

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202007013

Originating Department:	Parks
Division/Program: (i.e. Dept. Division and Program)	Administration
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	Boys & Girls Club of Whatcom County
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input checked="" type="radio"/> No <input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: <u>9310001</u>	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>N/A</u> This Amendment Amount: \$ <u>N/A</u> Total Amended Amount: \$ <u>N/A</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: Third amendment to lease of baseball fields at 5238 Northwest Drive to Boys & Girls Club of Whatcom County.	
Term of Contract: 25 years Expiration Date: March 31st, 2045	

Contract Routing:	1. Prepared by: Michael McFarlane	Date: 6/10/20
	2. Attorney signoff: <u>[Signature]</u>	Date: <u>6/10/2020</u>
	3. AS Finance reviewed: <u>[Signature]</u>	Date: <u>6/30/2020</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>[Signature]</u>	Date: <u>2-28-2020</u>
	6. Submitted to Exec.: <u>[Signature]</u>	Date: <u>7-13-2020</u>
	7. Council approved (if necessary): <u>[Signature]</u>	Date: <u>7-21-2020</u>
	8. Executive signed: <u>[Signature]</u>	Date: <u>7-22-2020</u>
	9. Original to Council: <u>[Signature]</u>	Date: <u>7-28-2020</u>

THIRD AMENDED LEASE BETWEEN
WHATCOM COUNTY
AND BOYS & GIRLS CLUB OF WHATCOM COUNTY

THIS LEASE is made and entered into this 22nd day of July 2019, by and between WHATCOM COUNTY, a municipal corporation organized under the laws of the State of Washington, hereinafter "County", and BOYS AND GIRLS CLUB OF WHATCOM COUNTY, a Washington non-profit corporation, hereinafter "Club".

RECITALS:

- A. The parties entered into a Boys and Girls Club of Whatcom County Lease on the 12th day of November, 1993, for the development of baseball fields, located at 5238 Northwest Drive, Bellingham, WA.
- B. The parties entered into an Amended Boys and Girls Club of Bellingham Lease on the 3rd day of June, 1997. The Amended Lease expires on the 31st day of March, 2020. This Lease will be the third amended lease and will go into full force and effect at the expiration of the prior Lease at midnight on April 1, 2020, provided it is signed by all Parties.
- C. The County wants to assist the Club in providing recreational youth baseball facilities which will benefit the public by fulfilling a park-like function, thereby reducing demands on the County's budget.
- D. RCW 35.59.080 authorizes the County to lease its land for public safety facilities, playfields, outdoor sports and recreation facilities, for such fees, charges and other consideration as the legislative body deems appropriate.
- E. The Club shares infrastructure with Whatcom Sports & Recreation, a Washington non-profit corporation ("WSR").
- F. WSR leases from the County real property to the east of the Leased Premises.
- G. Shared infrastructure is shown on the map attached as Exhibits "C-1 and C-2".

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties agree as follows:

- 1. Leased Premises: The County, for an in consideration of the promises hereinafter provided and the covenants and agreements hereinafter contained, hereby demise, let and lease unto the Club the real property described in Exhibit A ("Leased Premises"). A depiction of the leased premises is attached as Exhibit B.

The Leased Premises are subject to the following reservations:

- a. WSR's right to use, maintain, repair and replace the waterline from City of Ferndale for domestic water service.
- b. WSR's non-exclusive right to use for parking, ingress and egress over a portion of the Leased Premises developed as parking and road, shown as Common Access Road and Parking and Common Parking on Exhibit "C-1".
- c. The right for WSR to operate the irrigation system that includes the existing well and water lines for transmission of water to and from the irrigation pond identified on Exhibit "C-2", including reasonable access for maintaining, repairing and upgrading of the irrigation system.
- d. A non-exclusive right reserved by Whatcom County for the purpose of using parking constructed on the Leased Premises as overflow parking during business hours.
- e. The right reserved by Whatcom County and granted to the WSR over the northwest corner of the Leased Premises upon which an access road from Northwest Avenue has been constructed.
- f. The right of Whatcom County to install and operate general utilities anywhere on the Leased Premises for the purpose of maintaining existing underground utilities and for adding additional underground utilities as the County deems appropriate.
- g. Those rights reserved by the County in Sections 7, 15, 18 and 21.

