

NON-GOVERNMENT AGREEMENT
Between
THE CITY OF SEATTLE PARKS AND RECREATION DEPARTMENT
And
SEATTLE PREPARATORY SCHOOL

This Non-Government Agreement (“NGA”) is dated _____, 2022, and is entered into by and between the City of Seattle (the “City”) a first-class city of the state of Washington, acting by and through its Superintendent of Seattle Parks and Recreation (“SPR”), and Seattle Preparatory School, a private school organization and Washington public benefit corporation (“Seattle Prep”). The City and Seattle Prep are collectively the “Parties” and individually, a “Party.”

RECITALS

- A. WHEREAS, The City and Seattle Prep have worked closely for many years to provide a quality playfield at the City’s Montlake Playfield that enhances safety and playability for its community users and students;
- B. WHEREAS, Seattle Prep has been a valued client and collaborator with the City and SPR;
- C. WHEREAS, the existing synthetic turf carpet on Montlake Playfield, which Seattle Prep installed in 2011 for substantial improvement in the experience of community users and Seattle Prep students, is now nearing the end of its useful life and must be replaced;
- D. WHEREAS, the City desires to formalize its commitment to collaborate with Seattle Prep to enhance the Montlake Playfield; and
- E. WHEREAS, the City and Seattle Prep agree that it is in the public interest and mutually beneficial that Seattle Prep be responsible for issuing a contract to a contractor to replace the synthetic field turf carpet on the Playfield so that it can continue to be used by Seattle Prep and the public;

AGREEMENT

AND NOW THEREFORE AND ACCORDINGLY, SPR and Seattle Prep identify their understandings and agreement as follows:

1. INCORPORATION OF RECITALS

The Recitals set forth above are incorporated into the terms of this NGA.

2. TERM OF AGREEMENT

The term of this NGA shall commence on the date of execution by the Parties and shall terminate on December 31, 2034 (the “Termination Date”) or such earlier date that the Parties mutually agree that the synthetic turf playfield carpet has reached the end of its useful life. The

Agreement may be extended at Seattle Prep’s option for an additional twelve (12) year term if Seattle Prep requests such extension in writing at least six (6) months prior to the Termination Date, and Seattle Prep pays all costs associated with subsequent replacement or repair of the synthetic turf carpet. For the avoidance of doubt, the replacement or repair costs referenced in this section refer to replacement or repair of the synthetic turf carpet subsequent to the replacement contemplated in the other sections of this NGA. If an extension is requested, Seattle Prep understands and acknowledges that City may condition the extension on Seattle Prep Agreeing to updated general terms and conditions and public benefit requirements SPR determines to be consistent with current practices at the time of renewal.

3. **PROJECT SCOPE AND PARTY RESPONSIBILITIES**

A. **Project Scope.** This NGA addresses improvements to be made to Montlake Playfield Park, located at 1618 E Calhoun St. in Seattle, Washington with a tax parcel number of 678820-2280 (“Park”). The “Project” consists of re-carpeting Montlake Playfield by replacing the old synthetic turf carpet with a new synthetic turf carpet of at least the same quality and with at least the same expected lifespan as the old synthetic carpet. For the purpose of clarity, the synthetic turf carpet in the Project refers to artificial turf suitable for athletics. The playfield is located on the northeast corner of the Park (the “Playfield”).

B. **Seattle Prep Responsibilities.**

i. Seattle Prep will undertake construction of the Project at its own expense. Seattle Prep will pay and be responsible for all costs related to construction of the Project.

ii. Seattle Prep will contract for construction and require all contractors and subcontractors performing work on the Project to file a statement of intent to pay prevailing wages (“Intent”), and Affidavit of Wages Paid (“Affidavit”). Seattle Prep will retain copies of the Intent and Affidavit from each contractor or subcontractor for the duration of the Project and six (6) years after completion and make these copies available to City on request.

iii. Seattle Prep will cause its Project contractor to comply with all applicable terms outlined in Exhibit 1, the SPR Plans and Specifications, PRK730300-234, of this NGA. Seattle Prep will comply, or cause its selected contractor to comply, with all applicable state and local legal requirements regarding public works contracting, including prevailing wages, approved state license, contract bonding, insurance, equal benefits, and non-discrimination provisions. Seattle Prep must require its selected contractor to comply with the insurance requirements set out in the “Insurance and Indemnification” section of this NGA, including naming the City of Seattle as additionally insured. Seattle Prep will send a copy of the contract with the Montlake Playfield resurfacing Project contractor to SPR within thirty (30) days after execution.

