

## CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works / Parks / Administration

**DATE:** July 18, 2017

**REQUESTED ACTION:** Approve third amendment to lease with Harmony Sports Association.

  X   Consent           Hearing           County Manager

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### **PUBLIC WORKS GOALS:**

- Provide a safe, efficient transportation system
- Support a vibrant system of parks and natural areas while preserving the environment
- Continue responsible stewardship of public funds
- Increase partnerships and foster an engaged, informed community
- Empower a skilled, responsive workforce
- Make Public Works a great place to work

### **BACKGROUND**

On December 10, 1996, Clark County and Harmony Sports Association (HSA) entered into a lease for Harmony's use of approximately 40 acres at the intersection of NE 192nd Avenue and NE 18th Street. Clark County and HSA amended the lease on April 2, 2007, to add approximately 14 more acres development of athletic fields for individuals with disabilities.

The 1996 lease, as amended in 2007, was replaced and superseded by a lease agreement between the parties dated September 11, 2012. This modified the previous lease to allow for developing three synthetic turf soccer fields with lighting and fencing. The term of the lease was extended to June 1, 2042, provided the three soccer fields were developed by the year 2026.

In turn, by a licensing agreement entered into June 15, 2013, HSA granted the Washington Timbers Football Club (WTFC) a license to occupy and use the Harmony Sports Complex for operating youth and adult soccer programs and incidental purposes related to that use.

An amendment to the 2012 lease agreement between Clark County and HSA was added on June 16, 2015. The amendment enabled WTFC to secure a loan with Craft3, a Washington nonprofit corporation, to finance the development of three synthetic soccer fields with lighting and fencing.

A second amendment was approved on June 21, 2016. It allowed WTFC to serve and sell alcohol at Harmony Sports Complex for up to three (3) events per calendar year.

This third amendment to the original lease agreement will authorize WTFC to secure additional financing for the construction of the third lighted, synthetic turf field and the grading of a parking lot on the property.

PW17-083

**COUNCIL POLICY IMPLICATIONS**

This staff report does not result in any Council policy implications.

**ADMINISTRATIVE POLICY IMPLICATIONS**

This staff report does not result in any administrative policy implications.

**COMMUNITY OUTREACH**

Parks staff has worked with WTFC to craft an amendment, which is acceptable for both parties.

**BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

**BUDGET DETAILS**

Local Fund Dollar Amount	None
Grant Fund Dollar Amount	None
Account	None
Company Name	None

**DISTRIBUTION:**

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

**Attachments:** 2012 Agreement and its 1<sup>st</sup> and 2<sup>nd</sup> amendments

for   
 Bill Bjerke  
 Parks Division Manager

  
 Heath H. Henderson, PE  
 Public Works Director/County Engineer

  
**APPROVED:**  
 CLARK COUNTY, WASHINGTON  
 BOARD OF COUNTY COUNCILORS

DATE: 7-18-17  
 SR# SR 152-17





THIRD AMENDMENT TO LEASE AGREEMENT ENTERED  
INTO SEPTEMBER 11, 2012, BETWEEN CLARK COUNTY,  
WASHINGTON, AND HARMONY SPORTS ASSOCIATION

CLARK COUNTY, WASHINGTON, a political subdivision of the State of Washington, ("County"), and the HARMONY SPORTS ASSOCIATION, a Washington nonprofit corporation, ("Harmony"), enter into this Third Amendment to that certain Lease Agreement between the County and Harmony made and entered into September 11, 2012 (County and Harmony, together, shall be referred to as the "Parties") and amended by the Parties effective June 16, 2015, and June 21, 2016. This Third Amendment is dated as of July 1, 2017.

BACKGROUND

On December 10, 1996, the Parties entered into a lease for Harmony's use of approximately 40 acres of property in Section 30, at the intersection of NE 192nd Avenue and NE 18th Street. The Parties amended the December 10, 1996 lease on April 2, 2007 to add approximately fourteen more acres of land for the development of athletic fields for individuals with disabilities. The 1996 lease, as amended in 2007, was replaced and superseded by that certain Lease Agreement between the Parties dated September 11, 2012 ("Lease") to modify the previous lease and add three synthetic turf sports fields with lighting and fencing on the property. The term of the Lease was extended to June 1, 2042, provided the three soccer fields were developed by the year 2026. In turn, by a licensing agreement entered into June 15, 2013, Harmony granted the Washington Timbers Football Club, a Washington nonprofit corporation ("Timbers"), a license to occupy and use the Harmony Sports Complex for the purpose of operating youth and adult soccer programs and incidental purposes related to that purpose ("License"). The Parties entered into a First Amendment to the Lease dated June 16, 2015 ("First Amendment") for the purpose of enabling Timbers to secure a loan with Craft3, a Washington nonprofit corporation ("Lender") to finance development of synthetic soccer fields with lighting and fencing ("Improvements") on the County-owned parks property, Harmony Sports Complex. A Second Amendment ("Second Amendment") to the Lease, was approved on June 21, 2016. The purpose of the Second Amendment was to allow the Washington Timbers Football Club to serve and sell alcohol at up to three (3) events per calendar year. Lease and the First and Second Amendments, together, shall be referred to as the "Amended Lease."

PURPOSE

The purpose of this Third Amendment is to enable Timbers to secure a new loan with Lender to finance the development of a third lighted synthetic turf soccer field and to grade a parking lot on the County-owned parks property, Harmony Sports Complex.