2. Term: The term of this Lease shall be for a period of twenty five (25) years, commencing on the 1st day of April, 2020, and ending at midnight on the 31st day of March, 2045.
3. Rent: There shall be no rent for the Leased Premises, except as otherwise provided for herein. The consideration received by the County shall be the improvements to the Leased Premises and the use of the Leased Premises, which fulfills a public need and purpose.
4. Acceptance of Premises: The Club acknowledges that the Leased Premises have been examined to the Club's satisfaction and the Club accepts the Leased Premises in their present condition and AS IS.
5. Administration: This Lease shall be administrated by the director of the Whatcom County Park Department ("Director"). The Director is authorized to administer this Lease and deal with all issues related hereto, including the granting of the necessary approvals contemplated by this Lease; provided, this Lease may only be amended in the same manner that it was originally executed. All actions taken by Director as the County's agent for administering this agreement shall be subject to the approval of the Whatcom County Executive.
6. Use: The Club shall use the Leased Premises only for youth baseball and other youth athletic activities, concession sales, and other incidental and related activities. The parties agree that the Club shall have the primary use of the Leased Premises for that purpose; provided the Director may allow other uses and activities on all or a portion of the Leased Premises during those times that the Leased Premises are not scheduled for use by the Club. If such use is not detrimental or damaging to the turf, or other facilities located on the Leased Premises.
7. Improvements: The Club shall make no alterations, improvements, repairs or do any development to the Leased Premises without the prior written consent of the Director. The Club shall pay for all costs to repair damages to the Leased Premises and improvements thereto incurred during Club's use of the Leased Premises. The Club shall return the Leased Premises to the County with all improvements in an adequate condition upon termination or expiration of this Lease. The Club agrees to secure the necessary permits required for construction of improvements on the Leased Premises. The County reserves the right to require any fixtures or improvements to be deeded to the County upon expiration or termination of this Lease. The Club shall pay all costs and expenses for work done and materials used for the construction of improvements or installation of equipment. The Club shall keep the Leased Premises free and clear of all mechanics or material liens, or other liens on account of any work done for the Club on the Leased Premises.
8. Maintenance: The Club shall be solely responsible for maintenance of the Leased Premises. The Club agrees that the County shall not have responsibility for maintenance of any kind.
9. Operating Costs: The Club shall pay all costs of operation of the Leased Premises, including but not limited to, electricity, water, gas, sewer and garbage.
10. Concession: The Club is authorized to operate concessions on the Leased Premises for the sale of food, food items, apparel and other youth sports related items; provided, such concession shall only be open during events scheduled on the Leased Premises. The Club shall be responsible for acquiring all necessary permits, approvals, and licenses for such concession operations.

11. Insurance: The Club shall, at its own expense, obtain and continuously maintain the following insurance coverage. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified herein or the coverage limits provided or available under the policies maintained by the Club without regard to this lease, whichever are greater:

Commercial General Liability and Public Liability
Property Damage - \$500,000.00 - per occurrence
General Liability & bodily injury- \$2,000,000.00 – per occurrence
\$4,000,000 - Minimum, Annual Aggregate

Business Automobile Liability
\$2, 000,000 Minimum, per occurrence
\$4,000,000 Minimum, Annual Aggregate

The Club shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$2,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

The Club must provide to the County a Certificate of Liability Insurance with Endorsements on the CGL, Public Liability and auto policy. The Certificate of Liability and Endorsements shall name the County, employees, officers, agents, officials and volunteers as named Additional Insureds. The Club's insurance shall be considered primary and shall waive all rights of subrogation. The County insurance shall be non-contributory. The CGL policy shall be an occurrence basis. All Club's subcontractors' and vendors' providing services and performing work on the Leased Premises shall have policies of insurance that shall also name the County as an additional named insured with endorsements, provide primary insurance coverage, waiver of subrogation and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participate in by the County shall be excess. All Contractor's and subcontractors' liability insurance policies must be endorsed to show this primary coverage.