C. SPR Responsibilities.

i. SPR will undertake design, review, and construction inspections for the Project at its own expense. SPR will coordinate with Seattle Prep during the design process to confirm that the Project will meet the shared expectations of the Parties.

ii. SPR will cooperate with Seattle Prep in its construction of the Project and will assist and work together with Seattle Prep in order to facilitate the timely and cost efficient completion of the Project. SPR will name a Project liaison who will attend mandatory weekly meetings with Seattle Prep during the construction of the Project to facilitate this cooperation.

D. City Ownership. The City will remain the owner of the Park, the Playfield and all improvements to the Park and Playfield.

E. Construction approval. No less than sixty (60) days prior to construction of the Project, Seattle Prep will transmit to SPR submittals as required in Exhibit 1 of this NGA, including but not limited to the proposed: (a) layout plan (including the marking plan for the supported sports); (b) synthetic turf manufacturer; (c) infill materials; (d) cushioning pad; (e) turf edge material; (f) construction sequence and schedule; (g) construction staging and access plan; (h) and erosion and sediment control plan. SPR will have twenty-one (21) days to review such submittals and either approve or reject the submittals in writing. If SPR rejects the submittals in whole or in part, SPR will provide Seattle Prep a written explanation of the basis for rejection and attempt to reach an agreed alternative for any rejected submittals. After that meeting, if SPR and Seattle Prep are unable to agree to an alternative submittal or other plan to move forward with the Project, either Party may terminate this NGA without further liability to the other Party.

4. PROJECT OVERSIGHT

A. During the course of the work, the City, working through SPR's Planning, Development and Maintenance (PDM) Division, will inspect the Project and may, at its discretion, direct Seattle Prep to cause any reasonable corrective actions the City determines necessary in order to ensure compliance with Exhibit 1 of this NGA. Seattle Prep will bear the cost of any reasonable corrective action the City determines necessary to complete the Project.

B. At the conclusion of Project work by Seattle Prep's contractor, the City will inspect the Project and, if the City approves the improvements made by Seattle Prep and its contractor, the City will accept the Project improvements.

C. Once the Project is completed and the improvements are accepted by the City, the City will own the improvements as part of the Park. Seattle Prep will cause the Project contractor to assign all Project-related warranties to the City and will use commercially reasonable efforts to assist the City in any legal or civil means to ensure that the interests of the Parties are protected and not compromised as a result of any defect, damage, or turf failure that may occur in the future and can be attributed to manufacturer's product and work.

D. Seattle Prep agrees to be responsible for the costs of any unanticipated work that may occur during the construction of the Project.

5. INDEMNIFICATION

Seattle Prep shall defend, indemnify, and hold the City, its elected officials, and employees harmless from any and all liabilities, claims, demands, losses, and costs (including reasonable attorney's fees) arising from (i) the use of the Park by Seattle Prep, its employees, agents, students, contractors, subcontractors and invitees (including opposing teams using the Playfield for games hosted by Seattle Prep), or (ii) any breach of this NGA by Seattle Prep or any of its contractors or subcontractors. If any claim or suit is brought against the City, Seattle Prep shall appear and defend the same, and shall satisfy any judgment that may be rendered against the City. Notwithstanding the foregoing, the City reserves the right to appear and defend any action without impairing the City's right to indemnification under this Section where the City determines that it is in the best interest of the City. Seattle Prep's obligation to defend and indemnify shall not include any claims arising as a result of the negligence or willful misconduct of the City, its employees, and agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Concessionaire's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide the City with a full and complete indemnity from claims made by Seattle Prep's employees. Seattle Prep shall promptly notify the City of casualties or accidents occurring in or about the Playfield. Seattle Prep's obligations under Section 5.9 shall survive termination or expiration of this Agreement for the statute of limitations applicable to any claim or liability to which this section applies. The City and Seattle Prep acknowledge that they mutually negotiated and agreed upon the indemnification provision in this Section.

