

GRAND PARK

SPORTS CAMPUS

DIAMOND SPORTS FACILITIES COMMON AREA LANDSCAPING AND MAINTENANCE SERVICES AGREEMENT

This Diamond Sports Facilities Common Area Landscaping and Maintenance Services Agreement (the "Agreement") is entered into as of the 1st day of January, 2021 ("Effective Date"), and is by and between the Westfield Redevelopment Commission, an Indiana municipal corporation (the "Commission"), and Sports Field Maintenance, LLC, an Indiana limited liability company (the "Operator").

RECITALS

The Commission leases and operates an integrated sports campus for field sports known as "Grand Park" which is comprised of approximately 360 acres (the "Campus") and is located at 19000 Grand Park Boulevard, Westfield, Indiana; and

There are common areas located adjacent to the Diamond Sports Facilities within the Campus (the "Common Areas") which are identified and located on Exhibit A attached hereto and made a part of this Agreement; and

The Commission wishes to engage the services of the Operator to provide landscape maintenance and repair services, janitorial services, and irrigation system maintenance and repair services for the Common Areas, as further detailed below, and the Operator has agreed to provide these services pursuant to the terms and conditions of this Agreement; and

In consideration of the mutual covenants, terms, and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission and Operator hereby agree as follows:

1. Recitals. The recitals set forth above are true and are incorporated into this Agreement.
2. Term. This Agreement will become effective as of the Effective Date, as first written above, and will continue, unless sooner terminated as provided herein, until December 31, 2025 (the "Initial Term"). The Initial Term and the "Extended Terms" (as defined below and if applicable) are hereinafter collectively referred to herein as the "Term". If Operator is not then in default (beyond expiration of any applicable notice and cure period) of any of the terms and conditions of this Agreement, then the Term will be automatically renewed for one additional term of five (5) years, unless the Commission or the Operator provide written notice, not less than one hundred eighty (180) days prior to the expiration of the Initial Term, to the other party of its intent to terminate this Agreement at the end of the Initial Term (the "Extended Term"). If this Agreement is not terminated, the Extended Term will commence upon the expiration of the Initial Term and continue to December 31, 2030. All of the terms, conditions, covenants, and obligations of this Agreement will apply during the Extended Term(s).

3. Termination Rights Upon Event of Default. Each of the following will be deemed an “Event of Default” by Operator unless the same has been cured within fifteen (15) calendar days (or other period specified below) following Operator’s receipt of written notice of the default:

(a) The Commission may terminate this Agreement upon a breach of the provisions contained in Section 4, paragraphs (a)-(c), if Operator fails to cure such failure within forty-eight (48) hours after receipt of notice from the Director of Grand Park to Operator’s designated contact, Ken Kocher, via telephonic, email, and text communication as follows:

Name of Contact: Ken Kocher
Telephone Number: (317) 523-5981
Email: Ken.Kocher23@gmail.com

Provided, further, that in the event that Operator receives notice of a breach of these provisions more than three (3) times in any twelve (12) month period (and it is determined that the Operator, in fact, breached this Agreement), no further notice of breach will be required, Operator will no longer have a right to cure, and the Commission may terminate this Agreement without prior written notice. The parties recognize, however, that this provision should not be used to terminate the Agreement for technical, non-material breaches of the provisions in Section 4, paragraphs (a)-(c). Rather this paragraph is intended to allow the Commission to terminate for material, repeated non-compliance with this Agreement that significantly impacts the operation of the baseball activities on the Campus.

(b) The Commission may terminate this Agreement if the Operator breaches any term of this Agreement and such breach causes or may cause immediate and significant risk of injury to persons or property or endangers the public safety or security on the Campus.

(c) The Commission may terminate this Agreement (without additional notice) upon the occurrence of any of the following if the Operator fails to cure such breach within fifteen (15) days following the date of written notice from the Commission to the Operator of:

- i. the breach of any term, provision, or condition of this Agreement (excepting for the events listed in sub-paragraphs (a) and (b) above);
- ii. the Operator does not pay its bills and debts as same become due unless those bills and debts are in dispute and such dispute does not impair or adversely affect, in the sole discretion of the Commission, Operator's operations and/or performance under this Agreement;
- iii. the Operator makes an assignment of this Agreement for the benefit of creditors;

