

Interlocal Agreement

**INTERLOCAL AGREEMENT**  
**regarding**  
**MEMORIAL STADIUM**  
**between**  
**SEATTLE PUBLIC SCHOOL DISTRICT**  
**and**  
**THE CITY OF SEATTLE**

*NOTE: This draft does not bind SPS or the City until a complete agreement is approved by each Party's authorized legislative body and the agreement is fully signed.*

This Interlocal Agreement regarding Memorial Stadium ("Interlocal Agreement") is by and between Seattle School District No. 1 ("SPS") and The City of Seattle, a first-class city of the State of Washington (the "City"). SPS and the City are also referred to individually as "a Party" and collectively as "the Parties."

In consideration of the mutual obligations and promises herein, SPS and the City agree as follows:

**RECITALS**

A. SPS and the City have a long history of collaboration to enrich the lives of Seattle's youth and families, including sharing their respective facilities for education and recreational purposes, the City's levy programs and funding for student enrichment, summer programming, programs to further racial equity, student health, and family support.

B. In 1946, the City quitclaimed to SPS certain real property adjacent to the existing Seattle Center campus conditioned upon SPS's construction, use, operation, and maintenance of an athletic stadium on the property. SPS constructed Memorial Stadium on the property and has continued to maintain and use it for student athletics, SPS events, and community use, including the City's Bumbershoot festival.

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C. While Memorial Stadium has a long history of successfully serving SPS students and community groups, the stadium is in need of new capital investment.

D. The 2008 Seattle Center Century 21 Master Plan envisioned that SPS and the City would partner to integrate a new Memorial Stadium into the Seattle Center campus as an active contributor to the vibrancy of Seattle Center, expanding open space in the heart of campus and consolidating Seattle Center maintenance shops.

E. Located adjacent to the stadium, the Memorial Wall, designed by Garfield High School student Marianne Hanson, was dedicated in 1951 to commemorate the lives of 762 students from Seattle Public Schools and King County schools who lost their lives in WWII. The Memorial Wall was designated a landmark by the Seattle Landmarks Preservation Board on October 4, 2023.

F. In 2016, the Seattle Center Foundation, SPS, and City representatives convened a workshop attended by a wide group of community representatives that resulted in a report released in December 2016 titled “Seattle Center: What’s Next,” which emphasized the need to “establish common ground between the City of Seattle and Seattle Public Schools” and noted a common interest to “connect Memorial Stadium with the rest of Seattle Center.”

G. Since the 2016 report, SPS and the City have continued to work and plan for a joint project to replace the existing Memorial Stadium, which efforts included a letter of intent between the SPS Superintendent and the Mayor in October 2021 that anticipated SPS’s inclusion of Memorial Stadium in its upcoming Building, Technology & Academics/Athletics (“BTA V”) levy in 2022.

H. In February 2022, Seattle voters approved \$66.5 million in the BTA V levy for a basic student athletic facility to replace Memorial Stadium. As part of the City’s 2025-26 biennial budget, the Seattle City Council allocated \$40 million for an enhanced Memorial Stadium project in the City’s Capital Improvement Plan.

I. On November 22, 2022, the SPS Superintendent and the Mayor entered into a Memorandum of Agreement outlining their intent to jointly issue a request for proposals (“RFP”) seeking proposals from qualified parties to invest in and lead the redevelopment, operation, and maintenance of a new financially sustainable Memorial Stadium as a state-of-the art multi-purpose sports, educational, and entertainment stadium.

J. The RFP was released in March 2023 through the City’s bidding platforms and was advertised in the Daily Journal of Commerce.

K. SPS and the City convened an RFP evaluation panel (“RFP Panel”) with subject matter experts and community representatives to review and evaluate the proposals in response to the RFP and to provide recommendations regarding selection to the SPS Superintendent and Mayor for their final decision.

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L. One Roof Partnership (“One Roof”) submitted a proposal in response to the RFP, setting out One Roof’s vision for a student-centered community stadium, embodying the philosophy that “no one profits and everyone benefits.”

M. Of the two proposals received and evaluated, the RFP Panel unanimously found that the proposal submitted by One Roof better met the shared goals and evaluation criteria of the City and SPS as established in the RFP.

N. On June 15, 2023, the SPS Superintendent and the Mayor jointly provided notice of their determination that One Roof’s proposal better met the goals and interests of SPS and the City as described in the RFP and that One Roof was selected for further negotiation of the terms and conditions of a joint Memorial Stadium development project between SPS, the City, and One Roof.

O. To execute the non-commercial vision for the Project, the One Roof team established a new entity, Memorial Stadium Redevelopment LLC (“MSR”), which is a partnership among One Roof Foundation, the Seattle Kraken, and Oak View Group, and MSR is committed to delivering a student and community-based stadium that is based on a not-for-profit model where MSR will seek no financial gain from the stadium’s operation.

P. The City and SPS have successfully negotiated an agreement whereby MSR will provide private funding to supplement public funding and will lead the design, permitting, and construction of the new Memorial Stadium (the “Development Agreement”) and the Parties have further agreed upon the basic terms on which MSR will operate the stadium for a term upon its completion.

Q. The new Memorial Stadium will serve as SPS’s premier venue for interscholastic sports events, provide new public open space and campus connections, be welcoming to all, and offer unparalleled athletic, educational, cultural, entertainment, and community opportunities in the heart of Seattle for generations to come.

R. The schedule for construction of the new stadium has been developed with the goal of managing the duration of SPS displacement from stadium use to a period of two football seasons and two graduation cycles.

S. Concurrent with the development of the new Memorial Stadium and to facilitate permitting requirements, Seattle Public Utilities will have MSR complete a replacement and upgrade of a sanitary sewer main owned by Seattle Public Utilities (“SPU”) that is currently located within the Development Site.

T. As authorized by the Interlocal Cooperation Act (RCW Chapter 39.34), SPS and the City have determined it is in their mutual best interest to jointly carry out the development of a new Memorial Stadium and associated improvements to the Seattle Center campus, and to provide for the shared and collaborative operation, maintenance, and programming of the new Memorial Stadium and associated Seattle Center improvements following completion.

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In consideration of the mutual obligations and promises herein, SPS and the City agree as follows:

### **ARTICLE I Memorial Stadium Project; Purpose of Agreement**

1.1 Memorial Stadium Project. The Memorial Stadium Project (the “Project”) means the design, permitting, demolition, site work, and construction necessary to (i) complete replacement of the existing stadium with a new Memorial Stadium, including Seattle Center replacement warehouse and shops space and associated open space improvements, (ii) restore and preserve the Memorial Wall, and (iii) make certain improvements to the SPS Parking Lot. The Project is described in more detail in Section 4.1 and in the Development Agreement.

1.2 Purpose of Agreement. The purpose of this Interlocal Agreement is to establish and confirm SPS’s and the City’s shared commitment to carry out the Project as a joint undertaking under RCW Chapter 39.34. This Interlocal Agreement establishes SPS’s and the City’s mutual roles and responsibilities with respect to the Project, recognizing that SPS will own the stadium facility and that SPS and the City will remain the owners of their respective real property on which the new Memorial Stadium and associated improvements will be constructed. Additionally, this Interlocal Agreement sets out SPS’s and the City’s commitment to provide for the long-term maintenance and operation of the new Memorial Stadium and associated improvements through one or more agreement(s) described herein, for the benefit of SPS students, the community, and in a manner that is coordinated and integrated with the Seattle Center campus and operations.

### **Article II Effective Date; Term; Definitions; Exhibit**

#### Section 2.1 Effective Date.

This Interlocal Agreement shall be effective on the day when last signed by a representative of each Party following authorization of the Seattle City Council and the Board of Directors of Seattle Public Schools (“Effective Date”).

#### Section 2.2 Term.

This Interlocal Agreement shall be in effect for a term that begins on the Effective Date and continues until the following conditions are met: (i) SPS and the City have issued Final Acceptance of the Project, (ii) SPS, the City, and MSR have entered into the Operating Agreement described in Section 11.1, and (iii) the Parties have entered into the Property Agreements described in Section 8.3, unless terminated as provided herein. Notwithstanding the foregoing, certain Sections survive the termination or expiration of this Interlocal Agreement, as provided herein.

#### Section 2.3 Definitions.



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Any capitalized term used in this Interlocal Agreement that is defined in the Development Agreement and not otherwise defined in this Interlocal Agreement shall have the meaning provided in the Development Agreement.

**“City Representative”** is defined in Section 3.2.B.

**“Commerce Grant Agreement”** is defined in Section 5.2.

**“Development Agreement”** means the Development Agreement regarding Memorial Stadium between The City of Seattle and Memorial Stadium Redevelopment LLC attached as Exhibit A and made a part of this Interlocal Agreement.

**“Development Site”** means the physical location for the permitting and development of the Project on property owned by SPS and the City. The Development Site is depicted in Exhibit A to the Development Agreement.

**“Director”** means the Director of the Seattle Center.

**“Excused Delay”** means a day-for-day delay of the Project resulting from SPS’s failure timely to provide a review, approval, or written response as required under this Agreement.

**“Final Acceptance”** means written acceptance of the Project as complete as described in more detail in Section 7.5 of the Development Agreement.

**“Final Project Design”** means the for-construction Project plans, drawings and construction specifications that have been approved in writing by the City following the design review process described in Section 5.2 of the Development Agreement and approved in writing by SPS as described in Section 6.1 of this Agreement.

**“Licensed Area”** is depicted in Exhibit A to the Development Agreement.

**“MSR”** means Memorial Stadium Redevelopment LLC.

**“Notice to Proceed”** means written confirmation from the Director issued to MSR, following consultation and approval by SPS as provided herein, that each of the conditions precedent for commencement of demolition and construction in Section 6.2 of the Development Agreement have been met or waived.

**“Operating Agreement”** means the Operating and Maintenance Agreement among MSR, SPS, and the City described in more detail in Article XI.

**“Operating Agreement Terms”** means the material terms of the future Operating Agreement. The Operating Agreement Terms are attached as Exhibit J to the Development Agreement.

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**"Perimeter Area"** means an open space area within the Development Site which includes both SPS-owned property and City-owned easement areas as depicted in Exhibit A to the Development Agreement.

**"Project"** is defined in Section 1.1.

**"Project Principals"** means the Director and the SPS Chief Operations Officer (SPS COO).

**"Project Representatives"** means the SPS Representative and the City Representative appointed as described in Section 3.2.

**"Property Agreement(s)"** are defined in Section 8.3.

**"SPS Principal"** means the SPS Chief Operations Officer.

**"SPS Representative"** is defined in Section 3.2.A.

**"SPU"** means Seattle Public Utilities.

### 2.4 Exhibit.

Exhibit A      Development Agreement (including all exhibits)

## **ARTICLE III Development Agreement; Representatives; Reviews and Approvals**

### 3.1 Development Agreement with MSR.

A. City Contracting Entity. The City and SPS agree that their mutual Project objectives are best achieved through an agreement between the City and MSR that utilizes the MSR team's expertise and qualifications to design, permit, and complete the Project with capped funding provided by SPS, the City (including SPU funding for the sanitary sewer work) and with all additional funds provided through private, philanthropic funds raised by MSR. Accordingly, SPS and the City have jointly negotiated the Development Agreement with MSR, and SPS has designated the City to act as the contracting entity and Development Agreement administrator for the Project.

Concurrent with this Interlocal Agreement, the City shall enter the Development Agreement with MSR. SPS acknowledges that it has had the opportunity to review, negotiate, and contribute to the Development Agreement and approves the City entering into the Development Agreement to carry out the joint Project, subject to the terms of the Development Agreement and this Interlocal Agreement.

B. Development Agreement Administration. The City shall administer the Development Agreement consistent with its terms for the mutual benefit of SPS and the City and

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shall act in good faith to cause MSR to complete its contractual obligations under the Development Agreement. Except as otherwise specifically provided under this Interlocal Agreement or the Development Agreement, SPS and the SPS Representative shall direct Project-related communications, design reviews and approvals, and other communications regarding the Project through the City Representative. SPS shall not issue any direction to MSR with respect to the Development Agreement unless expressly authorized by the terms of this Interlocal Agreement, the Development Agreement, or in writing by the City Representative. As provided in Subsection 3.1.F of this Interlocal Agreement, the City shall, through the person with the role designated in the Development Agreement, secure SPS review and approval before issuing the applicable approvals, including but not limited to Notice to Proceed and Final Acceptance, under the Development Agreement.

C. Limited Liability of City for MSR Default. Provided that the City has used reasonable and good faith efforts to cause MSR to comply with its obligations under the Development Agreement, and provided further that the City has complied with its obligations under the Development Agreement, the City shall have no liability to SPS for MSR's failure to comply with the Development Agreement.

D. Project Reviews, Approvals, and Deliverables; Limited Liability. Certain Project reviews, approvals, and deliverables in the Development Agreement are specified for SPS and the City to provide jointly or individually under this Interlocal Agreement and the Development Agreement. In all cases, each Party shall carry out its reviews and approvals and provide its deliverables in the timeline and according to the standards specified in the Development Agreement and this Interlocal Agreement and consistent with the milestones in the Project Schedule. Provided that each Party has complied with timelines established in the Development Agreement and this Interlocal Agreement for review, approvals, and deliverables, neither Party shall have any liability to the other for MSR's failure to achieve Notice to Proceed or to meet the Project Schedule.

E. SPS Third-Party Beneficiary. SPS is designated as a third-party beneficiary of certain provisions of the Development Agreement as outlined in Section 3.3.C of the Development Agreement. Before exercising any right as a third-party beneficiary under the Development Agreement, the SPS Principal shall provide the Director written notice describing the provision of the Development Agreement that SPS seeks to enforce, and the Parties shall endeavor to agree upon a course of action. If there is a dispute between SPS and the City regarding the enforcement of SPS third-party rights under the Development Agreement, the dispute resolution procedures under Article XII herein shall apply.

F. Consents and Approvals; City Reserved Rights. The Development Agreement includes requirements that the City provide, through the City Representative or Director, an approval, determination, or consent with respect to a variety of plans and actions. The Parties agree that it is in their mutual best interest to coordinate so that such approvals, determinations, and consents are provided within the time frames specified in the Development Agreement in order to achieve the Project Schedule. The City shall secure the concurrence of SPS before granting any approval or consent under the Development Agreement that is described in (1) through (16) below. Notwithstanding the foregoing, if SPS fails within the applicable timeframes

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below to either (i) provide concurrence or (ii) provide written objection based upon the standards under the Development Agreement (if any), the City is authorized to provide the determination, approval, or consent as the City deems in the best interest of the Project and consistent with the Development Agreement. SPS releases the City from any claims or liabilities with respect to any approval, determination, or consent the City grants in the absence of SPS's concurrence or objection in the time required. SPS shall be responsible for any additional costs or claims MSR is entitled to under the Development Agreement by virtue of an Excused Delay or otherwise to the extent the Excused Delay or additional cost is caused by the action or inaction of SPS, including but not limited to failure to provide concurrences and approvals within the time periods and consistent with any standards established under the Development Agreement.

The referenced sections under the Development Agreement that are subject to SPS review and concurrence are as follows:

- (1) Section 2.3.A (Approval of Final Project Budget subject to the parameters in Section 2.3.A),
- (2) Section 2.4 (Approval of Final Project Schedule subject to the parameters in Section 2.4),
- (3) Section 3.1.E (Verification of MSR secured funding as condition precedent of NTP, Parties to review jointly and the Director to obtain SPS concurrence before confirming MSR compliance with the requirements in Section 3.1.E),
- (4) Section 4.5.B (SPS Representative to participate in job site walk-through, review pay applications and notify City Representative within 3 business days for any proposed adjustment to MSR pay application),
- (5) Section 5.2 (Milestone and Final Project Design Reviews, SPS to review and provide approval or written objections to City within 10 business days),
- (6) Section 5.3 (Memorial Wall Design Review, SPS to provide input as to whether Final Project Design must be modified to secure LPB approval, timeline as reasonable under the circumstances),
- (7) Section 5.5 (Modifications to Final Project Design, SPS to review and provide approval or written objections to City within 10 calendar days),
- (8) Section 6.2 (Satisfaction or Waiver of Conditions Precedent for Commencement of Demolition and Construction, Parties to complete reviews and deliver Notice to Proceed or notice of unsatisfied conditions within 5 business days),
- (9) Section 6.3.A (Approval of form of Construction Bond),
- (10) Section 6.3.B (Approval of form of Completion Bond),
- (11) Section 6.7.C (Contractor Default; Termination Concurrence, SPS to approve MSR plan for Project completion within 5 business days),
- (12) Section 7.1.B (Punch List Process, SPS to provide written approval of, or comments on and objections to, punch list items to City within 10 business days and acceptance or non-acceptance of Physical Acceptance within 10 business days),
- (13) Section 7.4 (Approval of alternate deadline for completion of restoration of damage, timeline as reasonable under the circumstances),

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- (14) Section 8.2.A (Hazardous Substance Plans) and 8.2.C (Remedial Work Plans) (in both cases, timelines as expeditiously as reasonable under the circumstances),
- (15) Section 10.2 (Approval of condition of Project after repair and restoration following casualty, timeline as reasonable under the circumstances), and
- (16) Section 16.2 (MSR's Assignment of Development Agreement, timeline reasonable under the circumstances).

In addition to the above, City agrees to obtain the concurrence of SPS Principal before exercising any of the following rights under the Development Agreement: (i) termination of the Development Agreement under Section 5.7.D; (ii) satisfaction of the conditions for Final Acceptance under Section 7.5 (Final Acceptance), as set forth in Section 8.1 of this Interlocal Agreement; (iii) termination of the Development Agreement by the City under Section 10.2; (iv) modification or amendment of the Development Agreement under Section 16.7, (v) rights and remedies upon a MSR Default Event under Section 13.2; and (vi) termination of the Development Agreement for an MSR Default Event under Section 13.5 or for a Force Majeure Event under Section 13.7.B.

If SPS provides objections or withholds approval as to any matter above that the City reasonably determines is inconsistent with the standards or requirements provided in the Development Agreement, the City shall utilize the dispute resolution process under Article XII.

### 3.2 Appointment of Project Representatives.

A. SPS Representative. SPS shall appoint an owner's representative with the capacity and qualifications to represent and manage SPS's interests throughout design, permitting, demolition, and construction of the Project (the "SPS Representative"). The SPS Representative shall be responsible for coordinating and communicating with SPS stakeholders and decision-makers throughout the design, pre-construction, and construction of the Project so that decisions and approvals are communicated effectively and in a timely manner to the City Representative. SPS shall delegate to the SPS Representative the authority to communicate SPS's decisions with respect to all Project approvals and Project-related decisions to be made by SPS as provided in this Interlocal Agreement and where specifically referenced in the Development Agreement, except in cases where such consents or approvals are designated for the SPS Principal. The SPS Representative may be changed from time to time by notice to the City, subject to Subsection 3.2.D.

B. City Representative. The City will appoint a representative with the capacity and qualifications to represent and manage the City in its non-regulatory capacity throughout the design, permitting, and construction of the Project (the "City Representative"). The City Representative shall be responsible for coordinating and communicating with City stakeholders and decision-makers throughout the design, pre-construction, and construction of the Project. The City shall delegate to the City Representative the authority to communicate the City's decisions with respect to all Project approvals and Project-related decisions to be made by the City in its non-regulatory capacity as provided in this Interlocal Agreement and in the

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Development Agreement, except in cases where such consents or approvals are designated for the Director.

C. Contact Information. The SPS Representative and City Representative are referred to as the “Project Representative(s)”. Within five (5) business days of the Effective Date, the Project Principals shall exchange the name, email address, and business and emergency phone telephone numbers of their appointed Project Representative. At all times during the Project prior to Final Acceptance, each Party shall keep the contact information of its Project Representative current. If either Project Representative is anticipated to be unavailable for more than twenty-four hours, a substitute representative must be appointed, and the other Party’s Project Representative must be notified of the substitute representative’s contact information. The City shall provide the SPS Representative’s contact information to MSR.

D. Project Representatives are Key Personnel. The Parties agree and acknowledge that the appointment of qualified Project Representatives with sufficient capacity for the Project and sufficient speaking authority to represent the interests and decisions of their respective Party is key to the success of the Project. Accordingly, if any concerns should arise during the Project regarding the capacity or qualifications of either Project Representative, such concerns shall be elevated to the Project Principals for resolution. The Project Representatives are designated as key persons under this Interlocal Agreement for the coordination and management of each Party’s roles and responsibilities with respect to the Project. Accordingly, if either Party changes its designated Project Representative, the new representative shall have comparable qualifications and required speaking authority, and the appointment shall be subject to the written approval of the other Party, which shall not be unreasonably withheld.

## ARTICLE IV

### Additional Project Information; Site and Access Rights

#### 4.1 Project Scope, Budget, and Schedule.

A. Minimum Scope of Project. As outlined in the Development Agreement, the minimum required scope (“Minimum Scope”) for the Project is: a new stadium with capacity of 8,000 attendees (with seating capacity of 6,500 and an additional 1,500 attendees on the west berm seating and concourses and pavilions); four (4) approximately equal-sized locker rooms; stands covered on both sides; ticket booths; team training facilities; officials and coaches space; concessions areas; restrooms; Title IX compliant accommodations; first aid/guest services; synthetic turf playing field with cork infill and sewn-in striping at field perimeter only; restoration of Memorial Wall; press box/coaches booth; stadium storage; stadium lights; audio system; video system; security/admin; loading and staging area; improvements and plans for site circulation and access, including improvement of the pedestrian access route between Republican St. and Harrison St.; expanded open space; landscaping within the Development Site; and the Shop/Warehouse Space (as defined below).

a. City Shop and Warehouse Space. The Minimum Scope includes on-site space to house Seattle Center’s trade shops, event support, and building and grounds laborers as described in more detail in the Seattle Center Design Requirements in Section 5.1.C of the

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Development Agreement and Exhibit E to the Development Agreement (the “Shop/Warehouse Space”).

b. Sanitary Sewer Replacement. The Project shall include the replacement and upgrade of a sanitary sewer main owned by SPU that is currently located within the Development Site and as further described in Section 2.1.A.b of the Development Agreement (the “Sewer Replacement Work”). SPU shall pay for the Sewer Replacement Work as further described in Development Agreement and shall bear any environmental and geotechnical risks and associated costs of the Sewer Replacement Work and any Sewer Replacement Remedial Work not covered by indemnification, all as further described in the Development Agreement.

B. Approved DD+ Design. Prior to or upon signature of this Agreement, SPS, the City, and MSR have each approved the DD+ Design and determined it is consistent with the Minimum Scope for the Project and meets the Design Standards at the applicable design stage. The DD+ Design will be further developed into the Final Project Design through the design process described in Article V of the Development Agreement.

C. Project Budget. The Estimated Project Budget is detailed in the Development Agreement (reference Section 2.3 and Exhibit B). SPS acknowledges that the Project Budget remains subject to change throughout the design process and the City shall cause MSR to provide SPS with copies of updates to the Project Budget at the same time the updates are provided to the City as outlined in the Development Agreement. Before providing MSR with approval of the Final Project Budget, the City Representative shall obtain the written concurrence of the SPS Representative through the verification of funding process under Section 3.1.E of the Development Agreement.

D. Project Schedule. The Project Schedule is detailed in the Development Agreement (reference Sections 2.4 and Exhibit C). The Parties acknowledge and agree that MSR’s ability to complete the Project according to the Project Schedule is dependent upon compliance with the timelines specified in Section 3.1.F of this Interlocal Agreement. The City shall carry out its obligations to review and provide approvals in good faith and in the time and according to the terms of the Development Agreement. SPS, in turn, commits to the City that SPS shall carry out the reviews and approvals that are designated to be provided by SPS in this Interlocal Agreement in good faith and in a time and manner that allows the City to administer the Development Agreement according to its terms.

### 4.2. Project Development Site and Access Rights.

A. Project Development Site. The Project will be primarily constructed on real property owned by SPS, with a portion of the Project being constructed on real property owned by the City of Seattle. The Development Site is depicted in Exhibit A to the Development Agreement.