The Club agrees Club's insurance obligation shall survive the completion or termination of this lease for a minimum period of three years. Failure by the Club to provide insurance as required shall be considered a material breach of this Lease.

Due to the length of this Lease, the parties agree to periodically review the insurance limits to determine if they are adequate. If the County deems such insurance limits not to be adequate, then the Club, upon request from the County shall raise such insurance limits to adequate amounts.

The insurance policy covering liability for the Leased Premises and concession sales shall be a comprehensive general liability policy with the above policy limits, and, in addition shall include coverage for merchandise sold by the Club through its facilities.

The policy of insurance shall have a thirty (30) day cancellation notice in the event of termination, or material modification of coverage, which notice shall be provided to the County.

Failure by the County to review or reject the Insurance Certificate and/or Endorsement does not constitute a waiver of the Club's duty and obligation to obtain the Insurance and Endorsements required in this Lease, nor does it constitute an acceptance by the County of the Insurance and Endorsements provided.

12. Taxes and Fees: The Club shall pay all licenses, excise taxes, permits, and fees applicable to its operation and the Leased Premises. The Club shall be responsible for securing necessary permits and licenses imposed by applicable local, state or federal law with respect to the Club's employees or Club's property or activities on the Leased Premises.
13. Indemnification: The Club covenants and agrees to indemnify, hold harmless and defend County, its departments, employees, officers, agents, officials and volunteers, from and against all claims, losses and damages for personal injury or death, or damage to property occurring on or within the Leased Premises, arising out of the Club's use and occupancy of the Leased Premises, excepting any damage or loss caused by the sole negligence of County or solely by County's failure to perform its obligations hereunder.

The Club specifically and expressly waives any indemnity created under the Washington Industrial Insurance Act, Title 51 RCW, or similar laws of other jurisdictions and by its signature below acknowledges that this waiver was mutually negotiated and agreed to by the parties.

14. Assignment and Subletting: The Club shall not sublet the Leased Premises or any part thereof, or assign this Lease without the prior written consent of the County, which consent shall not be unreasonably withheld. Any such assignment or subletting, or attempt to assign or sublet without such consent shall result in an immediate forfeiture of the Club's interest in and to this Lease, as provided herein.
15. Entry onto Premises by County: The County reserves the right to enter onto the Leased Premises at reasonable times to inspect them, or make modifications and the Club shall permit the County to do so.
16. Independent Contractor: It is hereby understood, agreed and declared that the Club or any sublessee, is an independent contractor and not the agent or employee of the County and that no liability shall attach to the County by reason of entering into this Lease, except as may be expressly provided herein.
17. Oil and Mineral Rights: The County hereby expressly saves, accepts, and reserves out of the Lease hereby made, unto itself, its successors, and assigns, forever, all oils, gases, coals, ores, minerals, gravel, timber, and fossils of every name, kind, or description, and which may be in or upon said lands above-described; or any part thereof, and the right to explore the same for such oils, gases, coals, ores, minerals, gravel, timber and fossils, and it also hereby expressly saves and reserves out of lease hereby made, unto itself, its successors, and assigns, forever, the right to enter by itself, its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coals, ores, minerals, gravel, timber and fossils, and to that end it further expressly reserves out of this Lease, unto itself, its successors, and assigns, forever, the right by it or its agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads and railroads, sink such shafts, remove such oil, and to remain on said lands or any part thereof, for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself, its successors, and assigns, as aforesaid, generally, all rights and powers in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.
18. Termination and Remedies of County for Breach by the Club: The County shall have the right to terminate this Lease upon breach of this Lease by the Club, or any sublessee of the Club, upon giving sixty (60) days written

notice of termination to the Club. The written notice shall specify the reason for termination and the Club shall be given a reasonable time to cure the breach described in such notice. These remedies shall be in addition to any other remedies available to the County.

In the event the Leased Premises are necessary for the County to fulfill a County purpose, as determined solely by the County, then the County may terminate this Lease as to all or that portion of the Leased Premises required to fulfill such County purpose. Whatcom County agrees to reimburse the Club for any damages incurred in the event this Lease as to all or a portion of the Leased Premises is terminated by the County without cause. Damages shall be limited to reimbursement of monies expended on the Leased Premises.

