW.

b. County shall pay the field lighting costs for County usage.

4. MLVW acknowledges and agrees to be bound by the most current Operation and Use Policy for County Sports Fields. MLVW is responsible for ensuring that all players, parents, officials, volunteers and operations persons in the MLVW program follow the most current Operation and Use Policy.

5. MLVW may not charge park admission fees or parking fees for MLVW hosted or sponsored activities. Tournament entry fees and/or league entry fees are permitted.

6. All parking available at the Park shall be available equally to all site users and no stalls shall be specifically reserved during the term of this Agreement.

7. Concession sales may be allowed at the Park. MLVW must receive written authorization from the County prior to engaging in concessions sales at the Park. If engaging in concession sales, MLVW must meet all applicable federal, state, and county health and food handling standards and must secure any food handling permits required by law. MLVW may sell advertising banners to be placed on the outfield fencing of the Field. All banners must follow County's Banners/Signage/Advertising policy that is current as of the time of their placement or display. MLVW may sell donor bricks. All verbiage must be reviewed by County and follow current County standards. MLVW may sell advertising space on the scoreboard of the Field. All advertisements and their location at the Field, in any form, must be approved by County prior to posting at the Property.

8. During any period of approved use of the Field, MLVW shall schedule all league games and practices with at least thirty (30) minutes between the end of one game and the start of the next to ensure adequate parking capacity.

9. MLVW shall not permit vehicles to be driven off of the entry road or parking lot area within the park.

#### **VII. Reservation of the Field**

1. At the beginning of each year, the County will accept requests for reservations of the Field from outside parties. The County will pass on any requests by County or third parties to MLVW.

#### **VIII. Gender Non-Discrimination Policy**

1. Clark County complies with Washington's Fair Play and Community Sports Act. This Act prohibits discrimination against any person in a community athletics program on the basis of gender. All programming and activities scheduled under this Agreement will comply with County's current policies prohibiting discrimination and the Gender Equity Statement. This Statement and the Fair Play and Community Sports Act are attached as Exhibit B.

#### **IX. Indemnification/Hold Harmless/Defense**

1. MLVW shall exercise its privileges hereunder at its own risk. MLVW shall indemnify, hold harmless, and defend the County, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, which terms include costs and attorney fees and expenses on appeal, of whatsoever kind of nature, arising out of, or in connection with, or incident to, the development and use of the Field and parking facilities at the Park by MLVW and its participants.

2. In the event that any suit based on such a claim, demand, loss, damage, cost or cause of action is brought against MLVW, the County retains the right to participate in and defend against said suit.

3. This indemnity, hold harmless and defense provision shall include any claim made against the County by an employee, subcontractor or agent of MLVW even if MLVW is otherwise immune from liability pursuant to the worker's compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole gross negligence of the County. MLVW specifically acknowledges that the parties have mutually negotiated the provisions contained herein and it is the intent of the parties that MLVW provides the broadest scope of indemnity permitted by RCW 4.24.115.

## **X. Insurance**

1. MLVW shall obtain and maintain throughout the first five years of the Term insurance coverage with a Best's minimum rating of A-VII and minimum liability limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for its liability exposures, annually renewing occurrence based coverage, including commercial general liability (CGL), no fault Med Pay of \$5,000, completed operations, property damage, and auto liability for all vehicles used by MLVW. The deductible for any one liability coverage shall be no more than \$5,000 unless otherwise agreed.
2. MLVW must give the County seven (7) days' notice of cancellation of insurance coverage required by this Agreement, and the cancellation of required insurance coverage, without simultaneous coverage under a replacement policy that meets the requirements of this section IX constitutes a material breach of this Agreement.
3. Such insurance shall name the County, and their officers, employees, and agents as additionally insured under policy endorsement CG 20 11 01 96. No less coverage under the additional insured endorsement will be provided to the County and its officers, employees and agents than exists in the underlying insurance contract. Before MLVW has access to the Pacific Community Park, MLVW shall provide the County with a complete policy set, including the underlying policy and the additional insured endorsement.
4. The County and MLVW shall review the amounts of the insurance limits specified herein prior to the end of the first five years of the term of this Agreement. The County may determine that the insurance limits must be adjusted as necessary and appropriate to a reasonable amount in light of changes in market and/or operational conditions, and MLVW shall take action to adjust the limits. Thereafter, the County may similarly that such insurance limits be adjusted as necessary and appropriate during the Term of this Agreement. Insurance carried by MLVW on the County's behalf shall be primary in all cases and not seek contribution from any other insurance held by the County.
5. A copy of the Certificate of Insurance must be provided to the County annually and prior to the start of the primary playing season and the initial use of the Park and Field. The certificate must be provided, after that, on an annual basis by the renewal date of the policy. Failure to submit evidence of coverage will constitute a breach of contract.

## **XI. Termination**

1. Either party may terminate this Agreement for any reason upon giving the other party a minimum of one hundred eighty (180) days' written notice in advance of the date sought for such termination. Such termination will not affect MLVW's practice, game, or postseason schedules. MLVW will be liable for all of its obligations pursuant to this Agreement until its usage of the Park and Field ends.
2. If for any cause either party fails to fulfill its obligations under this Agreement in a timely and proper manner, or if either party violates the terms and conditions of this Agreement, then the aggrieved party will give the other party written notice of such failure or violation. Except for a breach of section IX of this Agreement, the responsible party will be given the opportunity to correct the failure or violation. If the failure or violation is not corrected within fifteen (15) business days of such notice, this Agreement may be terminated immediately by written notice from the aggrieved party to the other. In the case of a breach of section IX, the County may terminate the Agreement immediately.
3. The County reserves the right to terminate this Agreement at any time without prior written notice if it becomes necessary to end operations of the all activities/usage of the Park, either temporarily or permanently. MLVW will be reimbursed the full cost of improvements made by them if it is terminated within the first 30 years of the agreement.