B. License for Development Site. Between the Effective Date of this Interlocal Agreement and the date of Notice to Proceed, SPS will grant MSR and the City the right to access the SPS-owned and controlled portions of the Development Site and the SPS parking lot for Project-related investigations and pre-construction activities with the approval of the SPS

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Representative subject to MSR's compliance with the insurance and indemnification provisions under the Development Agreement. Effective as of the date when the Director issues Notice to Proceed under Section 6.2 of the Development Agreement following the SPS Principal's written concurrence that the conditions to issue Notice to Proceed have been waived or satisfied and continuing until the end of the Term of the Development Agreement, SPS grants the City and MSR and their respective employees, agents, representatives, contractors, and licensees a right and license to use, occupy, and access the SPS-owned and controlled portions of the Licensed Area as further described under Section 2.2.A.b of the Development Agreement. Revocation of this right and license by SPS before the end of the Term of the Development Agreement shall be a Default subject to the provisions of Article XIII of this Interlocal Agreement and Article XIII of the Development Agreement.

## **ARTICLE V**

### **Project Funding; Commerce Grant**

5.1 Project Funding. The respective funding obligations of the City (including funding from SPU), SPS, and MSR, and the conditions applicable to disbursing Project funding are described in detail in Article IV of the Development Agreement. To carry out the Project as a joint Project under this Interlocal Agreement, SPS and the City shall comply with their respective funding obligations outlined in Article IV of the Development Agreement. If SPS (i) does not participate in a regularly scheduled monthly job walkthrough under Section 4.5.B of the Development Agreement, or (ii) does not provide an objection to the draft pay application within three (3) business days of the job walkthrough, the City Representative shall approve or adjust the pay application in good faith, and SPS shall pay its proportionate share as described in Section 4.5.B of the Development Agreement. If either Party delays or fails to provide its funding in the time required under the Development Agreement, that Party shall be responsible for additional Project costs, if any, resulting from the failure or delay. It is understood and agreed that SPS and the City shall have no funding obligations to the Project other than those outlined in this Interlocal Agreement and the Development Agreement. Neither SPS nor the City shall be in breach of this Interlocal Agreement for failure to provide any funding to the Project in excess of what is required under the Development Agreement.

5.2 Commerce Grant. The City has been awarded grant funding from the Washington State Department of Commerce (the "Commerce Grant"). Conditions applicable to the Commerce Grant are described in detail in Section 4.4 of the Development Agreement, including the execution of an agreement with the Washington State Department of Commerce ("Commerce Grant Agreement"), and SPS acknowledges that the disbursement of the Commerce Grant funding is conditioned on such conditions. SPS agrees to provide such documents as may be requested by the City for the purposes of complying with the conditions for the Commerce Grant funding and Commerce Grant Agreement. To the extent compliance with the Commerce Grant Agreement may conflict with the terms and conditions of this Agreement, and if required by the Washington State Department of Commerce, the Parties shall execute a mutually-agreed addendum to this Agreement as needed to comply with the Commerce Grant Agreement.



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5.3 Donor Information; Public Records. SPS shall comply with the requirements under Section 3.1.E of the Development Agreement with respect to donor personal information. If SPS receives a request for donor information or other Project-related public records pursuant to the Public Records Act, Chapter 42.56 RCW (the “Public Records Act”), SPS shall comply with the requirements under Section 4.8 of the Development Agreement and shall copy the City on any notice to MSR.

## ARTICLE VI Preconstruction Activities

6.1 Project Design. The Project Design Standards and the Project design review and approval process are both outlined in detail in Article V of the Development Agreement. Throughout the design review, comment, and approval process, the SPS Representative shall coordinate with all SPS stakeholders and shall ensure that the SPS reviewers complete their review in compliance with the Design Standards and in the timelines provided under the Development Agreement. The SPS Representative shall coordinate with the City Representative at each phase of the design review process to enable the City and SPS to provide MSR coordinated comments and direction regarding design. The Director shall not provide MSR written approval of the Final Project Design until the City has obtained the SPS Representative’s written concurrence.

6.2. Siting of City Art. As provided under the Development Agreement, a portion of the City’s funding for the Project is reserved to fund works of art in a manner that is consistent with the City’s 1% for Art program. During the Project design process, the City and SPS will work collaboratively with MSR to identify locations in the Perimeter Area or within publicly accessible areas of the Development Site for the installation and siting of art, at City’s expense. The City will keep SPS informed as the process of selecting and/or commissioning artwork progresses and will consider input from SPS as to the appropriateness of the artwork for installation in the vicinity of a student-centered facility. Any artwork installed as part of the Project with the City’s funds reserved for artwork under the Development Agreement shall be owned by the City and the City shall be responsible for its maintenance and care at City cost. Upon the later of the termination or expiration of this Interlocal Agreement or the installation of the artwork, SPS and the City shall enter an agreement granting the City the long-term right to site the artwork on the SPS property (subject to the City’s obligation to remove the artwork, upon notice from SPS, in the event of redevelopment or reuse of that area by SPS) and providing for the City’s ownership, maintenance, and eventual removal or surrender of the artwork, which agreement may be included in one of the anticipated Property Agreements or may be in the Operating Agreement.

6.3 Memorial Wall. Section 5.3 of the Development Agreement addresses the process for preserving the landmarked features of the Memorial Wall and for compliance with the landmark’s preservation process required under Chapter 25.12 of the Seattle Municipal Code. SPS shall work directly with the City Representative and MSR’s designated representatives to comply with the process and requirements applicable to the Memorial Wall as outlined in Section 5.3 of the Development Agreement.

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6.4 Community Engagement. In collaboration with MSR, SPS shall be responsible for carrying out the community engagement activities designated to SPS and outlined in Section 5.4 of the Development Agreement. The City shall not be responsible for independently completing any activities under Section 5.4 of the Development Agreement.

6.5. Environmental Review. Section 5.7 of the Development Agreement provides for the environmental review of the Project. SPS and the City acknowledge and agree that the Final Project Design and the Project mitigation requirements are subject to the environmental review of Seattle Department of Construction and Inspections, acting in its regulatory capacity. If the City and SPS are unable to agree with MSR on a Final Project Design that is consistent with environmental review, the City will obtain SPS's written concurrence as a condition precedent to terminating the Development Agreement under Subsection 5.7.D of the Development Agreement.

## **ARTICLE VII Construction**

7.1 SPS Approval of Notice to Proceed. The conditions precedent for the Director's issuance of Notice to Proceed to MSR allowing commencement of demolition and construction of the Project are described under Section 6.2 of the Development Agreement. Before issuing Notice to Proceed, the City shall obtain the written concurrence of the SPS Principal.

7.2 Cooperation During Construction. The City shall administer the requirements of the Development Agreement applicable to construction of the Project as described in Article VI of the Development Agreement, including monitoring compliance with Social Equity Requirements and administering the SPS Student and Community Workforce Agreement. The SPS Representative will be given the opportunity to participate in construction team meetings and receive construction communications. If at any point during the construction of the Project the City requires SPS's participation in Project-related decisions, including addressing Latent Conditions as described in Article VIII of the Development Agreement, dispute resolution as provided under Article XII of the Development Agreement or as otherwise required under the Development Agreement, SPS shall work expeditiously and in good faith with the City Representative, the Director, and other City representatives to facilitate decision-making and the City's ability to administer and carry out the applicable provisions of the Development Agreement.

7.3 Commissioning. SPS shall be responsible for coordinating directly with MSR for access to the Development Site during MSR's building systems commissioning. SPS shall cause its consultants and employees to conform to the review and inspection schedule and timelines established by MSR.

## **ARTICLE VIII Final Acceptance; Project Ownership; Property Agreements; Project Records**

## Interlocal Agreement

8.1 Final Acceptance. The process and terms for Project close-out and Final Acceptance are outlined in Article VII of the Development Agreement. The SPS Representative shall participate in the punch list process as outlined in the Development Agreement. Before issuing written notice of Final Acceptance of the Project to MSR, the City shall obtain written concurrence of the SPS Principal. SPS shall grant its concurrence provided that all conditions for Project close-out and Final Acceptance outlined in the Development Agreement are met in the reasonable judgment of SPS. SPS shall be responsible for any additional costs or liabilities arising due to any delay in issuance of Final Acceptance to the extent attributable to the actions or inaction of SPS, provided that MSR has met the terms for Final Acceptance under the Development Agreement.

8.2 Ownership of Project Improvements. Upon completion of the Project, Memorial Stadium will be owned by SPS with primary use by SPS for athletics, arts and other educational purposes consistent with stadium use and the 1946 quitclaim deed conveying the property to SPS. The City shall own all fixtures, furniture, and equipment in the Shop/Warehouse Space. The City shall have property rights to the Shop/Warehouse Space that shall be established consistent with Section 8.3.

### 8.3 Property Agreements.

A. Anticipated Property Agreements. No later than Final Acceptance of the Project, the Parties shall enter into one or more agreements to provide for reciprocal property rights (the "Property Agreements") as follows: (i) SPS's right to use City property that is within the Development Site for the new Memorial Stadium; (ii) any access rights needed for the City to carry out roles and responsibilities in the Perimeter Area owned by SPS or other locations provided under the agreements set forth below; and (iii) the City's right to use and occupy the Shop/Warehouse Space which is incorporated into the stadium building or otherwise sited on SPS property. The Property Agreement(s) are anticipated to be in the following form:

(1) An easement granted to SPS for those portions of the Project located on City Property on the North side of the Development Site for a term that is no less than the useful life of the improvements;

(2) A mutual and offsetting benefits facility lease from SPS to the City giving the City the exclusive use and occupancy rights to the Shop/Warehouse Space that is incorporated into the stadium facility or otherwise located on SPS-owned property for a term that is no less than the useful life of the improvements;

(3) A non-exclusive easement or license agreement granting the City the right to access and use the portions of the Perimeter Area owned by SPS for purposes of maintenance, temporary events, and other activities mutually agreed upon for an initial term of twenty-five years with further extension by mutual agreement; and

(4) A license or other appropriate agreement granting the City or its designee the right to use Memorial Stadium for community events no less than eight (8) days of full facility/field use annually for a term that is no less than the useful life of the improvements, including for Bumbershoot or other Seattle Center events, and a minimum of forty (40) days of operational space/back of house use annually for such events as Folklife, PrideFest, Bite of Seattle, Bumbershoot or their successors.

## Interlocal Agreement

B. Terms and Conditions of Property Agreements. Recognizing that the Operating Agreement will initially be for a shorter term than the life of the improvements, each Property Agreement shall make appropriate accommodation for operation, maintenance, indemnity, and insurance by the grantee therein and shall be in form and substance acceptable to the Parties, each in its discretion. The mutual exchange of property rights is conditioned upon completion of the Project. The Property Agreements will include mutual commitments to quality maintenance standards.

8.4 Project Records. As provided under Section 4.8.A of the Development Agreement, within sixty (60) days of Final Acceptance of the Project, subject to Excused Delay and Force Majeure, MSR shall deliver all of the Project Financial Records, Social Equity Records, and other MSR Project-related records in an electronically compatible format to SPS (the "Records Delivery"). SPS shall accept the Records Delivery and thereafter shall maintain the Project Financial Records and Social Equity Records in a location accessible to both Parties in King County for a minimum of six years following the Final Acceptance of the Project.

### **Article IX Development Site Condition; Costs to Remedy Latent Conditions**

9.1 Development Site Conditions. Article VIII of the Development Agreement governs pre-existing Development Site conditions, including Latent Conditions and treatment of Hazardous Substances (as defined in the Development Agreement). SPS shall work expeditiously and in good faith to support the City's administration of Article VIII with respect to 1) approving the Hazardous Substances Plan, 2) any Remedial Work Plan that may be required, and 3) addressing any Latent Condition.

9.2 Costs to Remedy Latent Conditions. If additional Project costs are incurred as a result of one or more Latent Conditions and the costs may not be addressed within the Final Project Budget or are not otherwise MSR's obligation to remedy at its cost, SPS shall be responsible for costs associated with addressing any Latent Condition on SPS-owned property and the City shall be responsible for any costs associated with addressing any Latent Condition on City-owned property. Notwithstanding the foregoing, this provision shall not be deemed to be a waiver of either Party's right to seek contribution from any responsible party or entity who is liable for the violation of any Environmental Laws or the release or exacerbation of any Hazardous Substances in, on, beneath, affecting, migrating to or migrating from the Licensed Areas.

### **Article X Indemnification; Insurance**

10.1 City Indemnification. To the extent permitted by law, the City shall defend, indemnify, and hold SPS and its respective officers, agents, employees, and elected officials harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities, and expenses (including actual and reasonable personnel and overhead costs and attorneys' fees

## Interlocal Agreement

incurred in connection with claims, regardless of whether such claims involve litigation) of any kind to the extent arising out of (i) the negligent acts and omissions of the City, its elected officials, employees, agents, tenants, invitees, contractors, and consultants of any tier, or (ii) City's Default under this Interlocal Agreement, or (iii) City's default or other action or failure to act under the Development Agreement.

10.2 SPS Indemnification. To the extent permitted by law, SPS shall defend, indemnify, and hold City and its respective officers, agents, employees, and elected officials harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities, and expenses (including actual and reasonable personnel and overhead costs and attorneys' fees incurred in connection with claims, regardless of whether such claims involve litigation) of any kind to the extent arising out of (i) the negligent acts and omissions of SPS, its elected officials, employees, agents, tenants, invitees, contractors, and consultants of any tier or (ii) any SPS Default under this Interlocal Agreement or exercise of third-party beneficiary rights under the Development Agreement or other SPS action or failure to act with respect to the Project that is contrary to the standards or terms of the Development Agreement or this Interlocal Agreement that results in any claim against the City or any City liability under the Development Agreement.

10.3 Limitation under RCW 4.24.115. To the extent necessary to comply with RCW 4.24.115 as in effect on the date of this Interlocal Agreement, each Party's obligation ("Indemnitor") to indemnify the other ("Indemnatee") for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Project, shall not apply (i) to damages caused by or resulting from the sole negligence of the Indemnatee; or (ii) to the extent caused by or resulting from the concurrent negligence of (A) the Indemnitor and (B) the Indemnatee (including any of its officers, elected officials, employees, designers, agents, or contractors of any tier, as applicable); provided, however; the limitations on indemnity set forth in this Section 10.3 shall automatically and without further act by either City or SPS be deemed amended so as to remove any of the restrictions contained in this Section which are no longer required by then applicable law.

10.4 Title 51 Waiver. Each Party agrees that its defense and indemnity obligations under this Interlocal Agreement extend to any claims and any negligence of a Party's own employees. Accordingly, each Party's agreement to the obligations under Article X are specifically intended to be a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, but only with respect to the other Party and to the extent necessary to fulfill their respective defense and indemnity obligations under this Agreement.

10.5. Survival. Each Party's obligations under Article X shall survive the termination or expiration of this Interlocal Agreement.

10.6 Insurance. SPS has approved the insurance MSR is required to maintain according to the terms of the Development Agreement. The City shall verify evidence of MSR's insurance required under the Development Agreement before allowing the commencement of any pre-construction access by MSR or any demolition or construction activities on the

## Interlocal Agreement

Development Site. Prior to Notice to Proceed, the City shall provide SPS with MSR's proof of insurance.

### **Article XI Operating Agreement Terms**

11.1 Operation of Memorial Stadium. Upon Final Acceptance, it is a fundamental purpose of this Interlocal Agreement that SPS and the City provide for sustainable maintenance, operation, and ongoing capital needs of the new Memorial Stadium for the duration of its useful life. Additionally, the City's willingness to enter this Interlocal Agreement and provide funding to the Project is conditioned, in part, on assurances that the new Memorial Stadium will be operated and managed in a manner that prioritizes student-centered use and enhances student learning while providing for Seattle Center use of the facility and integrating Memorial Stadium with the Seattle Center campus. Accordingly, SPS and the City agree to enter a three-party operating agreement with MSR whereby MSR will operate and maintain the new Memorial Stadium and adjacent SPS parking lot for an initial period of five years and without a management fee ("Operating Agreement"), consistent with the terms outlined in the Operating and Maintenance Agreement Term Sheet attached as Exhibit J to the Development Agreement ("Operating Agreement Terms"). SPS and the City each agree to commit the staff resources necessary to negotiate in good faith with MSR in order to complete a final Operating Agreement that is consistent with the Operating Agreement Terms and that is executed by SPS, the City, and MSR so that MSR is positioned to operate the new Memorial Stadium upon Substantial Completion. If MSR, the City, and SPS have not substantially negotiated the Operating Agreement, including the initial operating budget, by August 31, 2026, any disputed or unresolved terms and conditions shall be referred to the Director, the MSR Principal, and the SPS Principal for resolution.

11.2 Parties to Consider Public Entity. Prior to the completion of the initial term of the Operating Agreement provided for under Section 11.1, SPS and the City agree to work with MSR to explore the establishment of a City-chartered public corporation, a public facilities district, an interlocal agreement, or creation of a non-profit operator as a strategy for addressing the new Memorial Stadium's long-term operations, capital replacement needs, and financial sustainability. Under any such scenario, SPS would continue to be the owner of the stadium facility and portions of the Development Site owned by SPS as of the Effective Date unless otherwise agreed in writing by SPS, and, unless otherwise agreed in writing by the City, the City would continue to have non-revocable use and occupancy rights to the Shop/Warehouse Space, the use of the stadium facility for community events no less than eight (8) days of full facility/field use annually, minimum of forty (40) days of operational space/back of house use annually for such events as Folklife, PrideFest, Bite of Seattle, Bumbershoot or their successors, and year-round non-exclusive use of the Perimeter Area.

11.3 Event Curbside Management. The Seattle Center has oversight for the Seattle Center campus, which includes Climate Pledge Arena and numerous other venues and resident organizations. Seattle Center operates the campus as a whole, including agreements regarding the use of parking garages and curbspace. The Department of Transportation and the Seattle Center have an interdepartmental Memorandum of Agreement for Event Curbside Management,

## Interlocal Agreement

a copy of which is attached as Exhibit H to the Development Agreement and made a part of this Interlocal Agreement (the “Memorandum”). The new Memorial Stadium will be both a venue and a resident organization and Seattle Center will be responsible for working directly with SDOT on reserving curbspace for Memorial Stadium, including school buses, on behalf of its operator (MSR) and its tenants, including SPS. The Operating Agreement will outline the specific order of operations of how SPS, Seattle Center and MSR will apply for and secure curbspace for the operational needs of Memorial Stadium.

## Article XII Dispute Resolution

12.1 General Approach to Dispute Resolution. The SPS Representative and the City Representative shall make best efforts to resolve any disputes relating to this Interlocal Agreement as expeditiously as possible in a manner that protects their respective rights and obligations while facilitating the timely completion of the Project. Additionally, if any dispute between the City and MSR under the Development Agreement arises from or relates to SPS’s reviews and approvals or SPS’s interests as a third-party beneficiary under Section 3.3.C of the Development Agreement or any other matter that in any way relates to the rights and obligations of the Parties under this Interlocal Agreement, then upon request of the City Representative, SPS will also participate in dispute resolution as outlined in the Development Agreement.

12.2 Referral to Project Principals. If the Project Representatives are unable to resolve any dispute within a time that is reasonable taking into consideration the nature of the dispute and impacts on the Project, then upon written request of either Project Representative (which request may be by email), the matter shall be referred to the Project Principals. As soon as reasonably possible, the Project Principals shall meet, whether virtually or in person, and shall use good faith efforts to resolve the dispute.

12.3 Non-binding Mediation. If the Project Principals are unable to resolve the dispute within a timeframe reasonable under the circumstances, but in any case, no later than thirty (30) days following referral to them, then upon the written request of either Party, the Parties shall proceed to non-binding mediation. Within ten (10) business days of receipt of a written request for mediation, the Parties will agree to a third-party neutral to mediate the dispute. If the Parties are unable to agree upon a mediator within ten (10) business days, then at the written request of either Party, the Parties agree to have a mediator appointed by the Seattle Office of Judicial Dispute Resolution, LLC, or any similar organization. Mediation shall be scheduled at a mutually agreed-upon time and both Parties shall participate in good faith and shall equally share the cost of the mediation. If a dispute remains unresolved following mediation, either Party is free to pursue a lawsuit or other legal means of resolution.

12.4 Limitation. Notwithstanding the existence of any dispute between them arising under this Interlocal Agreement, or any dispute under the Development Agreement that requires performance of this Interlocal Agreement, the Parties shall continue to carry out, without unreasonable delay, all their respective responsibilities under this Interlocal Agreement that are not affected by the dispute. The Parties agree to follow each of steps in this Article prior to filing

## Interlocal Agreement

a lawsuit or seeking legal relief with one exception: if the nature of the dispute is such that there is imminent risk to the legal rights of either Party, life, or property, then either Party may proceed to exercise its remedies outside of this Article XII.

### **Article XIII Default and Remedies**

13.1 Default Defined. As used in this Interlocal Agreement, “Default” means any of the following conditions or circumstances that is not cured within the time specified:

(1) If either Party fails to disburse or pay any undisputed amount of funding as committed to provide the Project under Section 5.1 of this Interlocal Agreement and in the time required under the Development Agreement, if such failure continues for more than ten (10) business days following the other Party or MSR’s written demand.

(2) If either Party has failed to comply with or has violated any other term of this Interlocal Agreement if such failure or violation continues after the other Party’s written notice specifying the failure or violation, the requested cure, and a timeline for completion that is appropriate and reasonable given the nature of the failure or violation, which in any case shall not be more than thirty (30) calendar days; provided, however, that if the nature of the failure or violation reasonably requires more than the requested time to cure, a Party shall not be in breach if it has commenced the cure and thereafter reasonably pursues it to completion.

(3) If the City receives written notice of Default from MSR pursuant to the terms of the Development Agreement, if such Default is attributable to SPS’s failure to comply with or violation of any term under this Interlocal Agreement, and if such failure or violation is not timely cured by SPS following written notice from the City providing a copy of the MSR notice, along with the specified cure and MSR specified timeline, provided that if the nature of the failure or violation reasonably requires more than the requested time to cure, SPS shall not be in Default if it has commenced the cure and thereafter reasonably pursues it to completion consistent with the applicable requirements under the MSR notice.

(4) If the City fails to administer the Development Agreement in accordance with its requirements, and if such failure is not timely cured by the City following written notice from SPS, along with the specified cure and specified timeline, provided that, if the nature of the failure or violation reasonably requires more than the requested time to cure, the City shall not be in Default if it has commenced the cure and thereafter reasonably pursues it to completion, unless such additional delay is reasonably likely to result in additional costs, liability or damages to SPS and SPS has provided the City written notice specifying the risk to SPS and SPS’s requested cure.

13.2 Remedies. Upon the occurrence and during the continuance of a Default, then subject to the Dispute Resolution provisions of Article XII, which shall apply to any alleged



## Interlocal Agreement

Default disputed in good faith, the non-defaulting party shall have the following non-exclusive rights and remedies, at the Party's discretion:

- (1) Pursue monetary damages;
- (2) Seek specific performance, injunctive relief, or any other equitable remedy;
- (3) Terminate this Interlocal Agreement, provided that any termination after Notice to Proceed shall be subject to approval by resolution of Seattle City Council and the Seattle Public School Board. Notwithstanding the foregoing, if this Interlocal Agreement is terminated for Default, neither Party shall be relieved of any of its obligations that survive termination. Additionally, this Interlocal Agreement shall not be terminated for Default after Notice to Proceed has been issued but prior to Final Acceptance and entry into Property Agreements and an operating agreement unless the Council and Board resolutions approving the termination include a plan for either (i) completion of the Project, exchange of agreed-upon property rights, and ownership and management of the improvements, or (ii) a mutually agreed-upon property disposition plan.

13.3 Remedies Cumulative. The remedies specified in this Interlocal Agreement are cumulative, and neither Party shall be deemed to have waived the right to any remedy allowable at law or equity by virtue of exercising any right specified in this Interlocal Agreement.

13.4 Force Majeure. Neither Party shall be liable or responsible to the other Party or be deemed to have defaulted under or breached this Interlocal Agreement for any failure or delay in fulfilling or performing its obligations under this Interlocal Agreement when and to the extent the failure or delay is caused by Force Majeure. For the avoidance of doubt, the occurrence of a Force Majeure event or condition shall excuse performance of the obligations of the affected Party(ies) only for the duration and to the extent performance is prevented or limited by the Force Majeure event or condition. Force Majeure shall not provide either Party the ability to unilaterally terminate this Interlocal Agreement.