- iv. the Operator is adjudicated bankrupt by a court of competent jurisdiction and such adjudication is not stayed, vacated, or dismissed within ninety (90) days of filing or is consented to by the Commission;
 - v. the Operator files a voluntary petition in bankruptcy or a voluntary petition seeking reorganization, arrangement, readjustment of its debts, or other relief under the bankruptcy laws of the United States;
 - vi. the Operator has filed against it an involuntary petition in bankruptcy or seeking reorganization, arrangement, readjustment of its debts, or for any other relief under the bankruptcy laws of the United States which is not stayed, vacated, dismissed, or disputed within ninety (90) days of filing;
 - vii. the Operator applies for or receives an order for the appointment of a receiver or a trustee for its assets;
 - viii. the Operator merges or consolidates with another entity or sells or disposes of all or substantially all of its assets without the consent of the Commission which consent will not be unreasonably withheld; and
 - ix. the Operator attempts to assign this Agreement or there is a change in control of the Operator from the current owners of the Operator.
4. Landscaping, Maintenance, and Janitorial Services. The Operator will provide the following landscaping, maintenance, and janitorial services (the "Services") commencing as of January 1, 2021:
- (a) Landscaping, mowing, trimming, weed control, aeration, grass and minor irrigation maintenance and repairs, and edging in the Common Areas to maintain the desired manicured look of the Campus. The appearance of the Common Areas will be subject to inspection and approval by the Director of Grand Park and may be subject to inspection by the Commission's employees or designee.
 - (b) Janitorial services and trash collection to maintain the Common Areas and the facilities within the Common Areas in a clean, healthy, and orderly condition in accordance with all applicable health and safety regulations and standards.
 - (c) Operator will provide all necessary personnel, equipment, supplies, materials, and other items and services necessary to provide the Services consistent with a level of service and quality found at premier event and sport venues in the Greater Indianapolis metropolitan area.
 - (d) On or before December 1 of each year during the Initial Term and the Extended Term, if applicable, Operator will submit a schedule of estimated costs to provide the Services but it is understood and agreed that the estimated costs will not exceed the

“Cost for Services”, as defined below, without the agreement of both the Commission and the Operator.

- (e) The Operator will contract with a third party for the proper transportation and disposal of trash and recyclables from the dumpsters or trash/recycling receptacles in the Common Areas. The Operator will be responsible for the disposal of trash and recyclable materials generated in the Common Areas into the trash/recycling receptacles located in the Common Areas. The Common Areas are to be kept clear of all trash or rubbish and in a clean and healthy condition at all times.
 - (f) The Services for which the Operator will be responsible are the same services previously provided by the Bullpen Tournaments, LLC under the Amendment to Management Agreement dated as of January 1, 2018. Such Services are set forth on the attached Exhibit B.
 - (g) The Services do not include, among other things, major repair to or replacement of sprinklers, snow removal, security, road repair, parking lot maintenance, net or building maintenance, tree or pond maintenance, and any repair, replacement, or maintenance to the sewer, water, and drainage infrastructure on the Campus ("Excluded Services"). The cost of any task or service beyond the Services (i.e. any Excluded Service) will be imposed on an occurrence basis consistent with the pricing set forth on Exhibit C. The pricing identified on Exhibit C shall be subject to annual increases described in paragraph 6(a) below.
5. Availability of Books and Records: Audit. Payment of the “Invoices” (as defined below) by the Commission will be without prejudice to the Commission's right to examine Operator's books and records in order to verify that Operator actually performed the Services or incurred expenses from third parties for which the Commission received an invoice. All books, records and documents to be kept by Operator will be open to inspection by the Commission and its duly authorized agents during regular business hours upon forty-eight (48) hours prior written notice to Operator. In addition, Commission may at its option, at any time during the Term, cause an audit to be made of such books, records and documents of Operator relating to the Expenses. Such audit will be made by a certified public accountant selected and paid for by the Commission. In the event the audit shows that the Operator did not perform certain Services or incur certain expenses for which the Operator invoiced the Commission, Operator will promptly pay to and reimburse Commission the difference between the amount invoiced and the actual Services performed and expenses incurred (as determined by the audit). In the event that the actual Services performed and third party expenses actually incurred (as determined by the audit) exceed the amount paid by the Commission, then the Commission will pay the Operator the difference.
6. Payment for Services. The Operator will be compensated for the provision of the services as follows:

- (a) The amount payable to the Operator on a monthly basis, upon the submission and approval of the Invoices (defined below), during calendar year 2021 will be consistent with the payment schedule set forth in Exhibit B, the “Cost for Services”. The Cost for Services will be increased on annual basis during the Initial Term and the Extended Term by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) (1982-1984=100) from December 1, 2020, to December 1, 2021, for 2022 and thereafter from December 1 of each year to December 1 of next year during the Initial Term and the Extended Term. The annual increase described in this subsection for the CPI-U shall also be applicable to the pricing in Exhibit C.
- (b) The Operator will submit monthly Invoices to the Commission for review and approval as follows: Invoices must be emailed to the Commission’s Account Payable in PDF ap@westfield.in.gov by the 25th day of each month or the next business day. Invoices should be reasonably consistent with the annual estimate for Services and, at the request of the Director of Grand Park, include copies of invoices from third party suppliers of materials and services. Upon approval of the Invoice in full or in part, the Commission will make payment to the Operator by the 20th day of the following month. Additionally, the Director may request lien waivers from the contractors, subcontractor or suppliers of the Operator. Upon the filing of any lien or of the intention to hold lien against the real estate comprising the Campus, the Operator will obtain the release of same or provide security adequate to release the lien in the event that any objection by the Operator or the Commission is not successful.
7. Indemnification. Operator assumes all risks and will be responsible for all losses, accidents, injuries, or damages to persons or property arising out of the negligent or willful acts of the Operator, its officers, members, employees, contractors, agents, and other personnel or out of the provision of the Services or the performance of the obligations under this Agreement. The Operator agrees to indemnify and hold harmless the Commission, Westfield Redevelopment Authority, City of Westfield, and their officers, directors, members, employees, and agents from any and all claims, damages, demands, penalties, liabilities, losses, costs, and expenses (including reasonable attorneys’ fees), arising from or in connection with Operator’s performance of the Services hereunder and/or arising from the negligent or willful acts of the Operator, its officers, members, employees, contractors, agents and other personnel, except to the extent resulting from the action or inaction of the Commission or its officers, directors, members, agents, or employees. The Commission will protect, defend, indemnify and hold Operator and its officers, members, agents, and employees harmless from and against any and all claims, damages, demands, penalties, liabilities, losses, costs, and expenses (including reasonable attorneys’ fees and expenses) to the extent arising out of or relating to the action or inaction of the Commission or Commission’s officers, members, agents, or employees.
8. Insurance.

(a) Operator Insurance. During the term of this Agreement, Operator will obtain and continuously maintain in full force and effect Commercial General Liability Insurance for operations of the Operator on a standard ISO CG 00 01 Commercial General Liability form (or equivalent). Additional insured on a Primary and Non-Contributory basis is required. The Additional Insured endorsement must include premises, operations, products, and completed operations and will name the Commission, Westfield Redevelopment Authority, and City of Westfield, Indiana (collectively referred to herein as "Government Entities"), as Additional Insureds, including their respective directors, members, property managers, agents, employees, officers, volunteers, servants, and affiliates (the "Government Parties"). The policy must provide minimum limits of:

- One Million Dollars (\$1,000,000.00) per occurrence
- Two Million Dollars (\$2,000,000.00) aggregate

Operator will also obtain and maintain an umbrella insurance policy in an amount not less than Four Million Dollars (\$4,000,000.00) with the endorsements set forth above. The Commercial General Liability policy must have a commercially reasonable deductible. A per location aggregate and additional insured on a primary non-contributory basis will be provided under the policy. Such insurance must include specific coverage provisions or endorsements for broad form contractual liability insurance insuring Operator's obligations under this Agreement.

(b) Equipment and Operator's Personal Property. During the term of this Agreement, Operator will obtain and continuously maintain in full force and effect insurance coverage upon all personal property of Operator, as well as any property owned by the Commission but used by or maintained by the Operator in the performance of its obligations under this Agreement for the full replacement value against loss or damage by fire, windstorm, or other casualties.

(c) Automobile Liability Insurance. During the term of this Agreement, Operator will obtain and continuously maintain in full force and effect Automobile Liability Insurance limits in the minimum amount of \$1,000,000 each accident combined single limit for any automobile (including owned, scheduled, hired, non-owned vehicles, trucks, and trailers).

(d) Workers' Compensation and Employers' Liability. During the term of this Agreement, Operator will obtain and continuously maintain in full force and effect Workers' Compensation Insurance in full compliance with the laws of the State of Indiana.

