

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

This Non-Government Agreement ("NGA") is dated _____, 2023, 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 the Seattle Department of Parks and Recreation ("SPR"), and The Baseball Club of Seattle, LLLP, a Washington limited liability limited partnership d/b/a the Seattle Mariners ("Seattle Mariners"). The City and the Seattle Mariners are collectively the "Parties" and individually, a "Party."

RECITALS

- A. WHEREAS, the City and the Seattle Mariners have worked closely for decades to provide quality baseball facilities across Seattle that enhance safety and playability for its community users;
- B. WHEREAS, the Seattle Mariners and SPR have prioritized improvements to the baseball and softball fields at Rainier Playfield;
- C. WHEREAS, the Seattle Mariners will financially support conversion of two sand silt infields with synthetic turf infields, improvements to the bullpen, and other renovations to improve the experience of community users;
- D. WHEREAS, the City desires to formalize its commitment to collaborate with the Seattle Mariners to enhance the Rainier Playfield; and
- E. WHEREAS, the City and the Seattle Mariners agree that it is in the public interest and mutually beneficial that the Seattle Mariners be responsible for issuing a contract to convert the infields of two baseball/softball diamonds to synthetic turf so that it can continue to be used by the public;

AGREEMENT

NOW THEREFORE AND ACCORDINGLY, the SPR and Seattle Mariners 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 June 28, 2024 (the “Termination Date”) or such earlier date that the Parties mutually agree that the Project (defined below) is complete.

3. **PROJECT SCOPE AND PARTY RESPONSIBILITIES**

A. **Project Scope.** This NGA addresses improvements to be made to Rainier Playfield Park, located at 3700 SW Alaska St, Seattle, WA 98126, Washington with a tax parcel number of #170990-0005 (“Park”). The “Project” consists of renovations to make improvements for the community (including upgrades to the bullpen and fencing) and converting two infield diamonds at Rainier Playfield by replacing the old sand/silt surfacing with new synthetic turf carpets meeting SPR.s current standards. For clarity, the synthetic turf carpet in the Project refers to artificial turf suitable for athletics. The Baseball/Softball Diamonds are located in the northwest and southeast corners of the park (the “Playfield”).

B. **Seattle Mariners Responsibilities.**

i. Seattle Mariners will undertake construction of the Project at its own expense. Seattle Mariners will pay and be responsible for all costs related to construction of the Project as provided herein. The Seattle Mariners reserves the right to amend its responsibilities (i.e.: Scope of Work) in the event of unforeseen conditions that alter the intended nature of the Project including costs that exceed the budget range of one million (\$1,000,000) to one million, three hundred thousand dollars (\$1,300,000). Notwithstanding this reservation of rights, the Seattle Mariners may not alter the scope, timing, or quality of improvements to SPR property without prior written approval of SPR, which shall not be unreasonably withheld, conditioned, or delayed. In the event the Scope of Work is altered or cancelled, the Mariners will return the site to a playable condition despite any unforeseen conditions or change of scope that might occur.

ii. Seattle Mariners 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 Mariners 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 Mariners will cause its Project contractor to comply with all applicable terms outlined in Exhibit 1, the SPR Plans and Specifications, PRK730300-284, of this NGA. Seattle Mariners 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 Mariners 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 Mariners will send a copy of the contract with the

Rainier Playfield Resurfacing Project contractor to SPR within thirty (10) 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 Mariners during the design process to confirm that the Project will meet the shared expectations of the Parties.

ii. SPR will cooperate with Seattle Mariners in its construction of the Project and will assist and work together with Seattle Mariners 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 Mariners 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 Mariners 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) flat tile drainage system; (g) construction sequence and schedule; (h) construction staging and access plan; (i) and erosion and sediment control plan. SPR will have ten (10) 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 Mariners 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 Mariners 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 Capital and Design Division, will inspect the Project and may, in its discretion, direct Seattle Mariners to cause any reasonable corrective actions City determines necessary in order to ensure compliance with Exhibit 1 of this NGA. Seattle Mariners will bear the cost of any reasonable corrective action City determines necessary to complete the Project.

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

C. Once the Project is completed and the improvements are accepted by the City, City will own the improvements as part of the Park. Seattle Mariners 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 Mariners agrees to be responsible for the costs of any unanticipated work that may occur during the construction of the Project.

5. INDEMNIFICATION

Seattle Mariners 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 Mariners, its employees, agents, contractors, subcontractors and invitees, or (ii) any breach of this NGA by Seattle Mariners or any of its contractors or subcontractors. The City shall defend, indemnify, and hold the Seattle Mariners and its employees, contractors, and agents harmless from any and all liabilities, claims, demands, losses, and costs (including reasonable attorney's fees) arising from (i) the negligence or willful misconduct of the City, its elected officials, employees, contractors, and agents, or (ii) any breach of this NGA by the City, its elected officials, and employees, except to the extent that such claims arise out of the negligence or willful misconduct of the Seattle Mariners. If any claim or suit is brought against the City, Seattle Mariners 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 Mariners' obligation to defend and indemnify shall not include any claims arising because 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 Mariners' employees. Seattle Mariners shall promptly notify the City of casualties or accidents occurring in or about the Playfield. The parties' 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 Mariners acknowledge that they mutually negotiated and agreed upon the indemnification provision in this Section.

6. PUBLIC BENEFITS

The Seattle Mariners are under no obligation to provide additional public benefit above and beyond financing the conversion of two baseball/softball diamonds to synthetic turf. The benefit of these improvements is solely the benefit of the public.

7. MUTUAL OVERSIGHT AND MAINTENANCE RESPONSIBILITIES

The City will have the right to monitor and oversee Seattle Mariners' compliance with the requirements of this NGA. Seattle Mariners will provide SPR with reasonable access to all information, records, and facilities that would assist the City in monitoring Seattle Mariners' compliance with this NGA. The City will provide access to Seattle Mariners to all information and records necessary and convenient for Seattle Mariners 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.

8. **AUTHORIZED USE BY SEATTLE MARINERS**

Priority Access. In this Agreement Seattle Mariners are not requesting Priority Access of the Playfields beyond construction.

9. **INDEPENDENT PARTIES**

By executing this NGA, neither the City nor Seattle Mariners assumes any obligations or liabilities of the other Party. Neither Seattle Mariners nor the City will act as agent or partner for the other Party. Seattle Mariners 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 Mariners. 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 Mariners.

10. **NONDISCRIMINATION**

Seattle Mariners 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 Mariners' employment practices and personnel policies.

11. **AS-IS**

Seattle Mariners accepts the condition of the park in an as-is condition and SPR makes no representation of the suitability of the park or Playfields for Project purposes. Seattle Mariners acknowledges that Project work may reveal or exacerbate pre-existing site conditions that could alter the scope or cost of Project work.

12. **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 Mariners. 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.

13. **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.

14. 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.

15. 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.

16. CAPTIONS

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

17. 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 Mariners 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.

18. 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.

19. INSURANCE

For the Project design and construction activities contemplated herein, Seattle Mariners 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 Mariners' 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 _____

AP Diaz

Superintendent, Seattle Parks and Recreation

Date: _____, 2023

SEATTLE MARINERS

By _____

Fred Rivera

Executive Vice-president & General Counsel

Date: _____, 2023

Attachments:

Exhibit 1 - Project Manual Rainier Playfield Infield Conversion to Synthetic Turf -
Plans and Specifications, PRK730300-284