## Article XIV MSR Default; Termination of Development Agreement

14.1 SPS shall have the independent right as a third-party beneficiary of the Development Agreement to enforce the specific terms identified in Section 3.3.C of the Development Agreement.

14.2 Termination of Development Agreement.

A. Termination Before Notice to Proceed. If the Development Agreement is terminated by the City (with SPS concurrence) prior to Notice to Proceed (whether pursuant to Section 5.7.D of the Development Agreement or otherwise), each Party shall bear its own costs and the Project Principals shall meet as soon as reasonably practical to explore in good faith options for

## Interlocal Agreement

an alternative joint stadium redevelopment that meets the shared goals and vision for Project outlined in the Recitals, to the greatest extent feasible.

B. Termination After Notice to Proceed. If the Development Agreement is terminated by the City for MSR Default pursuant to Section 13.2 of the Development Agreement (with the concurrence of SPS) at any time after the Director's issuance of Notice to Proceed, the City shall have the option, but not the obligation, to complete the Project by providing written notice to SPS within thirty (30) business days of the City's notice of termination to MSR. If the City exercises the right to complete the Project, the City shall have the following rights: (i) to obtain assignment and disbursement of the committed donor funds as provided under Sections 3.1.E and Section 13.5.C of the Development Agreement, and (ii) to either accept assignment of any or all Project-related contracts to be assigned under the Development Agreement or to procure new contracts. If the City exercises the right to complete the Project, SPS shall reimburse the City for Project costs using the same process outlined for payments to MSR under Section 4.5.B of the Development Agreement, up to the total SPS funding committed under the Development Agreement. If the City reasonably determines that it is necessary to make adjustments to the Final Project Design in order to complete the Project with the available donor funds plus the capped funding amounts committed by SPS and the City pursuant to Article IV of the Development Agreement, the City may condition the exercise of its option to complete the Project upon the mutual agreement of the Parties on adjustments to the Final Project Design that will allow completion of the Project within the available funding. The Parties shall utilize the dispute resolution process if necessary to agree to such adjustments. If the Parties fail to come to agreement regarding adjustments to the Final Project Design, the City may, in its discretion and without liability, revoke its exercise of the option to complete the Project.

C. Alternative to City Completion. If the City does not exercise its right to complete the Project, or if the Parties fail to agree on adjustments to the Final Project Design with the result that the City revokes its option to complete the Project, SPS shall have the right to complete the Project. SPS may make such modifications to the Final Project Design as SPS deems appropriate, provided, however, that SPS shall ensure that the City Shop/Warehouse Space and the open space elements of the Final Project Design are completed in a manner consistent with the Seattle Center Design Requirements under the Development Agreement, and the City shall reimburse SPS for Project costs using the same process outlined for payments to MSR under Section 4.5.B of the Development Agreement.

## Article XV

### Notices; Project Administrative Communications

15.1 Agreement Notices. All notices, requests, and demands relating to or affecting a Party's legal rights under this Interlocal Agreement ("Notices") shall be in writing and delivered to the designated representative and addressed as follows:

#### If to City:

## Interlocal Agreement

Seattle Center  
Attn: Seattle Center Director  
305 Harrison Street  
Seattle, WA 98109  
Marshall.Foster@seattle.gov

### **With Copy to:**

Seattle City Attorney's Office  
Attn: Civil Division Chief  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7095  
Tom.Kuffel@seattle.gov

### **If to SPS:**

Seattle Public Schools  
Executive Director of Capital Projects and Planning  
2445 3rd Ave. South  
MS 22-332  
PO Box 34165  
Seattle, WA 98124-1165  
[rlbest@seattleschools.org](mailto:rlbest@seattleschools.org)

### **With Copy to:**

Seattle Public Schools  
Office of the General Counsel  
2445 3rd Ave. South  
MS 32-151  
PO Box 34165  
Seattle, WA 98124-1165  
[gcnarver@seattleschools.org](mailto:gcnarver@seattleschools.org)

Notices may be delivered by email (with electronic confirmation of delivery), personal delivery, Federal Express or other overnight courier service, or United States mail postage prepaid with delivery confirmation. Notices shall be deemed received upon receipt, or attempted delivery to the address provided in this Section where delivery is not accepted, as follows: (i) date of personal delivery, (ii) first business day after the date of deposit with FedEx or overnight courier, or (iii) three (3) business days after deposit in U.S. mail. Each Party may change its representative and address for notice by providing written notice to the other Party as provided in this section.

## Interlocal Agreement

15.2 Project-Related Communications. As used in this Article 15, “Project Administrative Communications” means communications relating to design-review, conditions for Notice to Proceed, construction inspections and reviews, punch-list activities and any other matter designated to be carried out by the Project Representatives under this Interlocal Agreement. Project Administrative Communications may be made by email and may be made orally with follow-up confirmation in writing as soon as reasonably practicable.

## Article XVI

### General Terms and Conditions

16.1 Relationship of Parties. Notwithstanding the fact that SPS and the City are undertaking the Project as a joint action under RCW Chapter 39.34, the Parties do not intend to create a partnership or separate legal entity, rather they intend that their relationship be that of two independent public agencies, each reserving all rights not expressly addressed under this Interlocal Agreement. Neither Party shall have the right, power, or authority to: (i) direct the employees of the other Party; (ii) waive any right, grant any release, make any contract or other agreement, other than the Development Agreement, that binds the other Party; or (iii) assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party.

16.2 Entire Agreement. This Interlocal Agreement, including the exhibit listed in Section 2.4 and any document which by its reference forms a part hereof, constitutes the entire agreement between the Parties concerning the subject matter herein. If there is any conflict between an exhibit and the body of this Interlocal Agreement, the body of this Interlocal Agreement shall govern to the extent necessary to resolve the conflict.

16.3 Relationship to Development Agreement; Order of Precedence. It is the City’s intent that this Interlocal Agreement be interpreted consistent with the City’s and MSR’s rights and obligations under the Development Agreement and with SPS’s rights as a third-party beneficiary to the maximum extent possible. SPS acknowledges that the City has provided SPS the opportunity to review and provide input regarding the Development Agreement and both Parties intend to avoid conflicts. However, if there should be a conflict between this Interlocal Agreement and the Development Agreement, with respect to the rights and obligations of MSR and the City, the Development Agreement shall take precedence, and with respect to the rights and obligations between the City and SPS, this Interlocal Agreement shall take precedence, but in both cases, only to the extent necessary to resolve the conflict.

16.4 Amendments. This Interlocal Agreement may not be modified or amended, except by a written instrument executed by SPS and the City, which may be subject to additional approvals of the legislative bodies of SPS and the City.

16.5 Governing Law; Jurisdiction and Venue. This Interlocal Agreement is governed by and shall be construed in accordance with the laws of the State of Washington. Unless otherwise required by applicable law, jurisdiction and venue for any action under this Interlocal

## Interlocal Agreement

Agreement shall be in the Superior Court of the State of Washington for King County and each Party consents to such jurisdiction and venue by entering into this Interlocal Agreement.

16.6 Severability. If any part, provision, term or exhibit of this Interlocal Agreement is held to be invalid, unenforceable, or in conflict with any governmental restrictions, or is otherwise rendered unenforceable or ineffectual, the remainder of this Interlocal Agreement shall continue in effect and remain enforceable to the fullest extent permitted by law; provided, that upon such determination, the Parties will negotiate in good faith to modify this Interlocal Agreement so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Interlocal Agreement are fulfilled to the greatest extent possible.

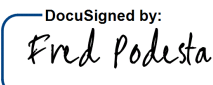
16.7 Time of the Essence. Time is of the essence of this Interlocal Agreement and all deadlines and covenants herein.

16.8 No Waiver. A Party's failure to complain or object to any act, omission or breach of this Interlocal Agreement by the other Party shall not be deemed a waiver of the express terms of this Interlocal Agreement, nor shall it operate to excuse a breach of any other provision of this Interlocal Agreement. If any action of any Party requires the consent or approval of another, consent or approval given on one occasion shall not be deemed a consent to or approval of that action on any other occasion. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

16.9 Interpretation. The captions and headings in this Interlocal Agreement are only for convenience and do not define, limit or describe the scope or intent of any of the provisions of this Interlocal Agreement.

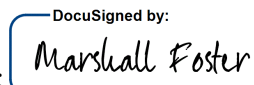
The Parties hereto have executed this Agreement by having their authorized representatives affix their respective signatures below.

SEATTLE SCHOOL DISTRICT NO. 1

By:    
DocuSigned by: 036D753D162A481...  
 Dr. Brent C. Jones Fred Podesta  
 Superintendent Chief Operations Officer  
 On behalf of the Superintendent.

Date: 6/13/2025

THE CITY OF SEATTLE

By:    
DocuSigned by: 0498A899BF1C4D6...  
 Marshall Foster  
 Seattle Center Director

Date: 6/24/2025

## Development Agreement

### DEVELOPMENT AGREEMENT

regarding

### MEMORIAL STADIUM

*NOTE: This draft does not bind any party until a complete agreement is approved by each party's governing body and fully signed.*

This Development Agreement regarding Memorial Stadium ("Agreement") is entered **[insert date]** ("Effective Date") by and between The City of Seattle, a first-class city of the State of Washington (the "City") and Memorial Stadium Redevelopment LLC, a Delaware limited liability company ("MSR"). The City and MSR are also referred to individually as "a Party" and collectively as "the Parties". As provided in Section 3.3.C below, Seattle School District No. 1 ("SPS") is a third-party beneficiary of this Agreement.

In consideration of the mutual obligations and promises herein, the City and MSR agree as follows:

#### RECITALS

- A. In 2016, the Seattle Center Foundation and representatives of the City and Seattle Public Schools convened a workshop attended by a wide group of community representatives that resulted in a report released in December 2016 and titled "Seattle Center: What's Next", which emphasized the need to "establish common ground between the City of Seattle and Seattle Public Schools" and noted a common interest to "connect Memorial Stadium with the rest of Seattle Center."
- B. Located adjacent to Memorial Stadium, the Memorial Wall designed by Garfield High School student Marianne Hanson was dedicated in 1951 to commemorate the lives of 762 students from Seattle Public Schools and King County schools who lost their lives in WWII and was designated a landmark by the Seattle Landmarks Preservation Board on October 4, 2023.
- C. Since the 2016 report, SPS and the City have continued to work and plan for a joint project to replace the existing Memorial Stadium, which efforts included a letter of intent between the SPS Superintendent and the Mayor on October 2021 that anticipated SPS's inclusion of Memorial Stadium in its upcoming Building, Technology & Academics/Athletics ("BTA V") levy.
- D. In February 2022, Seattle voters approved \$66.5 million in the BTA V levy for a basic student athletic facility to replace Memorial Stadium. As part of the City's 2025-26 biennial budget, the Seattle City Council allocated \$40 million for an enhanced Memorial Stadium project in the City's Capital Improvement Plan.

## Development Agreement

- E. On November 22, 2022, the SPS Superintendent and the Mayor entered a Memorandum of Agreement outlining their intention to jointly issue a request for proposals (“RFP”) seeking proposals from qualified parties to invest in and lead redeveloping, operating, and maintaining a new financially sustainable Memorial Stadium as a state-of-the art multi-purpose sports, educational, and entertainment stadium.
- F. The RFP was released in March 2023 through the City’s bidding platforms and was advertised in the Daily Journal of Commerce.
- G. SPS and the City convened an RFP evaluation panel (“RFP Panel”) with subject matter experts and community representatives to review and evaluate the proposals in response to the RFP and to provide recommendations regarding selection to the SPS Superintendent and Mayor for their final decision.
- H. One Roof Partnership (“One Roof”) submitted a proposal in response to the RFP, setting forth a vision for a student-centered community stadium, embodying the philosophy that “no one profits and everyone benefits.”
- I. Of the two proposals received and evaluated, the RFP Panel unanimously found that the proposal submitted by One Roof better met the shared goals and evaluation criteria of the City and SPS as established in the RFP.
- J. On June 15, 2023, the SPS Superintendent and the Mayor jointly provided notice of their determination that One Roof’s proposal better met the goals and interests of SPS and the City as described in the RFP and that One Roof was selected for further negotiation of the terms and conditions of a joint Memorial Stadium development project between SPS, the City, and One Roof.
- K. To execute its non-commercial vision, the One Roof team established a new entity, Memorial Stadium Redevelopment LLC (or, “MSR”), which is a partnership among One Roof Foundation, the Seattle Kraken, and Oak View Group, and MSR is committed to delivering a student- and community-focused stadium that is based on a not-for-profit model where MSR will receive no financial gain from the stadium’s operations.
- L. The City, SPS, and MSR have successfully negotiated the terms and conditions to jointly develop Memorial Stadium as a state-of-the-art venue of prominent design centered on students and youth and fully integrated with the Seattle Center campus.
- M. The new stadium will serve as SPS’s premier venue for interscholastic sports events, provide new public open space and campus connections, be welcoming to all, and offer unparalleled athletic, educational, cultural, entertainment, and community opportunities in the heart of Seattle for generations to come.
- N. Concurrent with the development of the new stadium and to facilitate permitting requirements, Seattle Public Utilities will have MSR complete a replacement and upgrade of a sanitary sewer main owned by Seattle Public Utilities (“SPU”) that is currently located within the Development Site.

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- O. The schedule for construction of the new stadium has been developed with the goal of managing the duration of SPS displacement from stadium use to a period of two football seasons and two graduation cycles.
- P. Concurrent with executing this Agreement, as authorized by RCW 39.34, the City and SPS are entering an interlocal agreement that establishes their respective roles and responsibilities with respect to jointly carrying out the design, construction, and operation of a new Memorial Stadium and associated Seattle Center improvements.
- Q. As provided under its interlocal agreement with SPS, the City is entering this Agreement with MSR on behalf of both the City and SPS to complete the development phase of the Memorial Stadium project and to establish the terms and conditions that will apply following completion to the operation, maintenance, and programming of Memorial Stadium and associated Seattle Center improvements.

## **ARTICLE I**

### **Term; Definitions; Exhibits**

#### **Section 1.1 Term.**

This Agreement shall be for a term (“Term”) that begins on the Effective Date and continues until Final Acceptance under Section 7.5, unless terminated earlier as provided under other provisions of this Agreement. Notwithstanding the foregoing, any provision of this Agreement which by its plain meaning survives the expiration of the Term, including but not limited to Sections 4.1, 4.2, 4.3, 4.8, 6.3, 8.4, and all sections within Article IX, X, and XIII, shall survive the termination or expiration of this Agreement.

#### **Section 1.2 Definitions.**

“ADA” is defined in Section 5.1.D.

“Affected Party” is defined in Section 13.7.A.

“Agreement” is defined in the initial paragraph. For clarity, this Agreement is not a development agreement for purposes of Chapter 36.70B of the Revised Code of Washington.

“ARC” is defined in Section 5.3.B.

“CFCs” is defined in Section 8.1.C.

“City” means The City of Seattle, a first-class city of the State of Washington.

“City Default Event” is defined in Section 13.3.

“City Design Standards” means the City design guidelines and requirements described in more detail in Section 5.1.C and Exhibit E.

“City Funding Commitment” is defined in Section 4.2.A.



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“**City Maximum Funding**” is defined in Section 4.2.A.

“**City Representative**” is defined in Section 3.4.

“**City Reserved Funding**” is defined in Section 4.2.A.

“**Commerce**” is defined in Section 3.1.E.

“**Commerce Grant Agreement**” is defined in Section 4.4.

“**Commerce Grant Funding**” is defined in Section 4.2.A.

“**Completion Bond**” is defined in Section 6.3.B.

“**Construction Bonds**” is defined in Section 6.3.A.

“**Construction Completion Guaranty**” is defined in Section 6.3.C.

“**Construction Contract**” means the contract between MSR and its Prime Contractor for construction of the Project.

“**Curbside MOA**” is defined in Section 6.6.

“**DD+ Design**” means the Memorial Stadium Design Development Plus Package, including materials specifications, prepared by Generator Studios and dated [*insert at time of signature*].

“**Defaulting Party**” is defined in Section 13.5.B.

“**Design Standards**” is defined in Section 5.1.A.

“**Development Site**” means the physical location for the permitting and development of the Project on property owned by SPS and the City. The Development Site is depicted on Exhibit A.

“**Director**” means the Director of the Seattle Center.

“**Donor Funds**” is defined in Section 3.1.E.

“**Effective Date**” means the date noted in the preamble so long as this Agreement is signed by both Parties.

“**Environmental and Geotechnical Due Diligence**” is defined in Section 8.1.A.

“**Environmental Law**” means any local, state or federal law, statute, regulation, code, decree, ordinance, or order addressing or regulating public health or safety, pollution, waste disposal, damage to or protection of the environment, as amended from time to time, including but not limited to the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.*, Federal Comprehensive Environmental Response, Compensation, and Liability Act

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of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act of 1980, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70A.15, Washington Hazardous Waste Management Act, RCW Chapter 70A.305, Washington Model Toxics Control Act, RCW Chapter 70A.305A, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70A.355, and any regulations promulgated thereunder from time to time.

**“Estimated Project Budget”** means the estimated budget for the Project attached as Exhibit B.

**“Excused Delay”** means a day-for-day delay of the Project resulting from the City’s or SPS’s failure timely to provide a review, approval, or written response as required under this Agreement.

**“Final Acceptance”** is the written acceptance of the Project as complete, which shall be provided by the Director when the Project has been completed in accordance with the Final Project Design and the requirements in Section 7.5.

**“Final Project Budget”** is defined in Section 2.3.A.

**“Final Project Design”** is defined in Section 5.2.E.

**“Final Project Schedule”** is defined in Section 2.4.

**“FM Dispute Notice”** is defined in Section 13.7.A.

**“FM Notice”** is defined in Section 13.7.A.

**“Force Majeure”** or **“Force Majeure Event”** means: (a) acts of God; (b) flood, fire, earthquake, explosion, or unusually severe weather; (c) epidemics or pandemics; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (e) government order, law, or action; (f) embargoes, tariffs, or blockades; (g) national or regional emergency as declared by governmental authority; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances that are not covered by the SCWA; (i) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials or equipment or utility services, which in each case is outside the reasonable control of MSR; (j) delay of any regulatory agency, including by City in its capacity as a regulatory authority; (k) any Latent Condition discovered on or affecting the Licensed Area or any portion thereof; (l) any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, that prevents the action that is being delayed or causes a delay to a Party’s disbursement of funds, whether brought by a third party, the City, or SPS, that challenges or appeals any of the permits or other approval, action or consent required to implement

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the Project; or (m) other events that prevent performance and are beyond the control of the Party claiming Force Majeure, provided in all cases above that the Affected Party has undertaken commercially reasonable efforts to mitigate such delay. The duration of a Force Majeure Event includes reasonable delays for adjustments of insurance as a result of the Force Majeure Event. Force Majeure Event shall include a failure of a contractor, subcontractor or vendor to furnish labor, services, materials or equipment in accordance with its contractual obligations, but solely to the extent such failure is itself a result of a Force Majeure Event of the type described in this definition.

**“GMP”** means guaranteed maximum price for construction of the Project as established by MSR’s contract with its Prime Contractor.

**“GMP Design”** is defined in Section 5.2.B.

**“Hazardous Building Materials”** is defined in Section 8.1.C.

**“Hazardous Substance(s)”** means any substance or material defined as a “hazardous substance” under RCW 70A.305.020(13) (as now in effect or hereafter amended, or any successor statute thereto), and any other materials, which are now or hereafter designated as hazardous substances or are now or hereafter regulated by Environmental Laws.

**“Hazardous Substances Plans”** is defined in Section 8.2.A.

**“Indemnitee”** is defined in Section 9.3.

**“Indemnitor”** is defined in Section 9.3.

**“Interlocal Agreement”** means that certain Interlocal Agreement regarding Memorial Stadium between SPS and the City dated on or about the same date as this Agreement.

**“Known Conditions”** is defined in Section 8.1.B.

**“Latent Condition(s)”** means (i) any Hazardous Substances beneath, within, impacting, or migrating to or migrating from the Licensed Area as of the Effective Date, whether known or unknown; (ii) any adverse geotechnical conditions beneath, within, or impacting the Licensed Area as of the Effective Date, whether known or unknown.

**“LEED”** is defined in Section 5.1.E.

**“Licensed Area”** means the Development Site and the Temporary Access Areas. The Licensed Area is depicted on Exhibit A.

**“Lien”** is defined in Section 7.3.

**“LPB”** is defined in Section 5.3.A.

**“Material Change”** is defined in Section 5.5.

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“**Milestone**” is defined in Section 5.2.B.

“**Minimum Scope**” is defined in Section 2.1.A.

“**Monthly Invoice**” is defined in Section 4.5.B.

“**MSR**” means Memorial Stadium Redevelopment LLC, a Delaware limited liability company.

“**MSR Default Event**” is defined in Section 13.1.

“**MSR Funding Amount**” is defined in Section 3.1.D.

“**MSR Principal**” is defined in Section 12.2.

“**MSR Proposed GMP Design**” is defined in Section 5.2.E.

“**MSR Representative**” is defined in Section 3.4.

“**New Memorial Stadium**” means the improvements constructed as part of the Project situated on land owned by SPS or with respect to which SPS has easement rights, which improvements are in existence after Substantial Completion, together with any additional improvements made thereto between Substantial Completion and Final Acceptance.

“**Non-Defaulting Party**” is defined in Section 13.5.B.

“**Notice to Proceed**” means written confirmation from the Director that each of the conditions precedent for commencement of demolition and construction in Section 6.2 below have been met or waived.

“**Notices**” is defined in Article XV.

“**Operating Agreement Terms**” is defined in Section 11.2.

“**PCBs**” is defined in Section 8.1.C.

“**PC-FAS**” means Purchasing and Contracting, a division of The City of Seattle Department of Finance and Administrative Services.

“**Perimeter Area**” means an open space area within the Development Site which includes both SPS property and City-owned easement areas as depicted on Exhibit A.

“**Physical Acceptance**” is defined in Section 7.1.B.b.

“**Prime Contractor**” is defined in Section 6.1.

“**Project**” means all design, permitting, demolition, site work, construction, testing, inspections, and commissioning necessary to complete a new Memorial Stadium and associated Seattle Center improvements. The Project is described in more detail in Section 2.1.

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**“Project Financial Records”** is defined in Section 4.8.A.

**“Project Representatives”** is defined in Section 3.4.

**“Public Records Act”** is defined in Section 3.1.E.

**“Punch List”** is defined in Section 7.1.B.a.

**“Punch List Correction”** is defined in Section 7.1.B.b.

**“Qualified Non-profit”** is defined in Section 3.1.D.

**“Records Delivery”** is defined in Section 4.8.A.

**“Remedial Work Plan”** is defined in Section 8.2.C.

**“RFP”** means the City and SPS joint Request for Proposals for Development Partner released March 20, 2023.

**“SCWA”** means the Seattle Public Schools Student and Community Workforce Agreement dated October 1, 2020, and amended June 30, 2021.

**“SDCI”** is defined in Section 5.7.B.

**“SDOT”** is defined in Section 6.6.

**“Seattle Center Construction Management Plan”** is defined in Section 6.4.

**“Sewer Replacement Price”** is defined in Section 4.2.C.

**“Sewer Replacement Work”** is defined in Section 2.1.A.b.

**“Sewer Replacement Remedial Work”** is defined in Section 8.2.D(3).

**“Shop/Warehouse Space”** is defined in Section 2.1A.a.

**“Shop/Warehouse Work”** is defined in Section 7.1.B.b.

**“Social Equity Records”** is defined in Section 4.8.A.

**“SOV”** is defined in Section 4.5.B.

**“SPS”** means Seattle Public School District No.1.

**“SPS COO”** means the SPS Chief Operations Officer.

**“SPS Design Standards”** is defined in Section 5.1.B.

**“SPS Principal”** is defined in Section 12.2.

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“**SPS Representative**” is defined in Section 3.3.B.

“**SPS Maximum Funding**” is defined in Section 4.1.

“**SPU**” means Seattle Public Utilities.

“**Substantial Completion**” means the stage in the Project construction when construction is sufficiently complete in accordance with the Final Project Design so that the New Memorial Stadium can be occupied or utilized for its intended use, as determined by issuance of a certificate of occupancy (whether temporary or permanent) covering all or substantially all of the New Memorial Stadium. For purposes of this definition, (i) “intended use” has the meaning ascribed by the International Building Code’s occupancy classifications and uses, and (ii) beneficial occupancy of the New Memorial Stadium does not include completion of the Shop/Warehouse Space fixtures, finishes, equipment, or work that is included in the Project but not necessary for a temporary or permanent certificate of occupancy.