19. Conditional Use Permits: The Club agrees to comply with the terms of Conditional Use Permit issued by Whatcom County for development of the Leased Premises.
20. Modification: No change or addition to this Lease shall be valid or binding upon either party unless such change or addition be in writing, executed by the parties and approved by the Whatcom County Council.
21. Cooperation: The Club agrees to cooperate with WSR and to the extent practical, share facilities to facilitate both the programs provided by the Club and the programs offered by WSR. If the Director deems it appropriate, he may direct the Club to share space with WSR provided, the programs established by the Club are not impaired. In the event disputes arise between the Club and WSR, such disputes shall be resolved by the Director. The Director's decision shall be final.

Miscellaneous:

Time of the Essence: Time is of the essence in the performance of this Lease.

Entire Agreement: There are no other verbal or written agreements which modify or affect this Lease.

Benefit: The provisions in this Lease shall inure to the benefit of and be binding upon the successors, assigns and personal representatives of the parties hereto.

Notices: All notices or demands to be given by each party to the other under this Lease and all sums to be paid by each party shall be deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed as follows:

CLUB:

Boys & Girls Club
1616 Cornwall Avenue, #111
Bellingham, WA 98225
Phone:

COUNTY:

Whatcom County Parks & Recreation Department
ATTN: Director
3373 Mt. Baker Highway Bellingham, WA 98226
360.778.5850
Email: parks@co.whatcom.wa.us

Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

Execution of Documents: The parties agree to execute any documents which may be necessary, appropriate or convenient to carry out the intent of the transaction contemplated by this Lease.

Attorney's Fees: In the event either the County or the Club shall institute suit to enforce any rights hereunder, the successful party shall be entitled to court costs and reasonable attorney's fees against the losing party.

Survival: All of the terms and covenants in this Lease shall survive the closing and delivery of any deed

Severability: If any provision of this Lease is deemed void or unenforceable by the action of a court of law, such provision shall be severable and not affect the balance of this Lease, which shall remain in full force and effect

Applicable Law: This Lease shall be construed, interpreted and enforced pursuant to the laws of the State of Washington, and the parties agree that the Superior Court of Whatcom County shall be the appropriate venue of any suit or proceeding brought with respect to this Lease or the Leased Premises.

Waiver: Waiver of any breach or condition of this lease shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this lease shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the terms of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other terms, but the same shall be and remain in full force and effect.

Disputes: Any claim, dispute or controversy between the parties under, arising out of, or related to this Lease or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, but shall not have the power to award punitive damages. Each party shall pay its own costs of arbitration including attorneys' fees. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Executed as of the date first written above.

WHATCOM COUNTY

Satpal Singh Sidhu
Satpal Singh Sidhu
County Executive

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

On this 22nd day of July, 2020, before me personally appeared Satpal Sidhu to me known to be the County Executive of WHATCOM COUNTY and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Given under my hand and official seal this 22nd day of July, 2020.



Suzanne M. Mildner
NOTARY PUBLIC in and for the State of Washington,
residing at: Bellevue
My Commission expires: 12-31-22

WHATCOM COUNTY PARKS & RECREATION

[Signature]
Michael McFarlane, Director

APPROVED AS TO FORM:

[Signature]
Deputy Prosecuting Attorney

EXHIBIT "A"