## **XII. Notices**

1. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

Clark County Parks  
Attn: Public Works Director  
PO Box 9810  
Vancouver, WA 98666-9810

Miracle League of Vancouver  
Attn: President  
PO Box 872563  
Vancouver, WA 98687

2. The name and address to which notices shall be directed may be changed by either party by giving the other one notice of such change as provided in this section.

## **XIII. Coordination**

1. MLVW will meet with the County no less than semi-annually in March and September to review yearly scheduling and maintenance plans and progress.

2. Each party grants the other full access to its records and plans during reasonable hours, to the extent that such access is needed for any phase of planning, operations, or administration of this Agreement or any project carried out pursuant to this agreement.

## **XIV. Miscellaneous**

1. This Agreement constitutes the entire agreement between the County and MLVW and supersedes all prior agreements and proposals, oral or written, and all other communications between the parties, in relation to the subject matter of this Agreement. No other agreement or understanding exists among the County and MLVW regarding this matter, except as expressly put forth in this instrument.

2. Any modification of this Agreement must be by written amendment that is executed by both parties.

3. No waiver by either party of the breach of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of breach of any other term or condition or of any subsequent breach, whether of the same or different provision. No waiver shall be construed to be a modification of the terms and conditions of this Agreement.

4. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement, and the other parts of the Agreement shall remain in full force and effect.

5. This Agreement will be construed in accordance with the law of the State of Washington.

6. Venue for any litigation arising from or related to this Agreement shall be in the Superior Court for the State of Washington in Clark County.

7. The prevailing party in any litigation arising from or related to this Agreement shall be entitled to recover from the other party or parties its reasonable costs and attorney fees, including costs and attorney fees on appeal.

Dated this 2nd day of September, 2014.

**Board of County Commissioners  
Clark County, Washington**

By: Tom Mielke  
Tom Mielke, Chair

**Clark County Public Works Department**

By: Heath Henderson  
Heath Henderson, Director

**Miracle League of Vancouver**

By: Craig Mills  
Craig Mills, Executive Director

**Miracle League of Vancouver**

By: George Galliher  
George Galliher, President

**Approved as to form only**

ANTHONY F. GOLIK,  
Clark County Prosecuting Attorney  
By: Christine Cook  
Christine Cook, Deputy Prosecuting Attorney

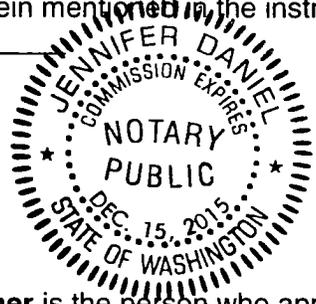
**NOTARIAL ACKNOWLEDGEMENT**

**STATE OF WASHINGTON COUNTY OF CLARK**

I certify that I know or have satisfactory evidence that **Craig Mills** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as Executive Director of the Miracle League of Vancouver, to be the free and voluntary act and deed of such party for the uses and purposes therein mentioned in the instrument.

Dated: 8-29-14 [Signature]  
Notary Public in and for the State of WA

Residing at: Vancouver  
My commission expires: 12-15-15

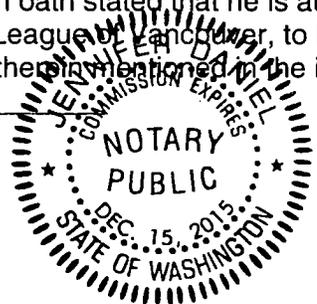


**STATE OF WASHINGTON COUNTY OF CLARK**

I certify that I know or have satisfactory evidence that **George Galliher** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as President of the Miracle League of Vancouver, to be the free and voluntary act and deed of such party for the uses and purposes therein mentioned in the instrument.

Dated: 8-29-14 [Signature]  
Notary Public in and for the State of WA

Residing at: Vancouver  
My commission expires: 12-15-15

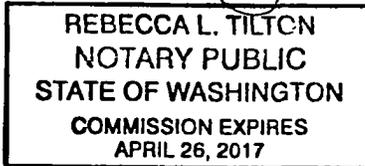


STATE OF WASHINGTON COUNTY OF CLARK

I certify that I know or have satisfactory evidence that **Tom Mielke**, duly elected, qualified and acting County Commissioner(s) of Clark County, Washington, who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Clark County, for the uses and purposes therein mentioned, and on oath stated that he/they is/are authorized to execute said instrument by resolution of the Board of County Commissioners of Clark County and that the seal affixed is the official seal of Clark County.

Dated 9/2/14  
Notary Public in and for the State of WA  
Residing at: Vancouver  
My commission expires: 4/26/17

*Rebecca L. Tilton*



STATE OF WASHINGTON COUNTY OF CLARK

I certify that I know or have satisfactory evidence that **Heath Henderson** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Director of the Clark County Public Works Department, to be free and voluntary act and deed of such party for the uses and purposes therein mentioned in the instrument.

Dated: 9-1-14  
Notary Public in and for the State of WA  
Residing at: Vanc WA  
My commission expires: 5-1-17

*Pam Mason*