“**Substantial Completion Date**” means the date established in the Final Project Schedule for achieving Substantial Completion.

“**Temporary Access Area**” means the area around portions of the Development Site in which temporary construction access is reasonably needed to construct the Project. The Temporary Access Area is depicted on Exhibit A, which area the Parties will adjust if reasonably necessary or convenient to implement regulatory or mitigation requirements.

“**Term**” is defined in Section 1.1.

“**WMBE**” is defined in Section 6.1.

### **Section 1.3 Exhibits**

The Exhibits listed in this Section 1.3 and referenced elsewhere in this Agreement are made a part of this Agreement:

Exhibit A	Licensed Area, Development Site, Temporary Access Area, and Perimeter Area
Exhibit B	Estimated Project Budget
Exhibit C	Project Schedule
Exhibit D	Estimated Cash Flow Schedule
Exhibit E	Seattle Center Design Requirements
Exhibit F	Social Equity Requirements
Exhibit G	SCWA Addendum
Exhibit H	MOA for Event Curbside Management
Exhibit I	Insurance Requirements
Exhibit J	Operating and Maintenance Agreement Term Sheet
Exhibit K	Building Envelope Monitor Responsibilities

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## ARTICLE II

### Project Information

#### Section 2.1 Project Description.

A. Minimum Scope. The minimum required scope (“Minimum Scope”) for the Project is: a new stadium with capacity of 8,000 attendees (with a seating capacity of 6,500 and an additional 1,500 attendees on the west berm seating and concourses and pavilions); four (4) approximately equal-sized locker rooms; stands covered on both sides; ticket booths; team training facilities; officials and coaches space; concessions areas; restrooms; Title IX compliant accommodations; first aid/guest services; synthetic turf playing field with cork infill and with sewn in striping at field perimeter only; restoration of Memorial Wall; press box/coaches booth; stadium storage; stadium lights; audio system; video system; security/admin; loading and staging area; improvements and plans for site circulation and access, including improvement of a pedestrian access route between Republican St. and Harrison St.; expanded open space; landscaping within the Development Site; and the Shop/Warehouse Space (as defined below).

a. City Shop and Warehouse Space. The Minimum Scope includes on-site space to house Seattle Center’s trade shops, event support, and building and grounds laborers as described in more detail in the Seattle Center Design Requirements in Section 5.1.C and Exhibit E (the “Shop/Warehouse Space”).

b. Sanitary Sewer Replacement. The Project shall include the replacement and upgrade of a sanitary sewer main owned by SPU that is currently located within the Development Site. MSR and City Representatives shall work with SPU to complete a mutually agreed-upon scope of work for replacement of the sanitary sewer main (“Sewer Replacement Work”). MSR shall cause its designer to complete the design of the Sewer Replacement Work in compliance with applicable provisions of the 2023 City of Seattle Standard Specifications and SPU design standards, as determined by SPU, and the Sewer Replacement Work design shall be reviewed and is subject to the City’s approval as part of the design review process under Section 5.2. SPU shall pay for the Sewer Replacement Work as further described in Section 4.2.C and shall bear any environmental and geotechnical risks and associated costs of the Sewer Replacement Work and any Sewer Replacement Remedial Work not covered by indemnification as further described in Article VIII and Article IX.

B. Approved DD+ Design. Prior to or upon signature of this Agreement, SPS, the City, and MSR have approved the DD+ Design and determined it is consistent with the Minimum Scope for the Project and meets the Design Standards at the applicable design stage. The DD+ Design will be further developed into the Final Project Design through the design process described in Article V.

#### Section 2.2 Licensed Area and Temporary Access Rights.

##### A. Licensed Area.

a. Between the Effective Date and the date when the Director issues Notice to Proceed, the City and SPS (by way of the Interlocal Agreement) respectively grant MSR and its

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employees, agents, representatives, contractors, and licensees the right and license to access the SPS-owned and -controlled portions of the Development Site and SPS parking lot and the City-owned and -controlled portions of the Development Site and Seattle Center campus for Project-related investigations and pre-construction activities, as may be reasonably requested by MSR to fulfill its obligations under this Agreement. MSR shall coordinate directly with the SPS Representative for access to SPS-controlled portions of the Development Site.

b. Effective upon Notice to Proceed, which is targeted to be issued on or before July 1, 2025, and continuing until the end of the Term of this Agreement, the City, and SPS (by way of the Interlocal Agreement), grant MSR and its employees, agents, representatives, contractors, and licensees (a) the exclusive right and license to use the Development Site, and (b) a nonexclusive right and license to use the Temporary Access Area for reasonable ingress and egress to and from the Development Site. From and after the date of Notice to Proceed, MSR shall have unrestricted access to and control of the Development Site solely for the purpose of carrying out the Project activities, subject to the Seattle Center Construction Management Plan developed under Section 6.4. MSR shall conduct all Project sitework, staging, loading, and construction activities within the boundaries of the Development Site, excepting only work in the right of way completed under regulatory permit and use of the Temporary Access Areas for access.

B. Access Rights. If MSR requires any temporary use of portions of Seattle Center campus outside the Licensed Area for access to the Development Site, utility work, or other Project activities, the use must be authorized in writing either (i) by the City Representative, on specific request; or (ii) as provided in the Seattle Center Construction Management Plan developed under Section 6.4.

### **Section 2.3 Project Budget.**

A. Project Budget. The current Estimated Project Budget is set forth in more detail in Exhibit B. As the design develops, the Estimated Project Budget remains subject to change. At the time of each Milestone delivery under Section 5.2, MSR shall provide material updates to the Estimated Project Budget (if applicable) as part of the design review process. At the time for verification of funding under Section 3.1.E, MSR shall provide a proposed final budget for the Director's review and written approval based upon the following criteria: alignment with the Project funding, inclusion of a construction contingency, and alignment with the Final Project Design. The budget approved by the Director as part of the verification of secured funding under Section 3.1.E shall be the "Final Project Budget".

B. Cap on SPS and City Funding; Contingencies. MSR acknowledges that the SPS and City funding for the Project as described in Article IV is capped and inclusive of all Project costs and that SPS and the City are not dedicating separate Project contingency funds. This cap on SPS and City funding is reflected in the contingencies in the Estimated Project Budget.

**Section 2.4 Project Schedule.** The current Project Schedule is attached as Exhibit C. MSR shall provide the City Representative and SPS Representative an updated Project Schedule with each Milestone delivery under Section 5.2. After achieving GMP Design and prior to Notice to Proceed, an updated Project Schedule shall be provided by MSR to the Director for the



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Director's written approval, and such approval shall not be unreasonably withheld, conditioned, or delayed. Such Project Schedule, once approved, shall be the "Final Project Schedule".

### **ARTICLE III General Project Roles and Responsibilities**

#### **Section 3.1 MSR Roles and Responsibilities.**

A. Permitting. MSR shall be responsible for obtaining and maintaining in effect all building permits, licenses, and other governmental approvals required for MSR to execute its obligations in connection with the Project work, except the Memorial Wall landmarks approvals, which shall be managed as described in Section 5.3.

B. Design. At its cost, MSR shall engage architects, engineers, and design professionals with experience and expertise necessary to design the Project consistent with the Design Standards. MSR shall manage and coordinate all design work and shall provide the City Representative and SPS Representative with design documents and additional information appropriate to achieve the design review approvals required under Section 5.2.

C. Construction. Through a competitive selection process, MSR engaged a general contractor with the expertise and experience necessary to successfully complete the Project in compliance with this Agreement. MSR shall manage its construction contracts and cause all Project work to be completed in a professional and skilled manner in compliance with: (i) the Final Project Design, (ii) permits and governmental approvals, (iii) all manufacturer's specifications and instructions applicable to building materials and products, and (iv) all additional terms of this Agreement applicable to construction of the Project.

D. Fundraising. MSR shall be responsible for conducting a fundraising campaign to secure binding commitments for a minimum of \$28.95 Million (the "MSR Funding Amount") from sources other than SPS and the City, including but not limited to, private individuals, corporations, foundations, and charitable organizations as needed to meet MSR's funding obligations under Section 4.3. Donor funds received have been or shall be deposited with the Seattle Center Foundation. MSR may deposit donor funds with another 501(c)(3) organization ("Qualified Non-profit") that agrees to steward these funds under restrictions to disburse the deposited funds first for the Project expenses, with any excess for operations and programs at the New Memorial Stadium, as described further in Section 3.1.E. Before depositing donor funds with a Qualified Non-profit, MSR shall provide the Director written notice confirming the Qualified Non-profit will meet the requirements set forth in the preceding sentence. MSR has provided the City a plan that outlines MSR's donor commitments to date and MSR's plan to meet additional funding requirements (as needed to reach the MSR Funding Amount) before Notice to Proceed.

E. Verification of Secured Funding. As a condition precedent to the Director's issuance of Notice to Proceed, MSR and the Director, or the Director's designee, shall complete verification of secured funding as described in this Section. After or concurrent with completion of the proposed or approved GMP Design, MSR shall provide the Director the following: (a) a proposed Final Project Budget, (b) the balance of the Seattle Center Foundation's donor account (or balance held by a Qualified Non-profit), and (c) for any donor funds committed but not yet

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deposited, information regarding the scheduled availability of donor funding as MSR projects to be needed during construction of the Project pursuant to the Estimated Cash Flow Schedule in Exhibit D. The total amount of the donor funds deposited and committed (“Donor Funds”) must be no less than the MSR Funding Amount, and when added to the SPS Maximum Funding and the City Maximum Funding (less the City Reserved Funding), the total must be no less than MSR’s proposed Final Project Budget. After MSR has provided the foregoing information, MSR and the Director (or designee) shall meet within no more than ten (10) calendar days (SPS COO to be invited to such meeting) to review and demonstrate to the Director that the MSR Funding Amount is secured. As used in this Section 3.1.E, “secured” means (w) a minimum of fifty percent (50%) of the MSR Funding Amount is deposited with the Seattle Center Foundation, or, if applicable, a Qualified Non-profit, (x) twenty-five percent (25%) of the MSR Funding Amount is committed, under the pledge commitment approved by the Director, with funds to be transferred within three (3) months after Notice to Proceed and prior to any demolition of the existing stadium, (y) for the remaining twenty-five percent (25%) of the MSR Funding Amount, the Seattle Center Foundation, or, if applicable, the Qualified Non-profit, has been provided with pledge commitments, on the templates that have been approved by the Director, demonstrating the donor’s commitment of funds to the Project, and (z) all funds held by the Seattle Center Foundation, or, if applicable, a Qualified Non-profit, shall be deposited in an assigned savings account whereby such funds would be directly available at the request of and for the benefit of the City and SPS for use to complete the Project in the event of termination of this Agreement following an MSR Default Event. Provided that MSR meets the requirements for secured funding set forth in this Section 3.1.E, the Director shall confirm in writing that the condition precedent has been satisfied. In addition, MSR shall provide written confirmation of donor commitments to the City sufficient for the City to satisfy the Washington State Department of Commerce’s (“Commerce”) grant requirements under Section 4.4. MSR’s donor pledges will be reviewed by the Director under procedures to protect the confidentiality of donor and donor-related information except to the extent disclosure is required to comply with the Public Records Act, Chapter 42.56 RCW (the “Public Records Act”). The MSR Funding shall be used solely for Project or New Memorial Stadium expenses. The MSR Funding shall be applied first for Project-related expenses with any excess funds being available for capital or operating expenses for the New Memorial Stadium.

F. Project Management. MSR shall provide all project management services and activities necessary to fulfill its obligations with respect to Project permitting, Final Project Design, and achieving Final Acceptance.

### **Section 3.2 City Roles and Responsibilities.**

A. Coordinate SPS Review and Approvals. As authorized by the Interlocal Agreement, the City shall manage and administer this Agreement for the benefit of SPS and the City. The City shall use good faith efforts to cause SPS to complete its reviews in the required timelines specified under this Agreement and the Interlocal Agreement and shall use good faith efforts to require that SPS approvals are granted, or objections provided, consistent with the standards provided under this Agreement. As required by the Interlocal Agreement, the Director and the City Representative will coordinate with the SPS COO and the SPS Representative regarding the development and approval of all items requiring Director approval under this Agreement. The Director and City Representative shall act consistently with their obligations under the Interlocal Agreement and, if and when required under the Interlocal Agreement, shall secure

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the review and approval of the applicable SPS Representative or SPS COO prior to delivering Director or City Representative approvals required by this Agreement. The MSR Representative shall keep the City Representative informed about MSR's anticipated schedule for requesting reviews and approvals and shall give the City Representative as much advance notice as is reasonable or possible under the circumstances before submitting documents, plans, and other materials for review and approval.

B. Coordinate with MSR on Permitting. The City shall form an interdepartmental team of representatives from City departments that are essential to completion of the Project under this Agreement for the purpose of efficient and effective communication in support of the Project. The interdepartmental team shall function purely in an advisory role and to facilitate communications. The interdepartmental team shall not be authorized to perform regulatory functions for the City and shall in no manner be deemed to limit, fulfill, or modify any regulatory requirements or in any way bind the City in its regulatory capacity.

C. Administer Payment Process on Behalf of SPS and City. The City shall coordinate with SPS to administer the disbursement of City and SPS funding and the SPU Funding according to the payment procedures provided under Section 4.5.

D. Administer Social Equity Requirements and SCWA. During the course of construction, the City will monitor compliance with the Social Equity Requirements under Section 6.5 and will administer the SCWA.

E. Environmental Review. The City, in its regulatory capacity, shall serve as lead agency for environmental review, as described in Section 5.7.

### **Section 3.3 SPS Approvals; SPS Representative; SPS as Third-Party Beneficiary.**

A. SPS Approvals. The City and MSR acknowledge and agree that while the Interlocal Agreement designates the City as the contracting party for the development of the Project, both Parties enter this Development Agreement with reference to SPS's and the City's joint interests in the Project. MSR has had the opportunity to review the Interlocal Agreement and understands that certain approvals of the Director or City Representative required under this Agreement are conditioned upon the SPS Representative or SPS COO's prior written approval as outlined in the Interlocal Agreement or as referenced in this Agreement. Provided that the City and Director have used best efforts to cause SPS to (i) carry out its reviews in the time required under the Interlocal Agreement and (ii) grant approvals based on the standards set out in this Agreement and incorporated by reference into the Interlocal Agreement, the City shall not be in breach of this Agreement solely by virtue of SPS's failure to carry out reviews or approvals in the time and manner required. Notwithstanding the foregoing, the actions, inactions, or delays of the City or SPS may (xx) constitute an Excused Delay or (yy) cause a City Default Event and give rise to MSR remedies as provided in Article XIII of this Agreement.

B. SPS Project Representative. MSR acknowledges that SPS has designated an individual to manage SPS's interests throughout design, demolition and construction ("SPS Representative"). MSR shall (i) invite the SPS Representative to any design team meetings under Section 5.2, (ii) invite the SPS Representative to Project meetings under Section 6.7.A, (iii) provide

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the SPS Representative with any Project design or construction-related reports or updates MSR is required to provide to the City under this Agreement, and (iv) invite the SPS Representative or its designee to any joint inspections. MSR shall not be responsible for ensuring the attendance of the SPS Representative at any Project meetings or inspections. Without limiting the generality of the foregoing, MSR shall not have the obligation to coordinate Project meetings or inspections around the availability of the SPS Representative. MSR shall not have any obligation to generate any specific reports or updates about meetings for the SPS Representative, only to distribute meeting notes and reports otherwise required to be generated.

C. SPS as Third-Party Beneficiary. The City shall make best efforts to carry out its rights and obligations under this Agreement in a manner that is coordinated and unified with SPS's and the City's interests, rights, and obligations as provided under the Interlocal Agreement; however, it is understood and agreed by MSR and the City that SPS is an intended third-party beneficiary under this Agreement with the ability and right to independently enforce the following terms of this Agreement: (i) provision of the Construction Bonds and Completion Bond; (ii) MSR's Completion Guaranty under Section 6.3.C; (iii) MSR's obligations with respect to the Project under Article VII; (iv) MSR's obligations regarding Hazardous Substances under Article VIII; (v) MSR's defense and indemnification obligation with respect to SPS under Article IX; and (vi) Article XIII. The City shall have no liability to MSR for any claim or action brought by SPS as a third-party beneficiary. If SPS exercises any of its third-party beneficiary rights under this Agreement, MSR shall have the right to assert directly against SPS any defense, counter-claim, default, claim for damage or any other right or remedy that MSR could assert if the City were exercising the rights exercised by SPS as a third-party beneficiary.

### **Section 3.4 Project Representatives; Key Personnel.**

Each Party shall appoint a primary representative to coordinate Project-related approvals, to efficiently administer roles and responsibilities under this Agreement, to provide day-to-day operational approvals and consents, and to ensure effective communication about the Project. MSR shall appoint the "MSR Representative" and the City shall appoint the "City Representative". The MSR Representative and the City Representative are jointly referred to in this Agreement as the "Project Representatives". MSR and the City shall each delegate to their respective Project Representative the authority to communicate the decisions with respect to all Project approvals and Project-related decisions to be made by a Project Representative as provided in this Agreement, except in cases where such consents or approvals are expressly designated for the Director or MSR Principal. Within five (5) business days of the Effective Date, MSR and the City shall exchange the name, email address, and business and emergency phone telephone numbers of the Project Representatives and shall at all times during the Project keep the contact information current. If either Project Representative will be unavailable for more than twenty-four hours, a substitute representative must be appointed, and the other Project Representative must be notified (text or email notification is acceptable) of the substitute representative's contact information. Notwithstanding the appointment of the City Representative, neither the City, the City Representative, nor the Director shall have authority to provide direction to MSR's contractor(s), with the exceptions of (i) direction and communications given by PC-FAS, with respect to administering the Social Equity Requirements and SCWA, (ii) any City regulatory department acting in its regulatory capacity, and (iii) the City's proper exercise of remedies in the event of an MSR Default Event in accordance with Section 13.2.

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## ARTICLE IV Project Funding

**Section 4.1 SPS Funding Commitment.** Through the Interlocal Agreement, SPS commits \$66.5 Million of SPS levy funding and \$2.8 Million in additional funding from the SPS capital budget to be disbursed to MSR for the Project (“SPS Maximum Funding”). The SPS Maximum Funding shall be disbursed to MSR on the terms described under Section 4.5 and consistent with the following availability schedule:

2025	\$16,000,000
2026	\$34,000,000
2027	\$19,300,000

**Section 4.2 City Funding Commitment.**

A. **City Maximum Funding.** The City’s adopted Capital Improvement Program for 2024 through 2029 includes a total of \$40 Million in City funding for the Project (“City Funding Commitment”). Additionally, the City has secured grant funds for the Project from Commerce in a total amount of \$3.95 Million (“Commerce Grant Funding”), bringing the total amount of City funding for the Project to \$43.95 Million (“City Maximum Funding”). The City shall provide the City Maximum Funding for the Project, provided that up to \$3 Million of the City Funding Commitment shall be reserved by the City for its costs and expenses related to the Project and typically included by the City in funding of capital projects (“City Reserved Funding”), including but not limited to out-of-pocket hard and soft costs, staff costs attributed to the Project, and the City’s 1% for Art program.

B. **Timing of City Funding.** The City Funding Commitment, less the City Reserved Funding, shall be disbursed to MSR for the Project on the terms described in Section 4.5 and will be available for disbursement on the following schedule:

\$9 Million in 2025.

\$28 Million in 2026-2027.

\$2 Million of the City’s Reserved Funding was reserved prior to the Effective Date, and the balance of \$1 Million of the City’s Reserved Funding will be reserved from the 2026 and 2027 amounts in a manner that does not conflict with the Estimated Cash Flow Schedule in Exhibit D. The City shall make the Commerce Grant Funding available to MSR for the Project on the timing and subject to the conditions under Section 4.4.

C. **SPU Sewer Replacement Funding.** The MSR and City Representatives shall work with SPU’s designated personnel to develop a price (“Sewer Replacement Price”) for design and construction of the Sewer Replacement Work. The Sewer Replacement Price must be confirmed in writing by the City and MSR and shall be a not-to-exceed amount unless otherwise approved in writing by SPU. The Sewer Replacement Price shall include the following (i) architectural and engineering, supplier, and contractor costs that are directly attributable to the Sewer Replacement Work, without mark-up by MSR, and (ii) the additional general conditions and overhead costs that are solely attributable to the time added to the Project Schedule as a result of

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the Sewer Replacement Work. The City shall disburse funding for the actual cost of the Sewer Replacement Work using the process under Section 4.5.B, up to the amount of the Sewer Replacement Price. If MSR, SPU, and the City determine it to be in the best interest of the Project, the City may procure some materials or elements of the Sewer Replacement Work.

**Section 4.3 MSR Funding Commitment; Public Funding Capped.** MSR shall obtain and commit to the Project no less than the MSR Funding Amount and shall provide the funds necessary to construct the Final Project Design that exceed the sum of (i) the SPS Maximum Funding and (ii) the City Maximum Funding (less the City Reserved Funding), regardless of whether such amount exceeds the MSR Funding Amount. MSR shall disburse the MSR Funding Amount to the Project as needed to meet Project expenses and consistent with the Estimated Cash Flow Schedule in Exhibit D. MSR shall not be responsible for any costs or expenses associated with or caused by any discretionary changes to the Final Project Design that are requested by the City or SPS, unless a change is required by the City in its regulatory capacity or is requested as the result of a design or construction error made by MSR, its architects or contractors. MSR shall have the sole right and responsibility to manage the cost and expenses required to construct the Final Project Design, including through selection of the means and methods of construction, value engineering, and other similar cost management strategies, provided that MSR's cost management strategies do not result in MSR's breach of any MSR requirement or obligation under this Agreement, reduce delivery of the Minimum Scope, or result in a Material Change to the Final Project Design (defined in Section 5.5 below).

**Section 4.4 Conditions Applicable to Commerce Grant Funding.** The City has been awarded grant funding from Commerce. The City shall bear the obligations and costs of grant compliance documentation and reporting for the Project. MSR agrees to provide such documents as may be requested by the City for such compliance purposes, subject to the confidentiality protections set forth in Section 3.1.E. The disbursement of the \$3,950,000 of Commerce Grant Funding is conditioned on (i) Commerce finding that the Project meets the requirements for the grant, including without limitation sufficient written evidence of site control, project budget, and proof of financing, and (ii) the City's or its designee's execution of an agreement with Commerce for the Commerce Grant Funding ("Commerce Grant Agreement"). After execution of the Commerce Grant Agreement, payment of the Commerce Grant Funding will be made on a reimbursement basis according to the terms and conditions set forth in the Commerce Grant Agreement. To the extent compliance with the Commerce Grant Agreement may conflict with the terms and conditions of this Agreement, and if required by Commerce, the Parties shall execute a mutually-agreed addendum to this Agreement to address any such conflict.

## **Section 4.5 Time and Manner of Public Funding Payments.**

A. **Payments During Design and Preconstruction.** The City and SPS will make up to \$10.1 Million available to pay for Project costs associated with permitting and design in the amount reflected on invoices substantiated with supporting documentation. MSR will provide an updated cash flow schedule upon or before issuance of Notice to Proceed and payment will be disbursed at the time shown in the estimated cash flow schedule, with the City and SPS each paying to MSR a proportionate share of the requested amount that reflects the funding split between the City and SPS in the cash flow schedule.