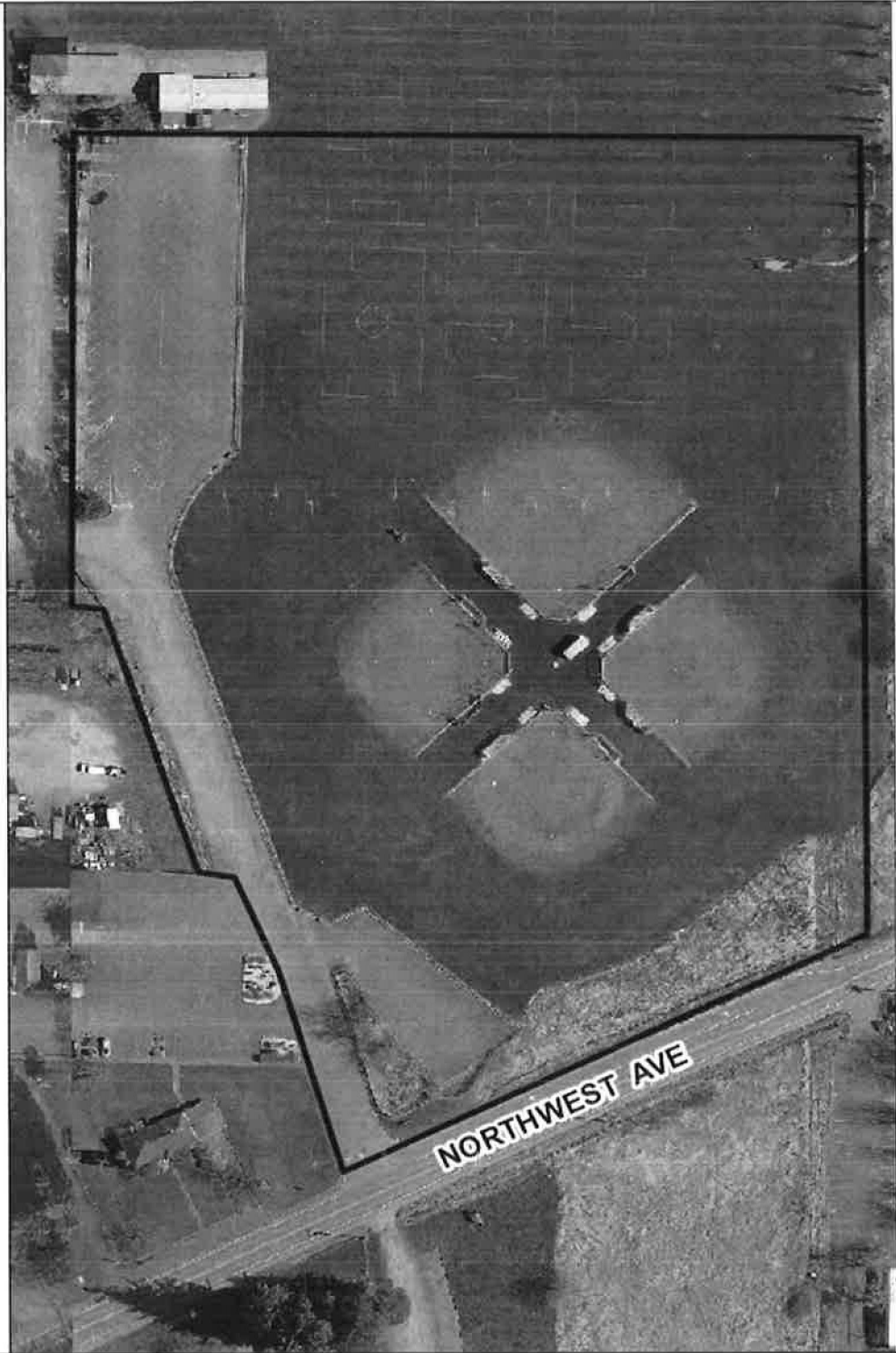
A PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 34; THENCE NORTH 89 DEGREES 32' 55" WEST ALONG THE NORTH LINE OF SAID SECTION 34, 1526.63 FEET; THENCE SOUTH 00 DEGREES 47' 10" EAST, 30.01 FEET TO THE SOUTHERLY MARGIN OF WEST SMITH ROAD (COUNTY ROAD NO. 103); THENCE CONTINUING SOUTH 00 DEGREES 47' 10" EAST, 318.17 FEET; THENCE NORTH 89 DEGREES 41' 59" WEST, 10.80 FEET TO THE TRUE POINT OF BEGINNING, THENCE CONTINUING NORTH 89 DEGREES 41' 59" WEST 389.96 FEET; THENCE SOUTH 00 DEGREES 53'34" WEST, 30.24 FEET; THENCE SOUTH 71 DEGREES 02' 03" WEST, 222.33 FEET; THENCE SOUTH 01 DEGREE 04' 02" WEST, 26.54 FEET; THENCE SOUTH 78 DEGREES 21' 55" WEST, 66.88 FEET; THENCE SOUTH 67 DEGREES 55' 18" WEST, 185.43 FEET ALONG THE WESTERLY MARGIN OF NORTHWEST AVENUE (COUNTY ROAD NO. 43); THENCE SOUTH 26 DEGREES 39' 00" EAST, 453.09 FEET; THENCE NORTH 89 DEGREES 42' 30" EAST, 632.09 FEET; THENCE NORTH 00 DEGREES 18' 01" EAST, 611.93 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS 9.7 ACRES, PLUS OR MINUS