6. PUBLIC BENEFITS

A. In addition to its payment responsibilities as set forth in this NGA, Seattle Prep shall provide a minimum of fifty (50) public service hours annually (the "Public Service Obligation") with the goal of helping fill gaps in community offerings and facilitate relationships with the Montlake community and/or children (who are not Seattle Prep students) from marginalized, under-served populations. A plan for Seattle Prep's proposed Public Service Obligation ("Public Service Plan") shall be submitted to SPR by October 1st each year for the upcoming year; SPR, acting reasonably, shall approve, modify or reject the plan within sixty (60) days of receipt. No more than thirty (30) days after the end of the calendar year, Seattle Prep shall provide a Public Service Report to SPR that delineates the public service hours provided by Seattle Prep during the previous calendar year. This Report is subject to annual approval by SPR, an approval that may not be unreasonably withheld. A template for the Public Service Report is included as Exhibit 2.

B. Seattle Prep and SPR recognize that the programming that fulfills Seattle Prep's Public Service Obligation may vary throughout the term of this NGA. The following represent possible expressions of the Public Service Obligation: (a) creation of lacrosse programs for middle school-aged children from low-income families; (b) partnering with Montlake Community Center to provide tutoring services by Seattle Prep students for children from low-

income, marginalized backgrounds; (c) assisting Northwest Child, a program dedicated to supporting members of the disability community, in providing recreation opportunities for its students.

C. Seattle Prep will identify and conduct programming in collaboration with the Montlake Community Center, local schools, and nonprofit organizations and facilitate on-going relationships between Seattle Prep and members of low-income communities.

7. MUTUAL OVERSIGHT AND MAINTENANCE RESPONSIBILITIES

The City will have the right to monitor and oversee Seattle Prep's compliance with the requirements of this NGA. Seattle Prep will provide SPR with reasonable access to all information, records, and facilities that would assist the City in monitoring Seattle Prep's compliance with this NGA. The City will provide access to Seattle Prep to all information and records necessary and convenient for Seattle Prep to plan scheduling of its activities on the Playfield. Following completion of construction of the Project, the City will be responsible for maintaining the field in accordance with Seattle Parks and SPR standards, with the understanding that Seattle Prep intends to use the Playfield for athletic purposes and that changing the use of the Playfield during the term of this NGA would deprive Seattle Prep of the benefits provided for in this NGA.

8. AUTHORIZED USE BY SEATTLE PREP

A. **Priority Access.** In this Agreement, "Priority Access" means exclusive use of the Playfield during the indicated times and dates as long as there are not any unforeseen health and safety issues, planned maintenance or renovations or other circumstances that render the field unusable (and in those events, SPR will use reasonable efforts in cooperation with Seattle Prep to secure alternative facilities to fulfill the Priority Access dates and times). The use described in this Section shall only apply during the term of this NGA, as it may be extended. Priority Access will not be offered to Seattle Prep after termination of this NGA unless the Parties enter another agreement addressing Playfield use. The Priority Access dates and times may be changed by mutual agreement of the Parties.

Seattle Prep will have Priority Access of the Playfield during the following dates and times:

- March 1 – June 15 (annually) from 3:00 p.m. to 5:30 p.m., Monday through Friday, and from 9:00 a.m. to 12:00 p.m., Saturday.
- A maximum of 100 hours within the months of June, July and August (annually) at dates and times to be determined. Seattle Prep shall submit summer reservation dates to SPR prior to April 1st each year. Seattle Prep's dates cannot conflict with Montlake CC Summer Program dates that are scheduled in February of each calendar year.
- August 10 – November 30 (annually) from 3:00 to 5:30 p.m., Monday through Friday, and from 9:00 a.m. to 12:00 p.m., Saturday.

B. **Fees.** Seattle Prep will pay for all use of the Playfield at the non-synthetic grass rate set by SPR consistent with the most favorable fee schedule applicable to any paying users in

effect at the time of use, with the exception of free community programs, for which SPR will grant a fee waiver.

C. **Football Games.** Seattle Prep is limited to scheduling four (4) Junior Varsity football games and four (4) freshmen football games per season. SPR prohibits Varsity football games from being played at the Playfield.

D. **Parking Plan.** Seattle Prep must continue to implement its plan to mitigate parking pressures in the Montlake neighborhood, especially regarding team bus parking.

E. **Unusability.** In the event that the Playfield is rendered unusable due to a construction project on the site by the City or another entity, then the City shall ensure that replacement synthetic field turf be installed at the Playfield immediately upon the conclusion of such construction project at no expense to Seattle Prep. The term of this NGA shall be increased for a period commensurate with Prep's loss of field use due to construction.