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B. Payments During Construction. MSR shall submit monthly invoices to the City and SPS for disbursement of the public funds and SPS and the City shall each disburse to MSR their respective funds, all in accordance with the process set forth in this section. By the 25<sup>th</sup> of each month, MSR (or the Prime Contractor on its behalf) shall prepare and provide to the City Representative and the SPS Representative a draft pay application, including a detailed Schedule of Values (“SOV”) and an updated Project Schedule. Such pay application shall include pay applications and SOV details of the Prime Contractor and all subcontractors. On or around the 25<sup>th</sup> of each month, after the City Representative and the SPS Representative have received the draft pay application, MSR (or the Prime Contractor on its behalf) shall conduct a job walk-through with the City Representative and the SPS Representative to review the draft pay application against actual construction progress and the Project Schedule. Within three (3) business days of such walk-through, the City Representative shall identify any changes it proposes should be made prior to final pay application submittal. MSR may contest such changes in accordance with the dispute resolution processes of Article XII. By the 1<sup>st</sup> of each month, MSR (or the Prime Contractor on its behalf) shall provide a final pay application with a signed and notarized AIA G702 coversheet together with any waivers or affidavits required by AIA G702 and MSR shall itemize that month’s associated soft costs and produce for the City Representative and the SPS Representative a cover sheet detailing the total monthly payment amount due, inclusive of both hard (per the final pay application) and soft costs, together with supporting documentation of such soft costs (the “Monthly Invoice”). Accompanying each Monthly Invoice, MSR shall provide the City and SPS a complete package of invoices from the Prime Contractor, the architect, and others providing materials to or performing services for the Project, which invoices shall have been approved by the Prime Contractor, the architect, and MSR. Each Monthly Invoice shall request payment on or prior to the 15<sup>th</sup> of the month or the second Wednesday of the month, whichever falls later and, on or before the requested date for payment, the City and SPS shall each pay to MSR a proportionate share of the requested payment that reflects the funding split between the City and SPS in the cash flow schedule for the applicable month. MSR shall cause the Prime Contractor and all subcontractors to provide certified payroll reports to the State Department of Labor and Industries and the Prime Contractor to submit monthly subcontractor payment reports electronically through B2Gnow. By the 1<sup>st</sup> of the month following any disbursement payment, MSR (or the Prime Contractor on its behalf) shall submit an accounting substantiating actual costs versus invoiced amounts. Adjustments to the next month’s pay application shall be made to address any over or under billing as compared to actual costs to-date.

C. Retainage. MSR shall satisfy RCW Chapter 60.28 retainage requirements through a retainage bond provided by its Prime Contractor equal to five percent (5%) of the amount of the prime contract. The bond shall be on a form acceptable to the Director and issued by a surety that: (i) is authorized by the Washington State Insurance Commissioner to transact business as a surety in the State of Washington and (ii) either appears on the United States Treasury Department’s most current list (Circular 570 as amended or superseded) or has a current rating of at least A-:VII in A. M. Best’s Key Rating Guide.

**Section 4.6 Taxes, Permit Fees.** MSR shall be responsible for payment of all sales tax, permit fees, and regulatory costs of any kind resulting from the fulfillment of its obligations under this Agreement, provided that such costs may be reimbursed or paid indirectly through funding

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disbursements from the City and SPS, subject to the City Maximum Funding and the SPS Maximum Funding caps.

**Section 4.7 Limitation on Use of City and SPS Funds.** Notwithstanding any other provision of this Agreement except for the express terms of Section 10.2, neither the City Maximum Funding, Commerce Funding, SPU Funding, nor the SPS Maximum Funding amounts shall be used for the following: any purpose unrelated to the Project, MSR's general or central overhead costs, MSR's staff costs, costs related to other projects or master planning, MSR's fundraising activities, general accounting as between MSR and its affiliates, lobbying of any government agency or elected body, or in-kind project-related services provided by a donor.

## **Section 4.8 Books and Records; Audit Rights; Public Records and Proprietary Records.**

A. **Books and Records.** MSR shall record and maintain in accordance with generally accepted accounting practices true, separate, accurate, and auditable books, records and systems of account detailing all Project funding, expenses, and the application of City and SPS funds disbursed under this Agreement ("Project Financial Records"). Additionally, MSR shall keep and maintain accurate records specified in the Social Equity Requirements attached as Exhibit F ("Social Equity Records"). Within sixty (60) days of Final Acceptance of the Project, MSR shall deliver all of the Project Financial Records, Social Equity Records, and other MSR Project-related records in an electronically compatible format to SPS (the "Records Delivery"). After the Records Delivery, SPS shall maintain the Project Financial Records and Social Equity Records in a location accessible to the City in King County for a minimum of six years following the Final Acceptance of the Project.

B. **Audit Rights.** In addition to any audits provided for by applicable law and to the extent required prior to the Records Delivery, MSR shall make available (i) the Project Financial Records and Social Equity Records upon request of the City or SPS for purposes of verifying that the City and SPS funds were applied by MSR in compliance with this Agreement, or for purposes of dispute resolution; and (ii) the Project Financial Records upon request of the State Auditor or other agency to perform audits required by applicable laws. Prior to the Records Delivery, MSR shall permit the City and SPS, as applicable, to make copies of any records maintained pursuant to the requirements of this Agreement. If any audit determines that any City or SPS funds were used for purposes not allowed under this Agreement, including but not limited to application of City or SPS funds to costs reimbursed through other sources, then within thirty (30) days of the audit determination MSR shall reimburse the City or SPS or both, as applicable, the full amount of the disallowed cost together with the cost incurred by the auditing party in connection with the audit, subject to the dispute resolution provisions of this Agreement.

C. **Public Records and Exemptions.** Under the Public Records Act, written materials prepared, owned, used, or retained by the City or SPS regardless of physical form or characteristics, are considered public records. These records include, but are not limited to, documents created for or provided to a public entity under a contract. The Public Records Act requires that, upon a request for public records pursuant to the Act, public agencies must disclose the public records unless the Public Records Act or another Washington State statute exempts the



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records from disclosure. Exemptions are codified by statute, including the Public Records Act and RCW 19.108.

If the City or SPS receives a public disclosure request for any public records or parts of public records that MSR has identified as confidential or exempt at the time of providing them to the City or SPS, the City (or SPS as provided under the Interlocal Agreement) will promptly notify MSR in writing of the request. While it is not a legal obligation, the City (or SPS pursuant to the terms of the Interlocal Agreement), as applicable, as a courtesy, will delay release of the records for up to ten (10) business days to allow MSR to obtain and serve the City or SPS with a court injunction to prevent the City or SPS from releasing the records (reference RCW 42.56.540).

Additionally, to the extent that MSR is determined to maintain records which are deemed public records and are needed for the City or SPS to respond to a request under the Act, as determined by the City or SPS, then within ten (10) business days, MSR will either (i) make the records available to the City or SPS, or (ii) provide the City or SPS with a written notice citing a specific exemption applicable to the records and thereafter promptly seek a court order preventing release of the records. If MSR needs more than ten (10) business days to locate and assemble the information requested, then MSR shall so inform the City or SPS within five (5) business days of receipt of the request, provide the City or SPS with a reasonable estimate of the additional time required to produce the responsive records, and make the records available to the City or SPS within that additional time period.

Neither the City nor SPS is obligated to assert an exemption under the Public Records Act on MSR's behalf. It is MSR's obligation to obtain a court order and serve the City or SPS within ten (10) business days, and if MSR fails to do so, neither the City nor SPS shall have any obligation or liability to MSR if the records are disclosed.

D. Survival of Obligation. The requirements under Section 4.8 shall survive the termination of this Agreement until the expiration of the document retention period under Subsection 4.8.A.

## **ARTICLE V**

### **Design and Permitting**

#### **Section 5.1 Project Design Standards.**

A. General Requirement for Design. MSR shall cause the design of the Project to be completed in accordance with the standards described or referenced in this Section 5.1 (the "Design Standards"). All design reviews, comments, and approvals required by SPS and the City shall be made with reference to these Design Standards and the Minimum Scope.

B. SPS Design Standards. The Final Project Design shall incorporate all applicable SPS Design Principles and Technical Standards relevant to stadium design and the SPS/WIAA Requirements, subject to such exceptions as the SPS Representative may agree to (which shall be documented in the applicable meeting minutes or approval process) in the course of their participation in design review meetings and Milestone reviews and approvals pursuant to Section 5.2. MSR has provided the SPS Design Principles included in the RFP and SPS Technical

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Standards (version 2023) and all SPS/WIAA Requirements included in the RFP (collectively, the “SPS Design Standards”) to the Project design team so that the team is guided by them during the design process for compliance. The Project shall be designed with the objective of bringing student athletics, arts and culture together to a common and central place as a training ground for careers in arts, performing arts, science, culinary arts, sports, journalism and sports management, among others.

C. City Design Standards. The Final Project Design shall be consistent with the Seattle Center Design Requirements described in Exhibit E, subject to exceptions the City Representative may agree to during design review and approvals (which shall be documented in the applicable meeting minutes or approval process). The Final Project Design must include site circulation and access that maintains or improves pedestrian access connecting Republican St. and Harrison St. within the Development Site. The design shall include open space reasonably accessible to the public.

D. Legal Requirements; ADA Requirements. The Final Project Design shall comply with all applicable laws, building codes, permit and regulatory requirements, including but not limited to the requirements of the Americans with Disabilities Act (“ADA”) as amended (42 U.S.C. 12101 et seq.), including ADA-related governmental regulations, standards, and guidelines. In cases where Title II of the ADA and the 2010 ADA Standards for Accessible Design differ from building codes and other regulations, MSR shall strive to comply with the standard that provides the highest degree of access to individuals with disabilities, but in any case shall comply with Title II of the ADA.

E. Sustainability. The Final Project Design must include all-electric facilities and comply with (i) the City of Seattle’s Sustainable Building Policy, which can be found at: <http://www.seattle.gov/environment/buildings-and-energy/cityfacilities/sustainable-buildings-and-sites>, and (ii) the One Seattle Tree Plan (Executive Order 2023-03). MSR shall use good faith efforts to cause the Project to meet a Leadership in Energy and Environmental Design (“LEED”) Gold rating, but in any case shall cause the Project to meet a LEED Silver rating, each as in effect as of the date of permit intake.

F. Artwork. The City will directly lead the planning and will administer the City’s 1% for Art artwork installation program using 1% of the City’s Funding, which will be funded through the City Reserved Funding. The City, MSR, and SPS will jointly determine the location and siting for the artwork to be included within the Seattle Center campus and in reasonable proximity to the Stadium, or potentially in or near the Perimeter Area. MSR shall have no obligations regarding the artwork installation program, provided that, (i) at the City’s timely request, (ii) at the City’s sole cost and expense, and (iii) upon the City’s provision of all artwork design documents and campus coordination requested by MSR, MSR may (in its discretion) construct some or all of the infrastructure (e.g., foundations, electrical connections, remote lighting) for the artwork located on the Licensed Area. The City shall have the right to construct artwork infrastructure within the Licensed Area if MSR does not complete the installation, however, the parties agree that all such work shall be outside of the scope of work required to achieve Substantial Completion, regardless of whether it is included in Final Project Design or other MSR deliverables.

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G. Signage. Signage shall be included in the Milestone reviews under Section 5.2. The Final Project Design shall include the design for all prominent exterior signage.

### **Section 5.2 Design Review Process; Final Project Design.**

A. Design Team Meetings. The Parties acknowledge that it is in their mutual interest to facilitate a coordinated and efficient design review process that will facilitate the Project Schedule and a Final Project Design acceptable to SPS, the City, and MSR. In furtherance of this shared interest and pursuant to Section 3.3.B (as relates to the SPS Representative), MSR shall invite and allow the SPS Representative and the City Representative to attend all MSR-scheduled design meetings with MSR's Project design team. SPS and the City may participate in discussions and represent the SPS and City's position with respect to the design's conformance to the Design Standards and Minimum Scope. Notwithstanding their participation in design team meetings, neither the City Representative nor the SPS Representative shall have the authority to give direction to MSR's designers. The City's and SPS's participation in design team meetings shall not waive or limit their right to provide or withhold Milestone approvals on the terms provided.

B. Milestone Reviews. In addition to regulatory reviews, the for-construction design documents (including plans and specifications) shall be subject to review and approval by the SPS Representative and the City Representative at the following milestones: (i) design development "plus," i.e., design development documents including materials proposals ("DD+ Design"), and (ii) construction documents conformed and reconciled to the guaranteed maximum price ("GMP Design"), and (iii) for-construction documents (each a "Milestone"), together with documents submitted for permitting for each Milestone if applicable.

C. Milestone Review Timing and Process. MSR shall provide the SPS Representative and City Representative as much advance notice as possible under the circumstances of each upcoming Milestone review. For each Milestone review, MSR shall deliver to the City Representative and the SPS Representative electronic (in AutoCAD, scalable PDF format, or similar electronic format) plans and specifications and corresponding reconciled construction cost estimates with each Milestone design package deliverable, together with a description of all Material Changes, if any, that are inconsistent with the prior (if any) Milestone package. Following MSR's delivery of the applicable Milestone design documents, then within 10 business days, the City Representative shall either (i) accept in writing the Milestone review package or (ii) provide in writing to MSR comments specifying the Milestone's failure to comply with the Minimum Scope, the Design Standards (subject to such exceptions as may have been agreed to in writing pursuant to Section 5.1.B and 5.1.C), and/or the DD+ Design. If the City Representative provides objections to the Milestone package, MSR may either incorporate revisions to address the objections or use the dispute resolution procedure described in Article XII. MSR shall not be required to modify the Project design in a manner that expands the scope beyond the Minimum Scope. Except as approved in response to a Material Change in accordance with Section 5.5 and Section 13.7 (respectively), the City Representative may not impose objections or additional design elements or specifications at a later Milestone that modify or contradict design elements or materials specifications that were approved at the time of an earlier Milestone.

D. SPS Role in Design Review; Building Envelope Monitor (During Design). The City will endeavor to coordinate its Milestone reviews with SPS and make best efforts to

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provide MSR with one set of combined comments within the 10 business-day review period. Additionally, the City will use reasonable efforts consistent with the Interlocal Agreement to cause SPS to complete Milestone reviews within the 10 business-day review period. MSR further agrees to engage a building envelope monitor acceptable to SPS to review and advise the design team regarding the building envelope design and perform the responsibilities set forth in attached Exhibit K. The cost of engaging the building envelope monitor shall be a Project expense, included in the Final Project Budget. At each Milestone, MSR shall provide the City and SPS Representatives with written confirmation from the building envelope monitor that it has reviewed the design and does not have objections or concerns with the design as it relates to the building envelope. In no event shall the total review period for each Milestone extend beyond twenty-one (21) business days, subject to a bona fide dispute being addressed under Article XII. If the City fails to provide its Milestone review response within such 21-day period, then the Milestone shall be deemed approved unless a bona fide dispute resolution remedy has been commenced under Article XII within such 21-day period.

E. GMP and Final Project Design. Upon completion of the DD+ Milestone review and first phase permitting process, MSR shall provide its proposed GMP Design, which shall include construction materials, plans and specifications, including any applicable manufacturers' installation specifications and instructions ("MSR Proposed GMP Design") to SPS and the City for their review and approval. Within 10 business days, the Director will either (i) provide written approval of the MSR Proposed Final Design or (ii) provide MSR any written objections that are based upon the MSR Proposed GMP Design's failure to comply with the Minimum Scope, the Design Standards (subject to such exceptions as may have been agreed to by the SPS and City Representative pursuant to Sections 5.1.B and 5.1.C), or the DD+ Design (as previously approved or conditionally approved by the City and SPS). If the Director provides written objections, MSR may incorporate any comments and provide the Director a revised MSR Proposed GMP Design for approval or use dispute resolution procedures described in Article XII. The process may continue until the MSR Proposed GMP Design is approved in writing by the Director, provided, however, that the City review process shall conclude no more than thirty (30) days after MSR's delivery of the MSR Proposed GMP Design. If the City fails to provide its review response to the MSR Proposed GMP Design within such 30-day period, then the MSR Proposed GMP Design shall be deemed approved unless a bona fide dispute resolution process has been commenced under Article XII within such 30-day period. Upon written or deemed approval of the Director, the MSR Proposed GMP Design shall be the "GMP Design". Notwithstanding anything to the contrary herein, the GMP Design shall require installation of all specified products and materials in a manner that complies with manufacturer specifications and instructions. The GMP Design will be used for verification of funding under Section 3.1.E. Prior to and as a condition of commencement of building construction, MSR shall provide the City and SPS Representatives the issued for-construction drawings for their review and written approval. The issued for-construction drawings that are approved in writing by the City Representative (with concurrence of the SPS Representative) shall be the "Final Project Design". All changes to the Final Project Design shall be subject to the conditions under Section 5.5 regarding a Material Change.

### **Section 5.3 Memorial Wall Landmarks Process.**

A. Designation of Wall. The Parties acknowledge that the City's Landmarks Preservation Board ("LPB") designated the Memorial Wall as a landmark, as detailed in LPB's

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designation report, LPB 351/23. The designation report identifies the features of the Memorial Wall that must be preserved and that can only be modified through obtaining a Certificate of Approval from the LPB, pursuant to SMC 25.12.670.

B. Architectural Review Committee. MSR will brief the Architectural Review Committee (“ARC”) of the LPB regarding its plans for the Memorial Wall. Such briefing may include providing options for development surrounding the Memorial Wall that are consistent with the Final Project Design. Following successful briefings of the ARC, MSR will apply for and obtain a Certificate of Approval from LPB that will allow for development of the Project consistent with the Minimum Scope and the designs reviewed by the City Representative at each Milestone. The Parties recognize that LPB has discretion to approve, disapprove, or approve with conditions the proposed modifications to the Memorial Wall shown in the Final Project Design. If MSR and the City Representative reasonably determine that the Final Project Design needs to be modified in order to secure LPB approval of the Certificate of Approval, then MSR and the City Representative will agree on a modification to the Final Project Design following the review process described in Section 5.2.C.

C. Controls and Incentives Agreement. SPS, as property owner, shall be responsible for the process and cost of negotiating a controls and incentives agreement with LPB for the Memorial Wall. The controls and incentives agreement shall come after achieving the Final Project Design and obtaining the Certificate of Approval.

D. Contractor Acknowledgment. MSR will require the Prime Contractor to acknowledge and abide by the approved Certificate of Approval and any Controls and Incentives Agreement signed related to the Memorial Wall.

### **Section 5.4 Stakeholder and Community Engagement.**

A. BEX/BTA Capital Programs Oversight Committee. SPS has facilitated the scheduling of a Project design presentation by MSR to SPS’s BEX/BTA Oversight Committee once in the early design phase for purposes of review and commentary; and will do so one time after the Final Project Design is developed, for review and information purposes.

B. Student Engagement. During its design process, SPS has coordinated with MSR to provide meaningful opportunities for authentic engagement and input from SPS high school students to shape the design concept priorities, and SPS acknowledges MSR’s meaningful engagement with SPS students in the design of the Project. SPS scheduled opportunities for student engagement, identifying and communicating to students, and otherwise facilitated MSR’s engagement with students for these purposes. During the design process, MSR has identified spaces that could be programmed for use by students of visual and performing arts, student athletes, students in Career and Technical Education (CTE) pathways, and student affinity groups. Subject to SPS’s facilitation, in the pre-operations planning phase, further student engagement and input regarding student programming is anticipated and may also include project fairs or listening sessions at SPS high schools where students will be naturally and most easily reached. The intent is for SPS to lead student engagement toward a successful program of bringing talent, voice and creativity to life in the Project.

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C. SDAT. A Stadium Design Advisory Team (SDAT) has been convened by SPS to gather and incorporate input on the design of the Project from likely direct future users of the Project or, by proxy, representatives identified by SPS, City and MSR, such as high school students representing athletics, visual and/or performing arts, skill center / CTE pathways, and other affinity groups; SPS faculty, mentors or coaches to students representing those educational and career interests. Subject to SPS's facilitation, MSR shall participate in such SDAT engagement process. With respect to design direction, such SDAT input will formally conclude at the DD+ Design approval Milestone.

D. External Engagement. The parties acknowledge that MSR has, prior to the Effective Date, worked with SPS's consultants who are engaging with external communities and potential future users of the Project which are both commonly known users and users who are often left out or at the margins of inclusive participation when visioning and designing civic projects. Prior to completion of DD+ Design, MSR shall work or has worked with SPS to engage these stakeholders in a manner and on a schedule that provides meaningful, material and authentic input and feedback to the design process.

**Section 5.5 Conditions for Modification of Final Project Design**. MSR shall make commercially reasonable efforts to avoid Material Changes to the Final Project Design after its approval. However, the Parties acknowledge that circumstances may arise that result in a need to change or modify the Final Project Design. MSR shall not make a Material Change to the Final Project Design without the prior written approval(s) required under this Section. As used in this Agreement, a "Material Change" is any change to the Final Project Design that: (i) is inconsistent with the Minimum Scope and/or the DD+ Design plans, or (ii) would necessarily extend the Substantial Completion Date (as set forth in the Final Project Schedule), (iii) is inconsistent with the Design Standards, subject to such exceptions as may have been agreed to by the SPS and City Representatives pursuant to Section 5.1.B and 5.1.C, (iv) materially changes the building mechanical systems or building automation systems, or (v) increases or decreases the Final Project Budget by more than \$250,000 or, when aggregated with other increases or decreases, increases the Final Project Budget by more than the amount of the Project's Construction Contingency funds. If MSR proposes a Material Change or if the City identifies a Material Change, the prior written approval of the Director is required, and within ten (10) calendar days, the Director shall provide approval or objections in writing. The dispute resolution process in Article XII shall apply to any Material Change dispute. Notwithstanding anything to the contrary in this Agreement, MSR shall have the right, in its sole discretion, to make changes other than Material Changes to the Final Project Design after the Final Project Design has been approved.

**Section 5.6 Effect of Approvals**. The City Representative's and SPS Representative's review of design documents and the Director's approvals of the Final Project Design, Project Schedule, review and approval of any Material Change, or any other matter requiring approval under this Agreement is solely for SPS's and the City's own proprietary purposes as intended owners of the Project and shall not constitute an opinion or representation regarding the constructability of the design or its compliance with regulatory and legal requirements. The City's and SPS's review, comment, and approval of design documents or any other matter under this Agreement shall not be the basis for any liability or claim for additional funding unless (i) the City or SPS requests a discretionary Material Change, or (ii) the actions, failure to act, or omissions of

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the City or SPS constitute an Excused Delay, to the extent that the Excused Delay results in an increase to the Final Project Budget.

### **Section 5.7 Environmental Review.**

A. Phased Environmental Review. SPS prepared a programmatic SEPA Checklist and issued a Mitigated Determination of Nonsignificance for the BTA V levy. These existing environmental documents prepared by SPS studied the environmental impacts of the demolition of Memorial Stadium and construction of a new stadium and noted that additional environmental review will be conducted in the future. These existing environmental documents are incorporated by reference pursuant to Seattle Municipal Code 25.05.600 and Washington Administrative Code 197-11-600 for purposes of this Agreement.

B. Lead Agency. The Seattle Department of Construction and Inspections (“SDCI”), acting in its regulatory capacity as permitting agency, will be the lead agency for the environmental review of the Project under WAC 197-11-060(5) and as provided in the Interlocal Agreement. Project-specific environmental review of the Project will be completed by SDCI during the permitting process.

C. Final Design Subject to Environmental Review. The Final Project Design is contingent upon completing environmental review and shall not be considered final until environmental review is completed and any substantive mitigation conditions or permitting conditions imposed by SDCI as a result of environmental review are addressed and incorporated into the Final Project Design.

D. Termination. If the Parties are not able to agree upon a Final Project Design consistent with environmental review requirements after issuance of SDCI’s substantive SEPA mitigation conditions or other SEPA-related permitting conditions become final, either Party may terminate this Agreement in accordance with the terms set forth in Article XIII.

## **ARTICLE VI Construction**

**Section 6.1 Prime Contractor; Subcontract Package Bids.** Prior to the Effective Date, MSR engaged a prime contractor for the Project (“Prime Contractor”) utilizing a competitive process. As of the Effective Date, the Prime Contractor is providing pre-construction services. MSR shall require its Prime Contractor to competitively procure subcontract packages for the Project to the maximum extent practical while in the best interest of the Project and consistent with the Women and Minority Business Enterprise (“WMBE”) inclusion and Social Equity Requirements in Exhibit F.