SITUATE IN WHATCOM COUNTY WASHINGTON

Phillips 66 Soccer Park



 Boys and Girls Club Lease Area

EXHIBIT "C-1"

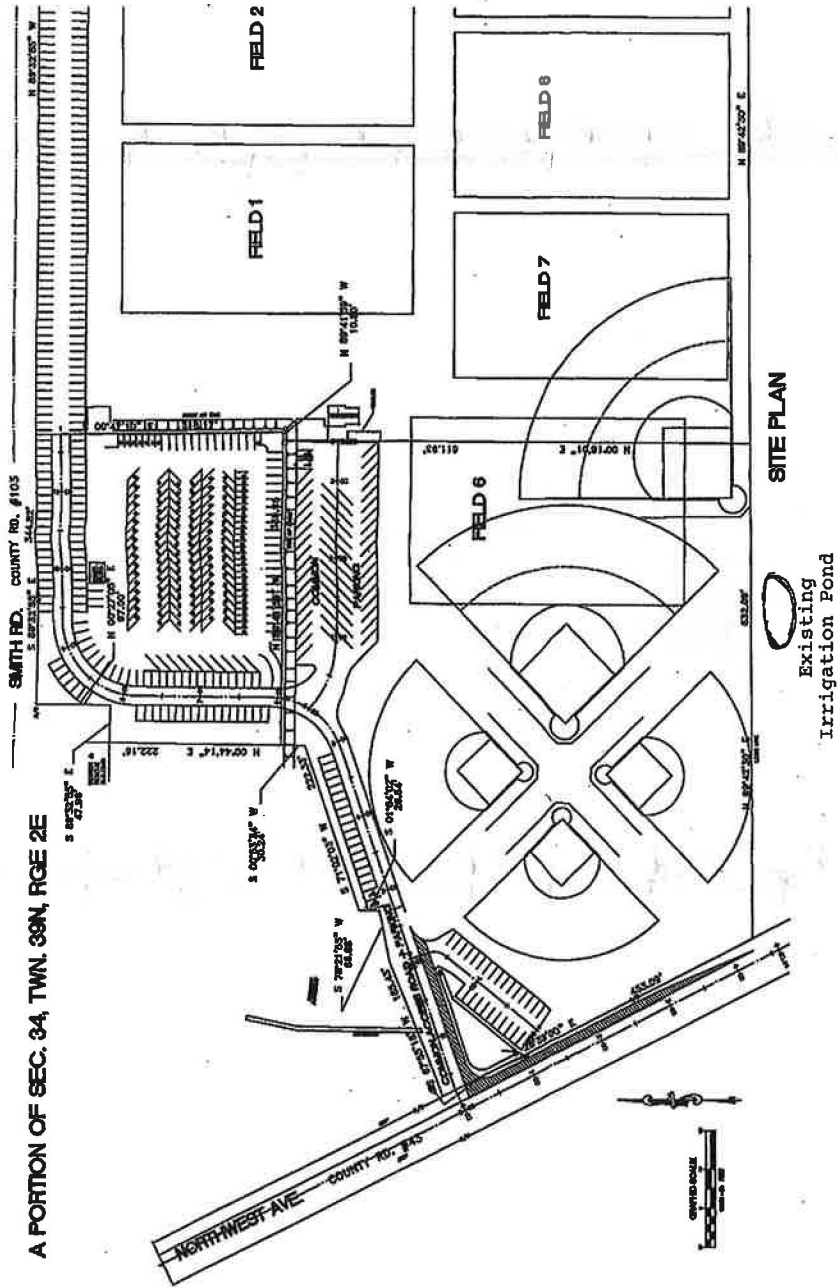
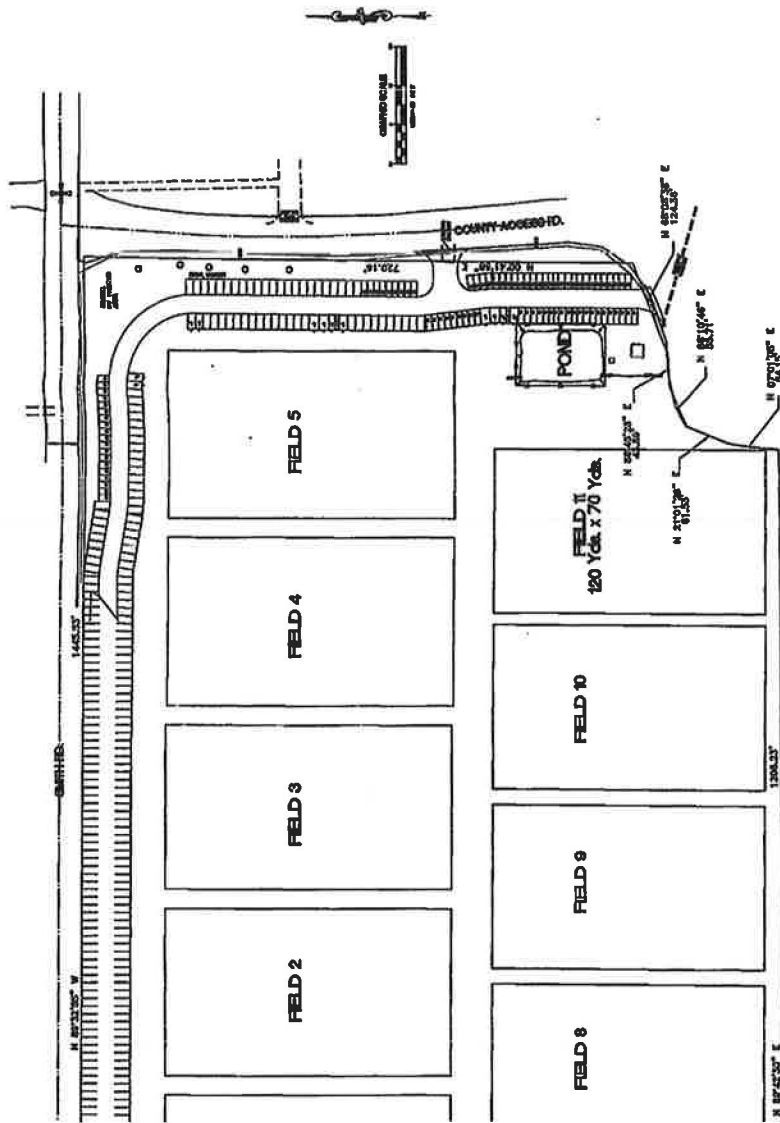


EXHIBIT "C-2"



WHATCOM COUNTY
Parks & Recreation
3373 Mount Baker Highway
Bellingham, WA 98226-9097




Michael G. McFarlane, Director
Christ Thomsen, Operations Manager

RECEIVED

JUL 13 2020

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

MEMORANDUM

TO: County Executive Sidhu and Members of the Council
FROM: Michael McFarlane, Director 
DATE: July 8th, 2020
RE: Baseball Field Lease Amendment with Boys & Girls Club of Whatcom County

Attached is a lease amendment for use and maintenance of the baseball fields on County property adjoining the Phillips 66 soccer fields. The Boys & Girls Club has leased and maintained these ballfields since 1997 providing needed youth sport activities at no cost to the County.

This agreement has been updated and extends the lease for another 25 years under similar terms and conditions. I recommend your approval of the agreement.

Thank you.