RECITALS

**WHEREAS**, the County owns that certain real property more particularly described in the Amended Lease, and on which is located the Harmony Sports Complex, which is occupied by Harmony pursuant to the Amended Lease (the "Premises"); and

**WHEREAS**, Timbers, which is licensed by Harmony to use and occupy the Premises for soccer programs, is seeking a second loan in the amount of \$750,000 from the Lender to finance development of a third field ("Field") with synthetic turf, lighting and fencing installed on or affixed to the Premises and grade a parking lot on the Premises ("Second Improvements" and together with Improvements shall be referred to herein collectively as "Lender-Financed Improvements"); and

**WHEREAS,** The Timbers are obligated to repay the second loan within five (5) years from the date the loan is secured, and making no less than one payment each year in the amount equal to or exceeding one fifth share of the loan balance and remain obligated to repay the first loan pursuant to its terms; and

**WHEREAS,** Section XIII of the Amended Lease prohibits Harmony from assigning or transferring any interest in the Amended Lease or the Premises without first obtaining the written consent of the County; and

**WHEREAS,** Section XIV of the Amended Lease requires Harmony to keep the Premises free and clear from any liens or encumbrances arising from Harmony's use, occupancy, improvement or maintenance of the Premises, except as provided for in the First Amendment, and on request to furnish the County written proof of payment of any item which would or might constitute the basis for a lien or encumbrance if not paid; and

**WHEREAS,** Section XVIII of the Amended Lease provides that all alterations and improvements to the Premises that the County does not direct Harmony to remove shall be considered as part of the Premises and shall be surrendered to the County upon expiration or sooner termination of the Lease; and

**WHEREAS,** the Lender has informed Timbers that it is willing to loan or advance money for Second Improvements only if it can obtain a security interest in certain of the Second Improvements, which would be inconsistent with the above provisions of the Lease; and

**WHEREAS,** the Second Improvements identified for security interest by the Lender are limited to the synthetic turf and lighting related to the Field and the Lender will take a security interest in no other improvements, including drainage, utilities, subgrade features, fencing or parking improvements, except as expressly provided for in accordance with the First Amendment; and

**WHEREAS,** the County previously modified the provisions of the Lease requiring that the Premises, which will include the Fields and their Improvements, remain free and clear of any liens and encumbrances, and limiting the transfer or assignment of any interest in the Premises only if the Fields remain, or are again made usable by the public as playable soccer fields in and after the event of loan default by Harmony and removal by the Lender of the Improvements in which it has taken a security interest so that Lender was given a security interest in certain Improvements consistent with the First Amendment to the License dated June 22, 2015; and

**WHEREAS,** Harmony and Timbers have entered into a Second Amendment to the License, attached hereto as Exhibit A, which obligates Lender to ensure that the new Field also is restored to a condition that is playable and usable by the public if the encumbered Second Improvements are removed and Harmony, Timbers and the County desire to have the Amended Lease further modified to allow for the Second Improvements to be financed through a second loan from Lender to Timbers under terms regarding Lender's security interests substantially similar to that given with respect to the Improvements;

**NOW, THEREFORE,** the Parties hereby agree as follows:

1. Except as specifically provided otherwise by this Third Amendment, and Exhibit A hereto, all provisions of the Amended Lease remain in full force and effect and bind the Parties in accordance with their terms.
2. County agrees that in exchange for financing the Second Improvements, Timbers may give Lender a security interest in the synthetic turf and lighting that are and will be among the Lender-Financed Improvements to the Fields, but in no other Improvements and on no other parts of the Premises except as authorized herein and the Amended Lease, and only pursuant to the terms of the License, as modified by the First Amendment to the License and Exhibit A hereto.

3. Timbers agrees that it will make all payments due to Lender in relation to financing the Lender-Financed Improvements in a timely manner and that it will furnish proof thereof to County at least monthly, and that it will satisfy all obligations to Lender in connection with the financing for the Lender-Financed Improvements, and that it will take no action that would bring it into default under its financing agreements with Lender.
4. Harmony warrants and agrees that it has entered into no agreement that would permit or effectuate the assignment or transfer of an interest in, or permit or result in a lien or an encumbrance upon any part of the Premises, Fields, or Improvements, except as set forth in Exhibit A to this Third Amendment and the Amended Lease. Harmony further agrees that it will not enter into any such agreement without the prior written consent of County.
5. The Amended Lease, as further modified by this Third Amendment, constitutes the entire agreement between the Parties, and supersedes all prior communications, agreements, and understandings, whether oral or written, between the Parties in relation to the subject matter of the Lease.

HARMONY SPORTS ASSOCIATION

By \_\_\_\_\_  
 Print Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

CLARK COUNTY  
 Board of County Councilors

By *Marc Boldt*  
 Marc Boldt, Chair  
 Date 7-18-17

APPROVED AS TO FORM ONLY:  
 Anthony F. Golik  
 Clark County Prosecuting Attorney

By *Anthony F. Golik*

By \_\_\_\_\_  
 Jeanne E. Stewart, Councilor

Date \_\_\_\_\_

By \_\_\_\_\_  
 Julie Olson

Date \_\_\_\_\_

By \_\_\_\_\_  
 John Blom

Date \_\_\_\_\_



By \_\_\_\_\_  
Eileen J. Quiring

Date \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF CLARK

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Harmony Sports Association, a Washington nonprofit corporation, to be the free and voluntary act and deed of such party for the uses and purposes therein mention in the instrument.

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

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at:  
My commission expires:

STATE OF WASHINGTON

COUNTY OF CLARK

On this 18<sup>th</sup> day of July, 2017, before me personally appeared MARC Boldt, to me known to be the duly elected, qualified and acting County Councilor 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/she is authorized to execute said instrument by resolution of the Board of County Councilors of Clark County and that the seal affixed is the official seal of Clark County.

Dated: July 18, 2017

Rebecca L. Tilton  
\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: Vanouver  
My commission expires: 4/26/2021