**Section 6.2 Conditions Precedent for Commencement of Demolition and Construction.** As used in this Agreement, “Notice to Proceed” means written notice from the Director that each of the conditions precedent in Subsections 6.2 (1) – (14) below have been met by MSR or waived by the Director in writing. MSR shall not commence or authorize its contractors to commence any demolition or construction of the Project on any portion of the

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Licensed Area before receiving the written Notice to Proceed. As conditions precedent to the Director's issuance of Notice to Proceed, MSR shall have:

- (1) provided the Director written confirmation that MSR has entered into a Construction Contract for construction of the Project that is consistent with the GMP Design and with a GMP and contingencies that conform to the Final Project Budget;
- (2) met the required conditions under Section 3.1.E, including demonstrating that MSR has secured and received funding in at least the MSR Funding Amount and has met the required conditions for deposit and assignment of the MSR Funding Amount under Section 3.1.E;
- (3) obtained approval of the Final Project Budget as described in Section 2.3.A;
- (4) obtained approval of the Final Project Schedule as described in Section 2.4;
- (5) obtained approval of the GMP Design as described in Section 5.2.E;
- (6) provided evidence of insurance required under Article X;
- (7) provided the Prime Contractor's Construction Bonds under Section 6.3.A and the Completion Bond under Section 6.3.B;
- (8) obtained all required permits required to commence demolition and complete construction of the Project (or demonstrated that permits will be sequenced to provide for continuous construction), including issuance of the Master Use Permit and completion of environmental review under Section 5.7.B;
- (9) provided the Director with the Prime Contractor signature on the SCWA Addendum attached as Exhibit G and letters of assent from all subcontractors engaged to perform work at the time of Notice to Proceed;
- (10) finalized the Seattle Center Construction Management Plan as described in Section 6.4;
- (11) installed construction fencing and barriers in locations identified in the Seattle Center Construction Management Plan;
- (12) obtained approval of the Hazardous Substances Plan under Section 8.2.A;
- (13) provided to the City Representative a video of pre-existing site conditions prior to mobilization, including Seattle Center campus areas



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adjacent to the Development Site (not limited to the Licensed Area) that are within 20 feet of the perimeter of the Development Site; and

(14) provided evidence that its contract with the Prime Contractor contains provisions allowing for assignment of MSR's interest under such contract to the City under the circumstances described in Section 13.5, and the Prime Contractor's agreement to secure the same assignment rights in its subcontracts.

MSR shall notify the City Representative when MSR requests that the Director issue Notice to Proceed. Provided that MSR has met each of the foregoing conditions precedent (unless otherwise waived by the Director in writing), the Director shall issue Notice to Proceed. If the Director determines that any condition precedent has not been satisfied, and the Director has not determined to waive such condition precedent, MSR will be notified in writing specifying the outstanding condition(s) identified in this Section 6.2 that MSR must meet. The Notice to Proceed or the writing specifying conditions the Director determines are not satisfied shall be provided to MSR within five (5) business days of the City Representative's receipt of the MSR request for Notice to Proceed, provided that MSR has provided the City with a checklist or other document demonstrating the basis for MSR's request for Notice to Proceed.

### **Section 6.3 Construction Completion Guaranties.**

A. Construction Bonds. MSR shall require its Prime Contractor to secure and pay for separate bonds covering (a) the faithful performance of the Construction Contract and (b) payment of all payment obligations arising under the Construction Contract (the "Construction Bonds"). The Construction Bonds shall be issued by a surety company admitted and licensed in the State of Washington and possessing an A.M. Best's policyholder's rating of A or better and a financial rating of no less than VIII. The Construction Bonds shall otherwise comply with the requirements of RCW 39.08, shall be executed on a form approved by the Director, and shall each be in the full amount of the GMP plus sales tax. The City and SPS shall each be identified as obligees on the Construction Bonds (by way of a dual obligee rider or otherwise).

B. Completion Bond. MSR shall secure and pay for a Project completion bond ("Completion Bond") ensuring full and complete completion of the Project in accordance with the Final Project Design, as documented by Final Acceptance. The Completion Bond shall be issued by a surety company admitted and licensed in the State of Washington and possessing an A.M. Best's policyholder's rating of A or better and a financial rating of no less than VIII. The Completion Bond shall be executed on a form approved by the Director. The City and SPS shall each be identified as obligees on the Completion Bond (by way of a dual obligee rider or otherwise).

C. Completion Guaranty. MSR represents and warrants that it will cause the Project to be completed in accordance with the Final Project Design ("Construction Completion Guaranty"). MSR shall remain fully responsible for all Project costs in excess of the Final Project Budget, and, except as to any damages resulting from a City or SPS Default, or City or SPS Excused Delay, neither the City nor SPS shall be responsible for any Project costs in excess of the SPS Maximum Funding, City Maximum Funding, and SPU Funding.

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**Section 6.4 Seattle Center Campus Construction Management Plan.** MSR and the City shall agree upon a plan to address management and mitigation of construction impacts on the Seattle Center campus (the “Seattle Center Construction Management Plan”), including, at a minimum, provisions for the following during the construction period: construction barriers and protection; construction site signage; access to adjacent buildings and sites; access to trash, recycling, compost and compaction equipment; site and adjacent street transportation; parking; security; utility protection; noise control; vibration; dust control; and rodent control. In addition, the Seattle Center Construction Management Plan will identify and include plans to accommodate and manage impacts to specified annual festivals, scheduled events, planned City maintenance and construction projects, and third-party tenants and licensees at Seattle Center. MSR acknowledges that the Seattle Center is hosting the FIFA World Cup Fan Celebration in summer of 2026 and that MSR shall coordinate with the City to support planning efforts for Seattle Center Fan Celebration requirements and activities. Nothing in the foregoing sentence shall be deemed to require MSR to make any change to the Final Project Design, Final Project Schedule or any other MSR commitment or obligation under this Agreement, except as may be agreed by MSR in its discretion, and at the sole cost and expense of the City or any third-party responsible for FIFA World Cup Fan Celebration costs.

## **Section 6.5 Social Equity Requirements.**

A. **Involvement of Students.** Consistent with the outreach described in Section 5.4 above, during its design development process, MSR will provide and/or facilitate opportunities for meaningful engagement and input from SPS high school students. In the construction phase, MSR or its contractors will provide opportunities for paid student internships.

B. **Social Equity and Workforce Requirements.** MSR shall cause the construction of the Project to be completed in compliance with the Social Equity Requirements attached as Exhibit F, including:

a. A PC-FAS approved WMBE Inclusion Plan from the Prime Contractor and first-tier subcontractors detailing affirmative efforts to provide the maximum opportunities for inclusion of WMBEs in the Project construction.

b. All contractors of every tier shall assent to the SCWA.

c. The Prime Contractor and MSR Representative must attend a monthly Joint Administrative Committee to address safety, workforce performance, apprentice utilization, job progress and any other relevant issues.

d. Payment of prevailing wages under RCW 39.12 and filing of prevailing wage intents and affidavits with Washington State Department of Labor and Industries.

e. The Project meets labor hour requirements for apprenticeships.

**Section 6.6 Coordination of Street Use.** MSR shall be responsible for obtaining any required permits from Seattle Department of Transportation (“SDOT”) for the closure or use of any public rights-of-way for MSR’s construction activities. Notice of any street closures set forth

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in the Seattle Center Construction Management Plan or otherwise contemplated by MSR shall be timely provided to all affected property owners and licensees, including any directly impacted resident organizations. For any other street right-of-way curbspace reservation or use adjacent to the Seattle Center campus that is addressed in that certain Memorandum of Agreement for Event Curbside Management dated September 15, 2021 (the “Curbside MOA”), a copy of which is attached to this Agreement as Exhibit H, MSR shall obtain applicable reservations or use permits by making a written request to the City Representative that Seattle Center exercise its rights under the Curbside MOA. For any street right-of-way use not addressed by the Curbside MOA, MSR shall reasonably coordinate with City Representative before applying to SDOT for a Street Use Permit, which coordination shall include the Project Representatives working reasonably and cooperatively with SDOT to prioritize and allocate street and curbspace rights to accommodate as much and as efficiently as possible the respective street and curbspace needs of MSR and other Seattle Center activities and tenants. In exercising any rights under SDOT permits or allocated to MSR by Seattle Center through the Curbside MOA, MSR shall comply with the terms of the applicable permits and Curbside MOA, including but not limited to, the payment of all applicable fees.

### **Section 6.7 Project Management and Coordination.**

A. Project Meetings. The MSR Representative (or the Prime Contractor, on behalf of MSR) shall keep the City Representative and SPS Representative reasonably informed of the time and place of each regular and special Project construction meeting. The City Representative and SPS Representative shall be invited and allowed to attend, become informed about the status of the Project, and provide comments and feedback to the MSR Representative consistent with the Final Project Design and standards under this Development Agreement, including identifying any construction activities that have been or may be undertaken and that, in the City Representative’s judgment, would constitute a Material Change. Notwithstanding their participation in any Project construction meetings, neither the City Representative nor the SPS Representative shall have the authority to give direction to MSR’s designers and contractors.

B. Status Reports; Meeting Minutes and Other Project Communications. MSR (or the Prime Contractor, on behalf of MSR) shall deliver a copy of Project construction status reports and meeting minutes to the City Representative within seven (7) days after MSR’s receipt of the same. Neither MSR nor its Prime Contractor shall have the obligation to generate any specific reports or updates about meetings other than meeting notes and reports already generated as part of the Project. MSR shall promptly provide the City Representative with any of the following: (i) any proposed change to the Estimated or Final Project Schedule that will necessarily extend the Substantial Completion Date; (ii) copies of any notice of violation or stop work order issued to the Project and received by MSR from any regulatory authority; and (iii) any notice, demand, or claim from the Prime Contractor or any subcontractor(s) which alleges, or if uncured would result in, a material MSR default under the Construction Contract.

C. Contractor Default; Termination Concurrence. MSR shall provide the City Representative and SPS Representative with copies of any notice of default or material breach delivered or issued by MSR to its Prime Contractor. Prior to terminating its Prime Contractor for default, MSR shall provide written notice to the City Representative and as soon as is reasonably practicable, meet and confer with the Director and the SPS COO regarding MSR’s plan for Project

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completion following termination of the Construction Contract. The Director will have five (5) business days to review and approve MSR's plan for Project completion, unless MSR reasonably determines that waiting for approval would materially impede its ability to achieve timely Substantial Completion, in which case MSR will provide notice to the Director and SPS COO and will meet and confer with the Director and SPS COO as soon as is reasonably practicable after beginning implementation of its plan for Project completion.

D. Minimization of Adverse Impacts. MSR shall make commercially reasonable efforts to protect from damage or destruction all private and public property on the Licensed Area that is not scheduled for repair, replacement, or removal.

E. Building Envelope Monitor (During Construction). MSR shall engage and require a building envelope monitor to review, inspect, and monitor the Project to ensure that building envelope construction activities are being implemented in accordance with the Final Project Design as further described in attached Exhibit K. MSR (or its Prime Contractor, on behalf of MSR) shall require the monitor to provide the MSR, SPS, and the City Representatives written inspection reports during construction of the building envelope system and related elements.

**Section 6.8 Compliance with Legal Requirements.** In addition to compliance with the applicable requirements of this Agreement, MSR shall cause the Project to be constructed in compliance with all applicable laws, licenses, permits and regulatory requirements, whether or not specifically referenced herein.

## ARTICLE VII Project Close-Out and Acceptance

### **Section 7.1 Substantial Completion; Punch List Process.**

A. Notice of Substantial Completion. The MSR Representative shall keep the City and SPS Representatives apprised of MSR's anticipated timing for Substantial Completion. The MSR Representative shall notify the City Representative and the SPS Representative when MSR has determined the Project has reached Substantial Completion. Within five (5) business days of receipt of such notice of Substantial Completion, the City Representative, the SPS Representative, and the MSR Representative will jointly participate in the punch list walk through.

B. Punch List Process and Completion of Work for Physical Completion. Following the walk through described in Section 7.1.A, the MSR Representative (or the Prime Contractor, on its behalf) shall provide the City Representative and SPS Representative with a draft punch list for their review and approval using this process:

a. The City Representative will provide one set of combined (on behalf of the City and SPS) written approval or comments and objections to the draft punch list within ten (10) business days of receipt of the draft punch list, unless more time is requested by the City Representative and granted by MSR, in its sole discretion. If MSR objects to the draft punch list comments, MSR will provide written objections to the City within five (5) business days, and the Parties and SPS will meet and confer as promptly as possible to agree upon the contents of the final punch list. If the final punch list is not mutually agreed between the Parties within twenty

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(20) business days of receipt of the draft punch list by the City Representative and SPS Representative, then, assuming no bad faith on the part of MSR, the draft punch list from MSR shall be deemed approved unless a bona fide dispute resolution process has been commenced under Article XII within such 20 business-day period. In the meantime, MSR may have its contractor address agreed work items. After agreement on the final punch list (the "Punch List"), the Punch List may not be amended, supplemented, or otherwise modified without the consent of MSR, in its reasonable discretion and consideration of the proposed need for such change(s).

b. MSR and the Prime Contractor will diligently address the items on the Punch List. Additionally, MSR and the Prime Contractor shall complete any build-out of the City shops and warehouse spaces that was not completed as part of Substantial Completion (the "Shop/Warehouse Work") and shall give the SPS and City Representatives advance notice of the anticipated completion date for such work. Once MSR determines the Punch List and Shop/Warehouse Work is complete, the MSR Representative shall notify the City Representative and the SPS Representative, who will, within five (5) business days of receipt of notice from MSR perform the walk-through to review the completed Punch List and Shop/Warehouse Work with the MSR Representative. Within ten (10) business days after the walk-through to review Punch List and Shop/Warehouse Work, the Director will notify the MSR Representative in writing that the City and SPS either (x) accept the Project as physically complete in accordance with the Final Project Design ("Physical Acceptance"), or, (y) do not accept the Project, in which case the notice shall identify the items on the Punch List and Shop/Warehouse Work that MSR did not adequately address in compliance with the Final Project Design, permits, and terms of this Agreement ("Punch List Correction"). The Director may withhold Physical Acceptance only based on MSR's failure to adequately address issues identified on the Punch List or failure to complete the Shop/Warehouse Work that was outstanding at the time of Substantial Completion. If the City and SPS do not accept the Project as physically complete, the Director must detail in writing the specific issues identified on the Punch List or Shop/Warehouse Work that MSR did not address, and in such event, MSR shall promptly (through the Prime Contractor) correct the identified deficiencies.

c. After MSR addresses the outstanding issues identified on the Punch List and any Punch List Correction, the MSR Representative will provide the City Representative and the SPS Representative with written notice of completion, and the Project Representatives will perform a walk through to inspect the work and, after the walk through, provide written notice of Physical Acceptance or Punch List Correction. The process and associated time frames shall continue until the Director provides MSR with written Physical Acceptance, provided that Physical Acceptance should occur as soon as is reasonably practicable after the Punch List is created, with all parties exercising commercially reasonable efforts to achieve Physical Acceptance within sixty (60) business days of MSR sending the draft Punch List.

C. Punch List Disputes. If a dispute should arise among the City, SPS, and MSR (as represented by the Project Representatives) regarding the contents of the draft punch list, the agreed-upon Punch List, the completion of the Shop/Warehouse Work, or regarding a Punch List Correction, the Project Representatives shall promptly meet and endeavor to resolve the dispute. In any case where the dispute arises as a result of an actual or alleged failure of the Project to address a Punch List Correction requested by SPS, the Director may, in its discretion, defer

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resolution to the SPS Representative. If the Project Representatives are unable to resolve the dispute, the Parties shall follow the process under Article XII for dispute resolution.

**Section 7.2 Final As-Builts and Project Deliverables.** MSR shall keep accurate records of the design documents, including any modifications, throughout the duration of the Project. Within sixty (60) calendar days following Physical Acceptance, MSR (or the Prime Contractor on its behalf) shall provide both the City Representative and the SPS Representative with the following: (i) a project close-out letter that shows the final allocation of funding and summarizes the application of the City's, SPS's, and MSR's funding; (ii) evidence of lien and claim releases demonstrating that the Project is lien and claim free; (iii) one set each of hard copy and electronic conformed as-built drawings and specifications, (iv) other Project documentation typically provided to an owner of a project of similar type, scale and complexity, as reasonably determined by MSR, including inspection reports, environmental documentation (including any geotechnical studies, soil or water sampling results, and documentation regarding disposal and remediation of any Hazardous Substances), and itemized make and model information for equipment and building systems, including (to the extent provided to MSR) copies of any warranties; (v) MSR's or MSR's Prime Contractor's one-year workmanship warranty, and (vi) testing and balancing and systems commissioning reports including for HVAC systems, lighting, sound system and electronic scoreboard. This Section 7.2 shall not be deemed to require MSR to provide any documents already provided to the City Representative and/or SPS Representative during the design and construction process or to create new analysis of information or documentation not otherwise required by the preceding sentence.

**Section 7.3 Lien Free.** As public property, the Development Site is not subject to liens. Accordingly, MSR shall keep the Licensed Area and SPS parking lot, including the improvements and adjacent property, free from any liens of mechanics, materialmen, laborers, surveyors, engineers, architects, artisans, contractors, subcontractors, suppliers, or any other lien of any kind whatsoever (a "Lien") that shall be created or claimed against or imposed upon the Licensed Area or any City or SPS property as a result of the Project. If any Lien is asserted or recorded by any persons, firms, or corporations performing labor or services or furnishing material or supplies in connection with the Project, MSR shall pay off in full, bond over as described below, or cause the Lien to be discharged of record within sixty (60) days of notification. MSR reserves the right to contest the validity or amount of any Lien in good faith provided that, within sixty (60) days after the filing of such Lien, MSR either discharges the Lien from the applicable property or records a bond which is consistent with the requirements of RCW 60.04.161. If MSR fails to remove or address any Lien as required under this Section 7.3, the Director may, in its discretion, provide written notice to MSR to cure the failure and if MSR fails to do so in the time required, then with written notice to the MSR Representative, the City may take such action as it determines appropriate to remove the Lien, in which case all costs and expenses incurred by the City including amounts paid in good faith settlement of the Lien, together with interest, shall be due, owing, and paid by MSR.

**Section 7.4 Restoration of Damage.** If any City, SPS, utility, or private property or improvements outside the Licensed Area are damaged as a result of the Project activity of MSR's Prime Contractor, or its subcontractors of any tier, the City or SPS shall provide written notice to the MSR Representative promptly upon becoming aware of the damage. Once MSR and its Prime Contractor have verified the damage, MSR shall cause such Prime Contractor or subcontractor to

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undertake restoration or repairs. The Prime Contractor, or the respective subcontractor, shall be responsible for timely completing the repair and restoration of the affected property to a condition equal to or better than that existing prior to the damage, including replacement if reasonably required due to the nature of the damage. MSR shall cause its Prime Contractor or subcontractors to warrant the repair or restoration for a period of one year. MSR acknowledges that the Seattle Center campus is an active public space and accordingly, MSR shall cause such restoration or repair work to be completed within thirty (30) calendar days of the occurrence of damage, unless an alternate deadline is reasonably necessary (due to reasons including but not limited to, impracticability of performing the repair within thirty (30) calendar days, cost-effectiveness of completing the repairs and delay to Project schedule, ensuring that additional damage would not occur during the normal course of construction activity) and such deadline is approved by the City Representative, in its reasonable judgment.

**Section 7.5 Final Acceptance.** MSR shall provide the City Representative and SPS Representative written notice when MSR determines that the Project has been completed in compliance with this Agreement. The Director shall provide written notice of Final Acceptance of the Project once the Director has determined that each of the following conditions are met:

- (1) a final certificate of occupancy has been issued;
- (2) all permit obligations are complete;
- (3) MSR has provided all deliverables under Section 7.2;
- (4) the Project architect has provided a certificate stating that all work, including all Punch List work, has been completed in accordance with the Final Project Design;
- (5) MSR's certification that there are no pending contractor claims or actions;
- (6) confirmation satisfactory to the City that the Project is lien free;
- (7) confirmation satisfactory to the City that all Project-related costs have been paid in full;
- (8) there shall be no uncured MSR Default Event;
- (9) all affidavits of payment of prevailing wages have been filed with Washington State Department of Labor and Industries;
- (10) MSR has caused its Prime Contractor or subcontractors to complete repairs to any damage or restoration as required under Section 7.4 unless the City has provided written extension for the completion, in which case the obligation shall survive Final Acceptance until such repairs are complete;
- (11) PC-FAS has determined compliance with the Social Equity Requirements, including completion of all required reporting;
- (12) MSR has obtained from a qualified attestant that acceptable results were obtained from impact attenuation testing of the synthetic turf system conducted in compliance with F1939 testing requirements;
- (13) no matters shall remain pending under Article XII;
- (14) all available warranties for materials, equipment, and systems are in place, complete, delivered to owner, and, if requested by the City, assigned (to the extent assignable) to SPS or the City;

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(15) all available training sessions for the owner and facility management team on applicable operation and maintenance of mechanical and operating systems have been conducted with the City and SPS Representatives (or their designees);

(16) the site is thoroughly cleaned, including removal of all debris, construction materials, and temporary structures;

(17) landscaping is completed and landscape warranties are in place for a period of no less than one (1) year to ensure proper establishment and maintenance of the landscaping; and

(18) The Prime Contractor has certified that all products and materials incorporated into the Project are “asbestos-free” and “lead-free” per United States standards.

### ARTICLE VIII

#### Condition of Development Site; Hazardous Substances; Latent Site Conditions

##### Section 8.1 Development Site in AS-IS Condition.

A. As-Is Condition. Prior to the Effective Date, MSR has had the opportunity to perform and has performed inspections and investigations of the Development Site, including but not limited to geotechnical borings and evaluations regarding the existence of Hazardous Substances and geotechnical conditions on, beneath, within, impacting, affecting, migrating to or migrating from the Licensed Area (“Environmental and Geotechnical Due Diligence”). MSR’s Environmental and Geotechnical Due Diligence was conducted for the purpose of assessing, planning, designing, and insuring against environmental and geotechnical risks for the Project, but the scope of the Environmental and Geotechnical Due Diligence did not include the Sewer Replacement Work elements and MSR did not have the opportunity to perform inspections and investigations regarding the Sewer Replacement Work. After the Effective Date, MSR and its contractors shall continue to have access to the Licensed Area (subject to Section 2.2.A) to perform further inspections and investigations. MSR accepts the Licensed Areas in AS-IS condition, subject only to the conditions and limitations in this Article VIII and to the exceptions noted in this Article VIII with respect to the Sewer Replacement Work.

B. Known Condition. If the Environmental and Geotechnical Due Diligence discovers Hazardous Substances or adverse geotechnical conditions on, beneath, within, impacting, affecting, migrating to or migrating from the Licensed Area, such Hazardous Substances and/or adverse geotechnical conditions are “Known Conditions.” Hazardous Substances or geotechnical conditions encountered or discovered during the Sewer Replacement Work shall not qualify as a Known Condition. MSR shall be responsible to fund the cost of the work addressing any Known Condition up to a maximum amount of \$150,000 in the aggregate, and the City and SPS shall be responsible for all additional funding required to address any Known Condition. MSR shall have no responsibility to fund the cost of work to address the Sewer Replacement Remedial Work (defined below). The City and SPS shall meet and confer with MSR to estimate the costs of addressing the Known Conditions, and the City and SPS shall adjust the City Funding Commitment and SPS Maximum Funding as needed to provide sufficient funding to address the Known Conditions.



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C. Hazardous Building Materials. MSR shall be solely responsible for all costs of addressing, mitigating or remediating any and all hazardous building materials encountered in any structure or infrastructure within the Licensed Area during the course of demolition and excavation, including but not limited to asbestos, lead coatings or lead paint, polychlorinated biphenyls (“PCBs”), mercury-containing fluorescent lighting, chloroflourocarbons (“CFCs”), or radioactive materials contained or encapsulated within structures or infrastructure (collectively, “Hazardous Building Materials”). Hazardous Building Materials do not and shall not qualify as Known Conditions or Latent Conditions.

### **Section 8.2    Hazardous Substances.**

A. General Requirement. Before Notice to Proceed, MSR shall develop plans to address all Known Conditions, including known or suspected Hazardous Substances on, beneath, within, affecting, impacting, migrating to or migrating from the Licensed Area in compliance with all applicable Environmental Laws and to prevent any release or exacerbation of Hazardous Substances on or beneath the Development Site (“Hazardous Substances Plans”). The Hazardous Substances Plans shall be subject to review by SPS and the City and must be approved by the Director prior to Notice to Proceed. After Notice to Proceed, MSR shall cause its contractors and environmental consultants to address Hazardous Substances on, beneath, affecting, within, impacting, migrating to or migrating from the Licensed Area in compliance with the Hazardous Substances Plans. If MSR or its contractors or any subcontractors violate any applicable Environmental Laws, cause a release or exacerbation of any Known Conditions (including without limitation the exacerbation of any Hazardous Substances that have come to be located on or beneath the Licensed Area), then MSR shall promptly notify the City Representative and SPS Representative and thereafter shall promptly take such action as is necessary to address and correct the release, violation or exacerbation. If MSR does not act in response to the release, violation or exacerbation in a reasonably prudent and prompt manner, City reserves the right (and SPS’s right), but not the obligation, upon reasonable prior written notice to MSR, to address or correct the release, violation, or exacerbation in a manner consistent with Environmental Laws and the Hazardous Substances Plans and to withhold the costs incurred from the City Maximum Funding and SPS Maximum Funding.