(e) General. All insurance required by this Agreement will be obtained and maintained from and with a reputable and financially sound insurance company with an A.M. Best Rating of A-VII or better authorized to issue such insurance in the State of Indiana, with commercially reasonable deductible amounts and with a claims paying rating

ability at least equivalent to a NAIC 2 Designation. The insurance which Operator is required to carry pursuant to this Section will insure the full insurable value of the improvements installed in the Common Areas that are owned by Operator. It is understood that Operator will look primarily to its insurers for reimbursement. Operator will furnish Commission with certificates of insurance or other evidence of insurance requested by Commission confirming compliance with this Section on or before the Effective Date. If available, all such insurance policies will carry a provision providing that the policy will not be subject to cancellation, termination, or change except after at least thirty (30) days prior written notice to Commission. If Operator fails to comply with the above requirements and such failure continues for ten (10) days following Operator's receipt of written notice from Commission, Operator will be in default hereunder and Commission may obtain such insurance and keep same in effect. Operator will pay Commission all such premium costs thereof upon demand.

- (f) Survival. The provisions of Sections 7 and 8 will survive the expiration or earlier termination of this Agreement.
9. Relationship of Parties. Nothing contained herein will be deemed or construed by the parties hereto, or by any third party, as creating between the parties hereto the relationship of principal and agent, partnership, joint venture, or any relationship other than the relationship of owner and operator.
10. Waiver. The parties hereto may, by a writing signed by both of the parties, waive the performance by any party of any of the provisions to be performed by such party under this Agreement. The failure of any party hereto at any time to insist upon the strict performance of any provision of this Agreement will not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provision at a future time. The waiver by either party hereto of a breach of or noncompliance with any provision of this Agreement will not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.
11. Severability. The invalidity or unenforceability of any particular provision of this Agreement will not affect the other provisions, and this Agreement will be construed in all respects as if such invalid or unenforceable provision had not been contained herein.
12. Binding Effect. This Agreement and all of the terms and provisions hereof will inure to the benefit of and be binding upon, the respective successors and assigns of Commission and Operator except as otherwise expressly provided herein. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, except as provided above, any rights, remedies, obligations, or liabilities under or by reason of this Agreement.
13. Governing Law; Consent to Exclusive Jurisdiction. This Agreement will be construed in accordance with and governed by the laws of the State of Indiana, without regard to conflict of laws principles. For the purposes of any suit, action, or proceeding arising out

of or relating to this Agreement, the Commission and Operator hereby irrevocably consent and submit to the exclusive jurisdiction and venue of the Circuit or Superior Courts located in Hamilton County, Indiana. The Commission and Operator each irrevocably waive any objection that it may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in either such court and any claim that such suit, action, or proceeding brought in such court has been brought in an inconvenient forum. In addition to any form of service of process otherwise permitted by law, service in any such action may be given by certified or registered mail, return receipt requested, and will be deemed served upon the actual delivery thereof in such manner to the party intended to be served, which service will be adequately established by the receipt for such delivery.

14. Entire Agreement; Amendments. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof. All representations, promises, and prior or contemporaneous undertakings between such parties are merged into and expressed in this instrument, and any and all prior agreements between such parties are hereby canceled (unless otherwise referenced in this Agreement). The agreements contained in this instrument will not be amended, modified, or supplemented except by a written agreement duly executed by both Commission and Operator.
15. Notices. Any notice, request, demand, waiver, consent, approval, or other communication which is required or permitted hereunder will be in writing and will be deemed given only if delivered personally, reputable courier service, by registered or certified mail-return receipt requested, postage prepaid, or email as follows :

Commission: Westfield Redevelopment Commission
2728 E. 171st Street
Westfield, Indiana 46074
Attn: Todd Burtron, Chief of Staff

Operator: Sports Field Maintenance, LLC
11522 Ridge Valley Court
Zionsville, IN 46077
Attn: Ken Kocher

With a copy to: Bose McKinney & Evans LLP
(Which will not 111 Monument Circle, Suite 2700
constitute notice) Indianapolis, IN 46204
Attn: J. Christopher Janak

or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval, or

other communication will be deemed to have been given as of the earlier of actual receipt or two (2) business days after being so delivered or mailed.

16. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed will be an original, but all of such counterparts will together constitute one and the same instrument.
17. Attorneys' Fees: In the event either party engages an attorney for the purpose of enforcing or defending this Agreement, the prevailing party in such dispute will be entitled to reasonable attorneys' fees, court costs, and expenses related thereto from the non-prevailing party. The term "prevailing party" will mean the party that obtains substantially the relief sought by judgment.
18. Authority to Execute: Each party and signatory hereto has the authority to enter into this Agreement and at all times has full authority to perform this Agreement. The undersigned hereby covenants and promises to the other that no further approval or consent by any other person or authority is required.
19. WAIVER OF JURY TRIAL: EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Commission and Operator have executed this Agreement as of the day and year first above written.