9. **INDEPENDENT PARTIES**

By executing this NGA, neither the City nor Seattle Prep assumes any obligations or liabilities of the other Party. Neither Seattle Prep nor the City will act as agent or partner for the other Party. Seattle Prep does not assume any obligations and has no liability for claims arising out of the design of the Playfield or use of the Playfield by any party other than Seattle Prep. The City does not assume any obligations and has no liability for claims arising or caused by the construction or installation of the Project improvements, or use of the Playfield by Seattle Prep.

10. **NONDISCRIMINATION**

Seattle Prep agrees that it shall not discriminate against any participant in the program covered by this agreement, or against any applicant for participation, because of race, religion, color, sex, sexual orientation, age, or national origin, presence of any sensory, mental, or physical handicap, or status of disabled veteran or Vietnam-era veteran, nor shall there be any such discrimination in Seattle Prep's employment practices and personnel policies.

11. **DISPUTE RESOLUTION**

Any disputes or misunderstandings that may arise under this NGA shall first be resolved through amicable negotiations, if possible, between SPR and Seattle Prep. If the Parties do not agree upon a decision within a reasonable period of time, the Parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. Any and all such dispute resolutions shall have venue in the state of Washington. Costs for alternative dispute resolution shall be shared equally by the Parties.

12. **FORCE MAJEURE**

Either Party may temporarily postpone its performance under this NGA without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as but not limited to acts of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior

governmental regulation or control, or in the public interest. The Parties acknowledge that they are executing this NGA during the COVID-19 public emergency and that, as of the time of execution, the public emergency does not rise to the level of force majeure.

13. COMPLIANCE WITH LAW

Both Parties shall comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of the City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

14. APPLICABLE LAW; VENUE

This NGA shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

15. CAPTIONS

The titles of sections and subsections are for convenience only and do not define or limit the contents.

16. ENTIRE AGREEMENT

This NGA and the exhibits attached hereto and forming a part hereof (if any), are all of the covenants, promises, agreements, and conditions, between the Parties. No verbal agreements or conversations between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of Seattle Prep prior to the execution of this NGA shall affect or modify any of the terms or obligations contained in this NGA. Any such verbal agreements shall be considered unofficial information and in no way binding on either Party.

17. NO THIRD-PARTY BENEFICIARIES

This NGA is executed solely for the benefit of the Parties and is not for the benefit of, nor may any provision of this NGA be enforced by, any other person or entity. There are no third-party beneficiaries to this NGA.

18. INSURANCE

For the Project design and construction activities contemplated herein, Seattle Prep will procure and maintain, or cause its contractors and subcontractors to procure and maintain minimum insurance coverage and limits as described below:

- Commercial General Liability: Insurance Services “occurrence” form CG 00 01 (current edition) or its substantive equivalent, including coverage for, but not limited to, Premises/Ongoing Operations, Contractual Liability, Products and Completed Operations. Commercial General Liability coverage will be no less than TWO MILLION DOLLARS (\$2,000,000) per combined single limit per occurrence, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate for bodily injury and

- property damage. Such limits may be satisfied with the use of an umbrella or excess liability policy.
- Automobile Liability: Insurance Services form number CA 00 01 (current edition). The Limit of Liability will be no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence.
 - Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence.
 - Professional Liability coverage will be no less than ONE MILLION DOLLARS (\$1,000,000) per claim and in the aggregate.
 - Pollution Liability coverage with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed. Coverage will include non-owned disposal sites.

The Commercial General Liability, Automobile Liability, and Pollution Liability insurance specified in this Section must include City of Seattle, its officers, officials, employees and agents as additional insureds, for full policy limits, as respects liability arising out of activities performed by or on behalf of Seattle Prep’s contractor in connection with this NGA. Such coverage will be primary and non-contributory as respects City of Seattle, its officers, officials, employees, and agents.

[Signatures appear on the following page]

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this NGA by having their representatives affix their signatures below.

CITY OF SEATTLE

By _____

Christopher Williams, Acting Superintendent,
Seattle Parks and Recreation

Date: _____, 2022

SEATTLE PREPARATORY SCHOOL

By _____

George Hofbauer, President

Date: _____, 2022

- EXHIBITS:**
1. Synthetic Turf Replacement Requirements (PRK730300-234)
 2. Template for Public Benefit Report