B. Discovery of Hazardous Substances. During the course of demolition and construction, if MSR or any of its agents, contractors, or subcontractors discovers any Hazardous Substances on, beneath, affecting, within, impacting, migrating to or migrating from the Licensed Area that were not identified in the Hazardous Substances Plans, MSR shall immediately notify the SPS Representative and the City Representative. Designated representatives of MSR, SPS, and the City shall immediately meet and confer concerning the nature and extent of the Hazardous Substances and the appropriate remedial action to address the Hazardous Substances, which may include but not be limited to further characterization, assessment, testing, responsibility for notification of appropriate regulatory authorities, and development of a remedial work plan for investigation, cleanup, removal, mitigation, monitoring or containment as needed to comply with Environmental Laws. Notwithstanding the foregoing, if immediate remedial work is necessary to address a condition that presents an imminent threat to human health or the environment, MSR shall take steps reasonably necessary to prevent such harm or threat, with notification to and oral approval from the Director, and MSR will follow-up with a written plan as soon as reasonable under

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the circumstances. MSR shall have no obligation to report a discovery of any Hazardous Substances to any regulatory agency.

C. Remedial Work Plan. MSR may proceed with remedial work to address Hazardous Substances discovered during the course of demolition and construction only when a remedial work plan has been reviewed by SPS and the City and approved by the Director, which plan shall then be memorialized by MSR in writing and approved in writing by the Director as soon as reasonably practical under the circumstances ("Remedial Work Plan"). As part of the Remedial Work Plan, MSR shall use the services of an environmental consultant acceptable to City and SPS. The objective of the Remedial Work Plan shall be to achieve a cleanup that complies with applicable Environmental Laws. After approval of the Remedial Work Plan by the Director, MSR shall complete all work specified in the Remedial Work Plan and shall conduct all construction activities in compliance with the Remedial Work Plan. At all times during the performance of the Remedial Work Plan, MSR shall give the City Representative and the SPS Representative direct access to the environmental professional(s) specified in the Remedial Work Plan, and to the data, records, and reports generated by the environmental professional(s) for the Remedial Work Plan. The Remedial Work Plan may only be amended with written approval of the Director. If an environmental regulatory agency, such as the Washington Department of Ecology, determines it shall oversee work to address Hazardous Substances under a regulatory order, decree, or other directive, the City, SPS and MSR shall meet and confer to coordinate responses and to determine respective roles and responsibilities in connection with such order, decree or directive.

### D. Allocation of Cost.

(1) Estimated Cost under \$150,000. Regardless of whether any Hazardous Substances discovered after Notice to Proceed is a Latent Condition or a Known Condition, if the cost to complete the work under the Remedial Work Plan in the aggregate is estimated to cost \$150,000 or less, MSR shall conduct all work in the Remedial Work Plan, shall use commercially reasonable efforts to minimize the costs of Remedial Work consistent with achieving a cleanup that complies with applicable Environmental Laws, and shall keep the City and SPS apprised of the progress of the performance of the Remedial Work Plan and its costs. MSR shall pay for the cost of completing the Remedial Work Plan utilizing contingency funds or other private funding sources and without any increase to the SPS Maximum Funding or the City Maximum Funding.

(2) Estimated Cost over Threshold. If the total estimated cost of the Remedial Work Plan in the aggregate exceeds \$150,000, then the Project Representatives and SPS Representative shall meet as soon as feasible and in good faith discuss options for resolution that would allow the Project to proceed within the Estimated Project Budget. If the discovered Hazardous Substances do not qualify as a Known Condition or Latent Condition, neither SPS nor the City shall be required to provide any funding over and above the SPS and City Maximum Funding and MSR shall not be relieved from delivering the Final Project and shall be responsible for any additional Project costs necessitated by the Remedial Work Plan. However, if the discovered Hazardous Substances qualify in part or in whole as a Known Condition or Latent Condition, then the City, SPS, and MSR shall use good faith efforts to mutually agree upon a funding plan,

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which may include use of Project contingency funds or additional funding from SPS or the City. MSR shall have no obligation to fund the Remedial Work Plan over \$150,000.

(3) Sewer Replacement Remedial Work. Sewer Replacement Remedial Work means any environmental or geotechnical work to assess, investigate or remediate any Hazardous Substance or geotechnical condition found, encountered, addressed, or discovered during the Sewer Replacement Work. Notwithstanding anything to the contrary in this agreement, MSR shall have no obligation to fund any Sewer Replacement Remedial Work. MSR shall follow the procedures in Section 8.2.B and Section 8.2.C regarding any Sewer Replacement Remedial Work.

(4) Reserved Rights. Any Director approval of a Remedial Work Plan or agreement regarding the funding for a Remedial Work Plan shall not be construed as a release by the City or SPS or MSR of their respective claims against or rights of contribution from any responsible party or entity who is liable for the violation of any Environmental Laws or the release or exacerbation of any Hazardous Substances in, on, beneath, affecting, migrating to or migrating from Licensed Area, unless otherwise expressly stated in writing signed by an authorized representative.

**Section 8.3 Geotechnical Latent Condition.** MSR shall promptly notify the City Representative and SPS Representative if, during the course of demolition and construction, MSR or any of its agents or contractors discover any geotechnical condition on or around the Licensed Area that qualifies as a Latent Condition and that is likely to result in a change order to MSR's contract with the Prime Contractor. The Project Representatives shall promptly meet and confer to address a plan for addressing the condition and shall use commercially reasonable efforts to address the condition within the Estimated Project Budget and at no additional expense to SPS or the City, which may include an agreed-upon use of Project contingency funds, a modification to the Final Project Design, or additional funding sources not identified at the time of Notice to Proceed. If the estimated additional cost to remedy any geotechnical condition that qualifies as a Latent Condition is reasonably estimated to increase the Estimated Project Budget by more than \$150,000, then upon written request of MSR, the City will work with SPS and MSR to identify additional funding to address the condition, which may include, but not be limited to, private sources.

**Section 8.4 Environmental Indemnification.** In addition to all other indemnification obligations under this Agreement and to the fullest extent provided by law, MSR shall defend, indemnify, and hold City and SPS free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including the fees of consultants, contractors and attorneys, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising out, resulting from, and to the extent of: (a) release(s) of Hazardous Substances caused by MSR or exacerbation of any Hazardous Substances; (b) the activities of MSR or its contractors or any subcontractors thereof on or beneath the Licensed Area; (c) any violation by MSR or its contractors or subcontractors thereof of Environmental Laws; or (d) MSR's obligations under this Article VIII. MSR's duty of defense and indemnity shall apply regardless of whether the release, exacerbation, or violation occurs either during the Term of this Agreement or after the expiration or termination of this

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Agreement if arising out of or resulting from a release, exacerbation, or violation during the Term of this Agreement. The City and/or SPS shall provide MSR with prior written notice of any event or circumstance which may give rise to MSR's defense and indemnity obligation under this Section 8.4. MSR's obligation under this Section shall not apply to claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including the fees of consultants, contractors and attorneys, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising solely from either Known Conditions or Latent Conditions. For avoidance of doubt, under no circumstances does MSR's indemnity in this Section 8.4 apply to Sewer Replacement Work or Sewer Replacement Remedial Work, except to the extent of MSR's negligence, or that of its contractors, or if caused by MSR's failure to comply with the provisions of Article VIII.

## ARTICLE IX Indemnification

**Section 9.1 MSR Indemnification.** To the extent permitted by law and subject to Article VIII, MSR shall defend, indemnify, and hold City and SPS and their respective officers, agents, employees, and elected officials harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities, and expenses (including the City's and SPS's actual and reasonable personnel and attorneys' fees incurred in connection with claims, regardless of whether such claims involve litigation) of any kind arising out of (i) MSR's design of the Project (except for any SPU-provided design of the Sewer Replacement Work), (ii) MSR's construction of the Project, (iii) the negligent acts and omissions of MSR and its officers, employees, designees, agents, and contractors and consultants of any tier, and (iv) any third-party claims or regulatory liabilities or actions that arise from MSR's breach of this Agreement.

**Section 9.2 City Indemnification.** To the extent permitted by law and subject to Section 8.4, the City shall defend, indemnify, and hold MSR and its respective officers, agents, employees, and elected officials harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities, and expenses (including MSR's actual and reasonable attorneys' fees incurred in connection with claims, regardless of whether such claims involve litigation) of any kind arising out of (i) the City or SPS's funding, including the failure without legal excuse to disburse funding in the time and manner required under this Agreement, (ii) any regulatory or third-party claims resulting from the City's breach of this Agreement, and (iii) the negligent acts and omissions of the City, SPS or any of their respective officers, elected officials, employees, agents and contractors of any tier.

**Section 9.3 Limitation of Liability.** To the extent necessary to comply with RCW 4.24.115 as in effect on the date of this Agreement, each Party's obligation ("Indemnitor") to indemnify the other ("Indemnitee") for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Project, shall not apply (i) to damages caused by or resulting from the sole negligence of the Indemnitee; or (ii) to the extent caused by or resulting from the concurrent negligence of (A) the Indemnitor and (B) the Indemnitee (including any of its officers, elected officials, employees, designers, agents, or contractors of any tier, as

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applicable); provided, however; the limitations on indemnity set forth in this Section 9.3 shall automatically and without further act by either City, SPS, or MSR be deemed amended so as to remove any of the restrictions contained in this Section which are no longer required by then applicable law.

**Section 9.4 Title 51 Waiver.** Each Party agrees that its defense and indemnity obligations under this Agreement extend to any claims and any negligence of a Party's own employees. Accordingly, each Party's agreement to the obligations under Article IX are specifically intended to be a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, but only with respect to the other Party and to the extent necessary to provide the other Party with a full and complete defense and indemnity.

**Section 9.5 Survival.** Each Party's obligations under Article IX shall survive the termination or expiration of this Agreement.

## ARTICLE X Insurance; Damage and Casualty

**Section 10.1 Insurance Requirements.** Continuously throughout the Term and at no additional cost to the City or SPS, MSR shall maintain, or shall cause to be maintained, insurance policies that meet the minimum coverages and limits of insurance as shown on Exhibit I.

**Section 10.2 Casualty.** The Project work is at MSR's sole risk, or the risk of its contractors, from the date of Notice to Proceed through Substantial Completion. If the Project or any part thereof shall be damaged by fire or other casualty before Substantial Completion, MSR shall give prompt written notice to the City Representative. Damage or casualty that is outside the reasonable control of MSR shall be an Excused Delay, but shall not result in the City or SPS being obligated to provide any additional funding to the Project other than the SPS Maximum Funding and the City Maximum Funding. Provided that MSR has maintained the required insurance for the Project and insurance proceeds combined with remaining Project funding is sufficient for repair and restoration, then following any damage or casualty to the Project work, MSR shall proceed with reasonable diligence to cause the repair and restoration of the Project to the condition existing immediately before the damage or casualty occurred, or to such other condition approved by the Director in writing. In the event of such damage or casualty that is outside the reasonable control of MSR, the provisions of Section 4.7 shall not apply to limit MSR's use of any insurance proceeds to pay for expenses incurred for MSR staff or consultants to manage the repair and restoration of the Project. For any casualty meeting the definition of Force Majeure Event that cannot reasonably be repaired or restored with available funds (including insurance) and within nine (9) months from the occurrence of the Force Majeure Event, MSR, the City, and SPS shall meet and mutually determine whether changes may be made to the Final Project Design to effect the repair and restoration within available funds. If the parties are unable to agree within a time reasonable under the circumstances, but in any case no longer than thirty (30) days, either the City or MSR may terminate this Agreement subject to the requirements under Section 13.5.C to the extent applicable.

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## ARTICLE XI

### Operating Agreement Terms

**Section 11.1 Ownership.** Upon Final Acceptance, ownership of the New Memorial Stadium shall automatically vest in SPS. The City and SPS shall each retain their respective rights in the real property comprising the Project, with the City's property rights with respect to the Shop/Warehouse Space and open space portions of the Project to be determined by separate agreement between SPS and the City.

**Section 11.2 Operation and Maintenance of the Stadium.** Upon Substantial Completion, it is a purpose of this Agreement and the intention of the Parties that MSR, the City, and SPS enter into an agreement to provide for the sustainable maintenance, operation, and ongoing capital needs of the New Memorial Stadium in a manner that prioritizes student-centered use and enhances student learning, that provides for Seattle Center use of the facility, and that provides use for community, concerts, and other events when the stadium is not in use by SPS in order to support sustainable operations in a manner that integrates with the Seattle Center campus. Accordingly, MSR agrees to operate and maintain the New Memorial Stadium and adjacent SPS parking lot for an initial period of five years and without a management fee, pursuant to an operating agreement between SPS, the City, and MSR upon the terms outlined in the Operating and Maintenance Agreement Term Sheet attached as Exhibit J ("Operating Agreement Terms"). MSR and the City each agree to commit the staff resources necessary to negotiate in good faith with SPS in order to complete a final operating agreement that is consistent with the Operating Agreement Terms and that is executed by the City, SPS, and MSR so that MSR is positioned to operate the New Memorial Stadium upon Substantial Completion. If MSR, the City, and SPS have not substantially negotiated the operating agreement, including the initial operating budget, by August 31, 2026, any disputed or unresolved terms and conditions shall be referred to the Director, the MSR Principal, and the SPS Principal for resolution.

**Section 11.3 Parties to Consider Public Entity.** Prior to the completion of the initial term of the operating agreement provided for under Section 11.2, MSR and the City agree to work with SPS to explore the establishment of a City-chartered public corporation, a public facilities district, an interlocal agreement, or creation of a public non-profit operator as a strategy for addressing the New Memorial Stadium's long-term operations, capital replacement needs, and financial sustainability. The establishment of a long-term strategy for sustainable operation and maintenance of New Memorial Stadium and associated improvements is a fundamental purpose of this Agreement.

## ARTICLE XII

### Dispute Resolution

**Section 12.1 General Approach to Dispute Resolution.** The City Representative and the MSR Representative shall make good faith efforts to resolve any disputes relating to this Agreement as expeditiously as possible in a manner that protects their respective rights and obligations while facilitating the timely completion of the Project. When the nature of the dispute relates to SPS's approvals or SPS's interests as a third-party beneficiary (as expressly set forth in Section 3.3.C), the City shall be responsible for engaging SPS in dispute resolution discussions and solutions as necessary under the Interlocal Agreement and as contemplated in this Agreement.

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**Section 12.2 Referral to Principals.** If the Project Representatives are unable to resolve any dispute within a time that is reasonable taking into consideration the nature of the dispute and impacts on the Project, then upon written request of either of the Project Representatives (which request may be by email), the matter shall be referred to the Director and the senior executive designated by MSR as its principal (the “MSR Principal”). The SPS Representative shall be copied on any written request to refer a dispute to the Director and the MSR Principal and, if requested by MSR or the City, the SPS COO (the “SPS Principal”) shall also participate in the dispute resolution meeting of the principals. As soon as reasonably possible, the principals shall meet, whether virtually or in person, and shall use good faith efforts to resolve the dispute.

**Section 12.3 Non-binding Mediation.** If the Director and the MSR Principal (and, if requested by the City or MSR, the SPS Principal) are unable to resolve the dispute within a timeframe reasonable under the circumstances, but in any case, no later than thirty (30) days following referral to them, then upon the written request of either Party, the Parties shall proceed to non-binding mediation. Within ten (10) business days of receipt of a written request for mediation, the Parties will agree to a third-party neutral to mediate the dispute. If the Parties are unable to agree upon a mediator within ten (10) business days, then at the written request of either Party, the Parties agree to have a mediator appointed by the Seattle Office of Judicial Dispute Resolution, LLC, or any similar organization. Mediation shall be scheduled at a mutually agreed-upon time and both Parties shall participate in good faith and shall equally share the cost of the mediation. If a dispute remains unresolved following mediation, either Party is free to pursue a lawsuit or other legal means of resolution.

**Section 12.4 Limitation.** Notwithstanding the existence of any dispute between them arising under this Agreement, the Parties shall continue to carry out, without unreasonable delay, all their respective responsibilities under this Agreement that are not affected by the dispute. The Parties agree to follow each of the steps in this Article prior to filing a lawsuit or seeking legal relief with one exception: if the nature of the dispute is such that there is imminent risk to the legal rights of either Party, or life or property.

## ARTICLE XIII Default and Remedies

**Section 13.1 MSR Default Event Defined.** As used in this Agreement, “MSR Default Event” means any of the following conditions or circumstances that is not cured within the time specified:

A. MSR fails to achieve Notice to Proceed by September 30, 2025 (other than as the result of acts or omissions of the City or SPS or as a result of failure to achieve Final Project Design through the SEPA environmental review process) and does not correct the failure within thirty (30) days of written notice from the Director (or such longer time if compliance within thirty (30) days is not practicable given the nature of the corrective action required and MSR is making substantial good-faith efforts to comply).

B. After Notice to Proceed is issued, MSR fails to use commercially reasonable efforts to cause the Prime Contractor to diligently prosecute the work in accordance with the Final Project Schedule or fails to achieve Substantial Completion by the Substantial Completion Date,

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other than as a result of acts or omissions of the City or SPS, and fails to commence corrective action within thirty (30) days of written notice from the Director describing the failure and the requested steps to cure, or, having timely commenced corrective action, fails to complete the corrective action in a manner that will achieve Substantial Completion by the Substantial Completion Date. For purposes of this section, “diligently prosecute” shall mean: absent a Force Majeure Event or Excused Delay, engaging in continuous construction activities and allowing City inspections consistent with the Final Project Schedule and with lapses of site-wide construction activity of no longer than seven (7) days at one time or thirty-five (35) days cumulatively, and being able to demonstrate to the reasonable satisfaction of the City that MSR will be able to achieve Substantial Completion no later than the Substantial Completion Date.

C. If, at any time during the Term, MSR fails to maintain the insurance required under this Agreement and fails to obtain the required insurance within five (5) business days of the Director’s written notice.

D. MSR has made a general assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they become due; or files a petition in bankruptcy, or has been adjudicated bankrupt or insolvent; or has filed a petition seeking any legal restructuring not approved under Section 16.2, liquidation, dissolution, or similar relief under any present or future statute, law or regulation; or has sought or consented to the appointment of any trustee, receiver or liquidator if such appointment remains in force or unstayed for a period of thirty (30) days, or has otherwise represented it is insolvent.

E. MSR has failed to comply with or has violated any other material term of this Agreement if such failure or violation continues after the Director’s written notice specifying the failure or violation, the requested cure, and a timeline for completion that is appropriate and reasonable given the nature of the failure or violation; provided, however, that if the nature of the failure or violation reasonably requires more than the requested time to cure, MSR shall not be in breach if MSR has commenced the cure and thereafter reasonably pursues it to completion.

**Section 13.2 City Remedies for MSR Default Event.** Upon the occurrence and during the continuance of a MSR Default Event, then subject to the dispute resolution provisions of Article XII, which shall apply to any disputed MSR Default Event, the City shall have the following non-exclusive rights and remedies, at the City’s discretion:

A. Pursue actual and reasonable monetary damages from MSR; provided, however, that MSR shall not be responsible for payment to City of any consequential, special, or punitive damages in any way arising from this Agreement or any claim of breach or failure under this Agreement; and provided further that the following shall not be excluded as consequential damages under this provision: any monetary damages asserted by SPS against the City under the terms of the Interlocal Agreement resulting from an MSR Default Event, any claims to which the defense and indemnification obligations under Section 8.4 apply, and third-party claims to which the defense and indemnification obligations under Article IX apply.

B. Seek injunctive relief or other appropriate equitable remedy, including specific performance with respect to disbursement of Donor Funds from the Seattle Center Foundation or Qualified Non-profit that is charged with holding such Donor Funds.



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C. Call the Construction Bonds and/or Completion Bond.

D. Require that the Licensed Area be vacated by MSR and its contractors, and thereafter the City and its contractors may enter upon the Licensed Area and cause corrective work or other correction or mitigation to be performed in accordance with the Final Project Design and applicable requirements that would otherwise apply under this Agreement and be reimbursed the City's actual and reasonable costs associated with the corrective or mitigating work, except that MSR will not be responsible for costs of corrective or mitigating work that arise from the negligence, recklessness, or willful misconduct of the City or its contractors in performing such corrective or mitigating work.

E. Terminate this Agreement in accordance with Section 13.5.

**Section 13.3 City Default Event Defined.** As used in this Agreement, "City Default Event" means any of the following conditions or circumstances that is not cured within the time specified:

A. The City or SPS fails to appropriate or disburse or pay any undisputed amount of money due to MSR in the time required under this Agreement if such failure continues for more than ten (10) business days following the MSR Principal's written demand to the Director with a copy to the SPS COO.

B. The City has failed to comply with or has violated any other material term of this Agreement, including but not limited to failure to meet required deadlines, if such failure or violation continues after the MSR Principal's written notice specifying the failure or violation, the requested cure, and a timeline for completion that is appropriate and reasonable given the nature of the failure or violation; provided, however, that if the nature of the failure or violation reasonably requires more than the requested time to cure, the City shall not be in breach if the City has commenced the cure and thereafter reasonably pursues it to completion.

C. SPS revokes the right and license granted pursuant to Section 4.2.B of the Interlocal Agreement before the end of the Term of this Agreement.

**Section 13.4 MSR Remedies for City Default Event.** Upon the occurrence and during the continuance of a City Default Event, then subject to the dispute resolution provisions of Article XII, which shall apply to any disputed City Default Event, MSR shall have the following non-exclusive rights and remedies, at MSR's discretion:

A. Pursue actual and reasonable monetary damages from the City, including without limitation any amounts required to satisfy donor restrictions of which the Director had actual notice and accepted in writing (including acceptance by confirming the verification of funding under Section 3.1.E, if applicable); provided, however, that City shall not be responsible for payment to MSR of any consequential, special, or punitive damages in any way arising from this Agreement or any claim of breach or failure under this Agreement, and provided further that the following shall not be excluded as consequential damages under this provision: third-party claims to which the defense and indemnification obligations under Article IX applies.

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B. Seek the City's specific performance of this Agreement, as well as injunctive relief or any other appropriate equitable remedy.

C. Terminate this Agreement in accordance with Section 13.5 and cease work on the Project.

**Section 13.5 Termination.** The remedy of termination of this Agreement for default, whether for a City Default Event, MSR Default Event, or Force Majeure Event, or exercise of any other termination right, shall be pursuant to this Section 13.5.

A. Remedies under this Agreement, other than termination, shall survive for any breach of this Agreement that shall have occurred prior to termination. All indemnities herein shall survive with respect to any pertinent occurrence, event, condition, act or omission that shall have occurred prior to termination. The termination of this Agreement for any reason shall not affect any right, obligation, or liability which has accrued under this Agreement on or before the effective date of such termination.

B. Upon the occurrence of any MSR Default Event or City Default Event under Section 13.1 or Section 13.3, respectively, the Party not in default (the "Non-Defaulting Party") shall have the right to terminate this Agreement by giving written notice to the Party who is in default (the "Defaulting Party") of the Non-Defaulting Party's intention to terminate this Agreement if the Defaulting Party fails to remedy such Default Event within ten (10) business days after its receipt of notice to remedy if such default relates to the payment of a sum of money, and, in all other cases, within 30 days after its receipt of notice to remedy; provided, however, that if such Default Event be of a non-monetary nature and if it cannot reasonably be remedied within said 30-day period, then such 30-day period shall be deemed to be extended for such additional period as may reasonably be required to remedy the same if the Defaulting Party begins and continues the remedy with due diligence, but in any case such period shall not extend more than ninety (90) days without the written approval of the Non-Defaulting Party.