COMMISSION:

WESTFIELD REDEVELOPMENT COMMISSION,
an Indiana municipal corporation

By: _____

Printed Signature

Title: _____

OPERATOR:

SPORTS FIELD MAINTENANCE, LLC
an Indiana limited liability company

By: _____

Printed Signature

Title: _____

GRAND PARK

SPORTS CAMPUS

EXHIBIT A

DIAMOND SPORTS FACILITIES COMMON AREA LANDSCAPING AND MAINTENANCE SERVICES AGREEMENT

[INSERT MAP SHOWING COMMON AREAS]

GRAND PARK

SPORTS CAMPUS

EXHIBIT B

DIAMOND SPORTS FACILITIES COMMON AREA LANDSCAPING AND MAINTENANCE SERVICES AGREEMENT

Sports Field Maintenance
Common Area- 2021

	Occurrence	\$ per Occurrence	Estimate												Dec-21 Total
			Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21		
Mowing, trimming, weeds, edging (9-10 below)	37		0	0	2	4	6	6	6	5	4	4	0	37	
		\$ 1,500	\$ -	\$ -	\$ 3,000	\$ 6,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 7,500	\$ 6,000	\$ 6,000	\$ -	\$ -	\$ 55,500
Weed Control	40		0	0	1	0	0	0	0	0	0	1	0	2	
		\$ 5,500	\$ -	\$ -	\$ 5,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,500	\$ -	\$ -	\$ 11,000
Fertilizer	40		0	0	0	1	0	0	0	0	1	0	0	2	
		\$ 4,000	\$ -	\$ -	\$ -	\$ 4,000	\$ -	\$ -	\$ -	\$ -	\$ 4,000	\$ -	\$ -	\$ 8,000	
Mulch	40		0	0	1	0	0	0	0	0	0	0	0	1	
		\$ 1,000	\$ -	\$ -	\$ 1,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000	
Janitorial- Events	40		0	0.5	1	2.5	4	4	4	1	2	2	2	0	23
		\$ 5,350	\$ -	\$ 2,675	\$ 5,350	\$ 13,375	\$ 21,400	\$ 21,400	\$ 21,400	\$ 5,350	\$ 10,700	\$ 10,700	\$ 10,700	\$ -	\$ 123,050
Janitorial- grounds/weekly non event related, parking lots, etc.	52		1	4	5	4	5	4	4	5	4	5	4	4	49
		\$ 500	\$ 500	\$ 2,000	\$ 2,500	\$ 2,000	\$ 2,500	\$ 2,000	\$ 2,000	\$ 2,500	\$ 2,000	\$ 2,500	\$ 2,000	\$ 2,000	\$ 24,500
Maintenance grounds- sprinkler maint, grass replacement (1-8 below)	52		0	3	3	4	5	4	4	5	4	5	4	4	45
		\$ 1,000	\$ -	\$ 3,000	\$ 3,000	\$ 4,000	\$ 5,000	\$ 4,000	\$ 4,000	\$ 5,000	\$ 4,000	\$ 5,000	\$ 4,000	\$ 4,000	\$ 45,000
Totals		\$	\$ 500	\$ 7,675	\$ 20,350	\$ 29,375	\$ 37,900	\$ 36,400	\$ 36,400	\$ 20,350	\$ 26,700	\$ 29,700	\$ 16,700	\$ 6,000	\$ 268,050

GRAND PARK

SPORTS CAMPUS

EXHIBIT C

DIAMOND SPORTS FACILITIES COMMON AREA LANDSCAPING AND MAINTENANCE SERVICES AGREEMENT

Sports Field Maintenance
Common Area – 2021

	Per Occurrence
1 Parking Lot Striping – Gravel Lots	\$ 700
2 Snow Removal – Paths and additional lots beside B	\$1,000
3 Major Sprinkler Repair	\$30 hour
4 Bleacher Repairs	\$20 per hour
5 Shade Structures for removal or installation	\$2,000 (for each)
6 Start up or winterization irrigation	\$3,000 (for each)
7 Annual audit of irrigation	\$3,500

Any tasks listed above or any tasks beyond the tasks listed on this Exhibit C will be negotiated by the parties before any work is started.