C. Upon any termination of this Agreement for any reason whatsoever:

a. MSR shall (i) cease and cause to be discontinued all activity associated with the Project on the Development Site, except as otherwise provided in this Agreement; (ii) at the election of the City (and SPS, through the Interlocal Agreement), remove all construction and other equipment and uninstalled materials on the Development Site or other Licensed Areas being used by MSR or any of its contractors or subcontractors in connection with the Project as soon as practicable; (iii) deliver to City and SPS possession of their portions of the Development Site, (iv) assign all rights to the Final Project Design to the City or SPS, as determined by the Interlocal Agreement; (v) in the event Donor Funds remain on deposit with Seattle Center Foundation or with a Qualified Non-profit, arrange for the transfer of such funds or take other steps necessary to provide that the funds shall be disbursed to the City for the Project, or with the Director's approval, to the Seattle Center Foundation to be held and disbursed to the City, or if requested by the Director, to SPS, for the benefit of the Project; (vi) deliver to City all materials and supplies, keys, copies of contracts and documents, invoices, receipts, and copies of all other papers, documents, and accounting records (including, but not limited to, Project Financial Records, Social Equity Records, and design and specification documents that were not provided previously)

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pertaining to the Project, (vii) identify any unpaid fees and other charges and reimbursements due MSR hereunder, (viii) expeditiously perform (or cause its Prime Contractor to perform) such work as required to leave the Development Site in safe and stable condition and immediately thereafter surrender the Development Site and all remaining work-in-progress; and (ix) upon written request of the City, assign any Project-related contracts to the City or SPS, provided that the City and/or SPS, as applicable, agrees in writing to assume MSR's duties and obligations arising thereunder after the date of assignment.

b. The City shall disburse to MSR, or use best efforts to cause SPS to disburse to MSR, any undisputed monies due MSR under this Agreement. Without limiting the generality of the foregoing, the City shall compensate MSR (and its Prime Contractor, by way of MSR) for all Project work performed as of the termination date and such compensation shall be made by City within thirty (30) days of receipt of final application for payment from the Prime Contractor or MSR consistent with the requirements of Section 4.5 of this Agreement.

D. Upon termination for an MSR Default Event, MSR shall not be relieved from any damages that may accrue to the City under applicable law by virtue of the termination of the Agreement, and MSR's obligations that expressly survive termination shall continue, including but not limited to its indemnity obligations. Upon any termination for an MSR Default Event, the City reserves all rights to proceed with the Project or portions thereof, as modified by the City in its sole discretion, including through assumption and enforcement of any Project-related contracts, including but not limited to the Construction Contract and MSR's contract with the Project designer.

E. Upon termination for a City Default Event, the City shall not be relieved from any damages that may accrue to MSR by virtue of the termination of the Agreement, and the City's obligations that expressly survive termination shall survive, including the City's indemnity obligations. Notwithstanding the foregoing, if this Agreement is terminated for a City Default Event, MSR shall not be relieved of any of its obligations that survive termination or that accrued prior to termination, provided that the performance of such obligation is not excused or rendered impractical by virtue of the City Default Event.

**Section 13.6 Remedies Cumulative.** The remedies specified in this Agreement are cumulative, and neither Party shall be deemed to have waived the right to any remedy allowable at law or equity by virtue of exercising any right specified in this Agreement.

**Section 13.7 Force Majeure.** Neither Party shall be liable or responsible to the other Party or be deemed to have defaulted under or breached this Agreement for any failure or delay in fulfilling or performing any of its obligations under this Agreement when and to the extent the failure or delay is caused by Force Majeure. For the avoidance of doubt, the occurrence of a Force Majeure Event shall excuse performance of the obligations of the Affected Party(ies) only for the duration and to the extent performance is prevented or limited by the Force Majeure Event, provided that Force Majeure shall not apply to any failure to pay or disburse, as applicable, any undisputed sum of money under this Agreement.

A. As soon as practicable after a Force Majeure Event occurs, but in no event later than five (5) business days after such Party's first knowledge of the occurrence of such event, the Party affected by the Force Majeure Event ("Affected Party") shall give the other Party a written

## Development Agreement

statement (the “FM Notice”) describing the Force Majeure Event and its cause (to the extent known to the Affected Party) and a description of the conditions impacting the performance of the Party’s obligations. If it is not clear when a Force Majeure Event commences, the Affected Party will provide the FM Notice as soon as is reasonable given the facts and circumstances of such Force Majeure Event. The Affected Party shall also provide notice to the other Party of the cessation of the Force Majeure Event and the affected Party’s ability to recommence unimpacted performance of its obligations under this Agreement by reason of the cessation of the Force Majeure Event, which notice shall be given as soon as practicable after the cessation of the Force Majeure Event. If a Party in receipt of the FM Notice disputes the Force Majeure Event or its impact on failure to perform or delay, that Party shall have ten (10) business days to object to the FM Notice by giving the Affected Party a written statement describing its objections (the “FM Dispute Notice”). Timely provision of the FM Dispute Notice will refer the objection to the dispute resolution processes of Article XII.

B. If the Affected Party is unable to perform its obligations in this Agreement for a period of ninety (90) days due to an impact resulting from a Force Majeure Event that is not subject to a FM Dispute Notice, the other Party may terminate this Agreement upon thirty (30) days’ notice to the other Party. Notwithstanding the foregoing, a Party shall not have the right to terminate for a Force Majeure Event that causes damage or casualty that is covered by Builder’s Risk insurance or that would have been covered if the insurance had been procured in compliance with this Agreement. If a Party elects to terminate pursuant to this subsection, the termination provisions of Section 13.5 shall apply.

## ARTICLE XIV Representations and Warranties

**Section 14.1 MSR Representations and Warranties.** By signature below, MSR represents and warrants to the City that as of the Effective Date:

A. MSR is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and is authorized to do business in Seattle, Washington.

B. MSR has obtained all corporate authorizations and approvals, including those authorizations required by any lender or affiliate partner or entity, required for MSR to enter this Agreement and MSR has all requisite power and authority to perform its obligations under this Agreement.

C. MSR’s execution and delivery of this Agreement and its performance of this Agreement according to its terms does not (i) violate the organizational documents of MSR or (ii) result in a breach of, or constitute a default (or any event which with the giving of notice or lapse of time would become a default) under, require any consent under, or give to any other person any rights of termination, amendment, acceleration, suspension, revocation or cancellation of this Agreement, or result in the creation of any lien on the assets or the properties of MSR.

## Development Agreement

D. No suit, proceeding or other action is pending or, to the knowledge of MSR, is threatened against MSR that would reasonably be expected to have a material adverse effect upon or prevent MSR's performance under this Agreement.

E. The individual executing this Agreement on behalf of MSR has the authority to bind MSR and this Agreement has been duly executed and delivered by MSR and constitutes valid and binding obligations of MSR.

**Section 14.2 City Representations and Warranties.** By signature below, the City represents and warrants to MSR that as of the Effective Date:

A. The City of Seattle is a validly existing municipal corporation of the first class formed under the laws of the State of Washington.

B. The City has obtained all required authorizations required to enter this Agreement, including an authorizing ordinance of Seattle City Council in effect on or before the Effective Date, and that the City has all requisite power and authority to perform its obligations under this Agreement.

C. To the best of the City's knowledge, the City's execution and delivery of this Agreement and its performance of this Agreement according to its terms does not result in a breach of, or constitute a default (or any event which with the giving of notice or lapse of time would become a default) under, require any consent under, or give to any other person any rights of termination, amendment, acceleration, suspension, revocation or cancellation of this Agreement.

D. No suit, proceeding or other action is pending or, to the knowledge of City, is threatened against the City that would reasonably be expected to have a material adverse effect upon or prevent the City's performance under this Agreement.

E. The individual executing this Agreement on behalf of the City has the authority to bind the City and this Agreement has been duly executed and delivered by the City in its non-regulatory capacity and constitutes valid and binding obligations of the City.

## **ARTICLE XV** **Notices**

All notices, requests, and demands ("Notices") under this Agreement shall be in writing and delivered to the designated representative and addressed as follows:

If to City:

Marshall Foster  
Director of the Seattle Center  
305 Harrison Street  
Seattle, WA 98109  
Marshall.Foster@seattle.gov

## Development Agreement

With Copy to: Thomas Kuffel  
Civil Chief  
Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7095  
Thomas.Kuffel@seattle.gov

If to MSR: Lance Lopes  
Memorial Stadium Redevelopment LLC  
10601 4<sup>th</sup> Ave NE  
Seattle, WA 98125  
llopes@seattlekraken.com

With Copy to: Hewan Teshome  
Memorial Stadium Redevelopment LLC  
334 1<sup>st</sup> Ave N  
Seattle, WA 98109  
legal@climatepledgearena.com

Notices may be delivered by email (with electronic confirmation of delivery), personal delivery, FedEx or other overnight courier service, or United States mail postage prepaid with delivery confirmation. Notices shall be deemed received upon receipt, or attempted delivery to the address provided in this Section where delivery is not accepted, as follows: (i) date of personal delivery, (ii) first business day after the date of deposit with FedEx or overnight courier, or (iii) three (3) business days after deposit in U.S. mail. Each Party may change its representative and address for notice by providing written notice to the other Party as provided in this section.

### **ARTICLE XVI** **Additional Terms and Conditions**

**Section 16.1 Non-Discrimination.** Without limiting MSR's general obligation for compliance with all applicable laws and regulations, for the Term of this Agreement, MSR shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to SMC Chapters 14.04, 14.10, and 20.42, as they may be amended from time to time, and rules, and regulations, orders and directives of the associated administrative agencies and their officers.

**Section 16.2 No Assignment.** The City and SPS selected MSR to perform the development activities of the Project under this Agreement, in part, based on MSR's skill, qualifications, expertise, and vision for the Project, all of which are personal to MSR. As a result, MSR shall not assign or transfer this Agreement in whole or in part, whether voluntarily, through bankruptcy, re-organization, sale of assets, merger, or operation of law, without the Director's prior written approval, which may be conditioned, withheld, or denied in the Director's reasonable discretion. Any attempted transfer or assignment of this Agreement without the Director's prior written approval shall be voidable, at the sole discretion of the City and SPS.

## Development Agreement

**Section 16.3 Relationship of Parties.** The relationship of MSR to the City, and through the City to SPS under the Interlocal Agreement, at all times under this Agreement shall be that of an independent contractor. The City and MSR do not intend and shall not be construed to create a partnership or joint venture associated with the Project or SPS or any other matter by virtue of this Agreement. Neither Party shall have the right, power, or authority to: (i) direct the employees of the other Party; (ii) waive any right, grant any release, or make any contract or other agreement that binds the other Party; or (iii) assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party.

**Section 16.4 Negotiated Agreement.** The Parties acknowledge that it is a mutually-negotiated document, that each Party had the opportunity to have this Agreement reviewed by its respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either Party on the basis of that Party's drafting of any part of this Agreement.

**Section 16.5 Entire Agreement; Relationship to Interlocal; Order of Precedence.** This Agreement, including the exhibits listed in Section 1.3 and any document which by its reference forms a part hereof, constitute the entire agreement between the Parties concerning the subject matter herein. If there is any conflict between an exhibit and the body of this Agreement, the body of this Agreement shall govern to the extent necessary to resolve the conflict. It is the City's intent that this Agreement be interpreted consistent with the City's rights and obligations under the Interlocal Agreement to the maximum extent possible. MSR acknowledges that the City has provided MSR the opportunity to review and provide input regarding the Interlocal Agreement and the Parties have made reasonable efforts to avoid conflicts. However, the City acknowledges that MSR is not party to the Interlocal Agreement. The City agrees that if there should be a conflict between this Agreement and the Interlocal Agreement solely with respect to the rights and obligations between MSR and the City with respect to the Project, this Agreement shall take precedence over the Interlocal Agreement, but only to the extent necessary to resolve the conflict.

**Section 16.6 Approvals.** Unless otherwise expressly provided, any approval that may be given or withheld under this Agreement by any Party will not be unreasonably withheld, conditioned, or delayed.

**Section 16.7 Amendments.** This Agreement may not be modified or amended except by a written instrument executed by MSR and the City, which may be subject to approval of the City Council and SPS to the extent such modification would conflict with the Interlocal Agreement. Notwithstanding the foregoing, the Director and the MSR Principal are authorized to approve, in a mutually executed writing, minor changes, clarifications, or such adjustments as may be necessary or appropriate to fulfill the purpose of this Agreement, as may be authorized by SPS and the City Council.

**Section 16.8 Governing Law; Jurisdiction and Venue.** This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington. Unless otherwise required by applicable law, jurisdiction and venue for any action under this Agreement shall be in the Superior Court of the State of Washington for King County and each Party consents to such jurisdiction and venue by entering into this Agreement.

## Development Agreement

**Section 16.9 Severability.** If any part, provision, term or exhibit of this Agreement is held to be invalid, unenforceable, or in conflict with any governmental restrictions, or otherwise be rendered unenforceable or ineffectual, the remainder of this Agreement shall continue in effect and remain enforceable to the fullest extent permitted by law; provided, that upon such determination, the Parties will negotiate in good faith to modify this Agreement so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Agreement are fulfilled to the greatest extent possible.

**Section 16.10 Time of the Essence.** Time is of the essence of this Agreement and all deadlines and covenants herein.

**Section 16.11 No Waiver.** A Party's failure to complain or object to any act, omission or breach of this Agreement by the other Party shall not be deemed a waiver of the express terms of this Agreement, nor shall it operate to excuse a breach of any other provision of this Agreement. If any action of any Party requires the consent or approval of another, consent or approval given on one occasion shall not be deemed a consent to or approval of that action on any other occasion. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

**Section 16.12 Interpretation.** The captions and headings in this Agreement are only for convenience and do not define, limit or describe the scope or intent of any of the provisions of this Agreement.

**Section 16.13 Signature by Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which, when taken together, will constitute one and the same instrument. Counterpart signature copies of this Agreement may be delivered by email/.pdf and shall be deemed effective upon delivery.

The Parties hereto have executed this Agreement by having their authorized representatives affix their respective signatures below.

### MEMORIAL STADIUM REDEVELOPMENT LLC

By: \_\_\_\_\_

Date: \_\_\_\_\_

### THE CITY OF SEATTLE

By: \_\_\_\_\_

Date: \_\_\_\_\_



## **Exhibit A**

### **Licensed Area, Development Site, Temporary Access Area, and Perimeter Area**

1. “Licensed Area” means the Development Site and the Temporary Access Areas.
2. “Development Site” means the physical location for the permitting and development of the Project on property owned by SPS and the City.
3. “Temporary Access Area” means the area around portions of the Development Site in which temporary construction access is reasonably needed to construct the Project. The Temporary Access Area is depicted on this Exhibit A, which area the Parties will adjust if reasonably necessary or convenient to implement regulatory or mitigation requirements.
4. “Perimeter Area” means an open space area within the Development Site which includes both SPS property and City-owned easement areas as depicted on this Exhibit A.



[illegible]

PROJECT INFORMATION	
OWNER:	SEATTLE PUBLIC SCHOOLS
LEGAL DESCRIPTION	SEE LEGAL DESCRIPTIONS OF PARCELS A & Z, WEST ACCESS EASEMENT, HARTSON ACCESS EASEMENT, AND NORTH IMPROVEMENT EASEMENT.
APNO. CO. APN	18825-040
UNIMPROVED AREA	357,000 SF (2.2 ACRES) (NET)   51,000 SF (ENCLOSED SPACE)

PROJECT VICINITY MAP **A1**

<p><b>PANEL X: LEGAL DESCRIPTION</b></p> <p>A PORTION OF LOT 18, PARCELS 1, BLOCK 15, 1, COUNTRY HOME, ADJACENT TO THE CITY OF SEATTLE, WASHINGTON, BEING THE NORTHWEST CORNER OF THE NORTHWEST CORNER</p>
--



means the area around portions of the Development Site in which temporary construction access is reasonably needed to construct the Project. The Temporary Access Area is depicted on this Exhibit A, which area the Parties will adjust if reasonably necessary or convenient to implement regulatory or mitigation requirements.



**ption**

NORTH  
COUNTY, WASHINGTON, NORTH 87°33' 35" WEST,  
THE ENE OF REPUBLICAN STREET PROJECTED WITH THE  
LINE AS ESTABLISHED BY CITY OF SEATTLE VACATION  
STREET LOCATED ADJACENT TO CITY OF SEATTLE.  
DISTANCE OF 115.09 FEET; POINCE CONTINUING ALONG  
NORTH LINE NUMBER 3650 SOUTH 87°33' 35"  
DISTANCE OF 63.62 FEET TO THE BEGINNING OF A NON-  
BEARING STRAIGHT AND ACROSS BEARING WHICH CENTER  
THROUGH A CENTRAL ANGLE OF 27°45' 38" TO THE  
4TH AVENUE NORTH AND REPUBLICAN STREET FOR  
2712 FEET;  
  
TRUE RIGHT OF RECORD.

(SEE PLAT)



PROJECT VICINITY MAP | Δ

PROJECT VICINITY MAP | Δ

**GENERATOR** STUDIO  
OWNER

SEATTLE PUBLIC SCHOOLS  
2445 3RD AVE S  
SEATTLE, WA 98134  
SEATTLE.SCHOOLS.ORG

DEVELOPER

ONE ROOF FOUNDATION  
10601 5TH AVE, SUITE 100  
SEATTLE, WA 98125

ARCHITECT

GENERATION STUDIO LLC  
1675 BALDWIN AVE  
KANSAS CITY, MO 64108  
816.333.6527  
GENERATIONSTUDIO.COM

LOCAL ARCHITECT

**dM & STRUCTURAL ENGINE**  
MAGNUSON KLEMENZ ASSOCIATE  
1801 5TH AVE. SUITE 2000  
SEATTLE, WA 98101  
206.352.1200  
MIA.COM

**LANDSCAPE ARCHITECT**  
SWIFT  
919 WESTERN AVE. SUITE 2M23  
SEATTLE, WA 98121  
206.455.2028  
SWIFTCOMPANY.COM

**CM + GC**  
SELLEN CONSTRUCTION  
227 WESTLAKE AVE N

BY EIGHT STEPS

STAMP BOX

NOT FOR CONSTRUCTION

REDEVELOPMENT  
401 5TH AVENUE NORTH  
SEATTLE, WA 98101

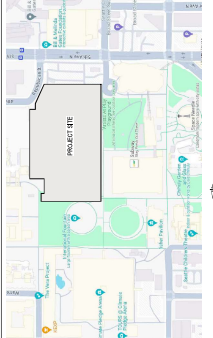
MUP SUBMISSION

ISSUE DATE: \_\_\_\_\_  
BY: \_\_\_\_\_

[illegible]

	PROJECT NO.
	DRAWN BY:
	CHECKED BY:

**MUP - AREA OF WORK  
BOUNDARY PLAN  
MUP-AS-10**



PROJECT VICINITY MAP	NTS
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[illegible]

## Exhibit A

Exhibit B  
Estimated Project Budget  
MEMORIAL STADIUM REDEVELOPMENT LLC

ID#	Group	Original Budget (date)	
300	LAND ACQUISITION & SITE DEVELOPMENT		
320	Hazardous Material Remediation	\$	- In Sellen estimate
350	Public Art	\$	- 1% of City contribution
395	East Parking Lot Improvements (ticket booth removal, restripe)	\$	- Incl in Sellen at \$85k
	Sub Total	\$	-
400	DESIGN/PROFESSIONAL SERVICES		
401	Basic Design & Engineering Services	\$ 6,500,000	Per Generator ASR update 2/14/25
402	Reimbursables - Architecture & Engineering	\$ 208,000	Per Generator ASR update 2/14/25
403	Additional Services - Architecture, Structural, Landscape, Civil	\$	- Assumed in Owner Contingency
404	Rendering Services	\$	-
405		\$	-
406		\$	-
407		\$	-
408	Arborist	\$ 18,225	
409		\$	-
410	Cost Estimating	\$	- Incl w Generator above
411.1	Survey	\$ 70,830	Per BRH proposals
412	Acoustical Consultant	\$	- Now incl above w Generator
413	Envelope Consultant	\$	- Now incl above w Generator
414	Commissioning	\$ 100,000	TC estimate - increased 12/5 from \$35k to \$100k due to likely LEED
	Energy Model req'd for LEED	\$ 35,000	TC estimate 1/26/25
415	Telecommunications Service Charges (Comcast and Clink)	\$ 25,000	TC estimate
416	Parking & Traffic Consulting	\$ 35,000	Per Heffron proposal + \$5k
417	Graphic Design (Directional/Branding/Experience)	\$	- In Generator fee
418	Kitchen /Ops Consultant	\$	- In Generator fee
419	Web Consulting	\$	- NA
420	Geotechnical Report	\$	- Incl w Generator above
421	Geotechnical Construction Monitoring & Inspection (TBD)	\$ 247,909	Risk of escalation
422	Permit Expeditor	\$ 26,875	Per PCNW proposal
423	Cultural Resources Consultant	\$ 9,870	Perteet executed proposal
424	LEED Certification and Other Fees	\$ 25,000	TC added 12/5 (scorecard by Kraken/B but recerts and application fees apply)
	Sub Total	\$ 7,301,709	
500	LEGAL & GOVERNMENTAL SERVICES		
501.1	Legal Services - Transaction & Administrative	\$ 250,000	
501.2	Legal Services (Owner Expense / Budget Offset)	\$	-
	Sub Total	\$ 250,000	
600	PROJECT ADMINISTRATION		
602	Project Management - services CLLC	\$ 600,000	
603		\$	-
604	Project Management - reimbursables	\$ 2,500	
605	Project Management AVIT	\$	-
606	Public Relations Consultant	\$	-
607	Other Administrative Expenses or Prof Services	\$	-
	Sub Total	\$ 602,500	
700	CONSTRUCTION		
701	Preconstruction Services Fees - Sellen	\$ 1,647,269	Per Sellen 3/17/25
702	MEP/Environ Design/Build Engineering - Sellen	Incl in 701	
703	Current Sellen Construction Estimate -		

ID#		Group	Original Budget (date)	
	Direct		\$ 114,338,189	Includes Contractor Contingency of \$2,188,248. Per Sellen 3/17/24
	Indirect		incl above	
	GC's		incl above	
710	WSST - 10.35%		\$ 11,972,636	10.35%
Sub Total			\$ 127,958,094	
750	SYSTEMS & EQUIPMENT			
755.0	Furniture & Furnishings		\$ 200,000	Verify MSR and SPS assumptions and obligations
755.1	Moving & Storage Services		\$ -	
755.4	Trash Compactor, Material Handling		\$ -	TBD - Verify
755.7	Kitchen Equipment		\$ -	\$300k carried by Sellen/Bargreen incl POS.
755.8	Beverage systems		\$ -	Included in Kitchen Equip above
755.9	Custom Fence Screening during const		\$ -	\$28k carried by Sellen
756.0	Network and Firewall Equip		\$ 50,000	Not incl in Sellen currently
756.1	Structured cabling		\$ -	included in Sellen SD budget
756.2	AV Systems & Integration		\$ -	included in Sellen SD budget
756.3	Sideline communication systems		\$ -	TBD - Verify
756.4	WIFI Systems		\$ -	included in Sellen SD budget
756.5	Security / Access Control		\$ -	included in Sellen SD budget
756.6	Signage - Exterior		\$ -	\$300k carried by Sellen
756.7	Signage - Interior/Founding Sponsors		\$ -	Incl above
756.8	Signage - Misc.		\$ -	Incl above
756.9	POS Equipment		\$ -	Included in Kitchen Equip above.
Sub Total			\$ 250,000	
800	PERMITS, TESTING, FEES & SPECIAL TAXES			
801	Building Permit / MUP Fees		\$ 700,000	estimate by GGLO/Dave W
802	Haz Mat Survey		\$ -	Incl in Sellen estimate
803	Independent Special Testing/Inspection Fees		\$ 250,000	TC estimate - Krazan or other
804	Domestic & Fire Prot water connection fees (SPU)		\$ 150,000	TC estimate
805	Sanitary Sewer connection fees (King County)		\$ 50,000	
806	Gas connection fee (PSE)		\$ -	
807	Electrical design/equipment/connection fees (SCL)		\$ 176,896	SCL Service fee/consolidation per Sellen 1/30/25
808	Storm water connection fee		\$ 50,000	
809	Health Dept, Liquor Board Fees/Etc.		\$ -	
810	MHA - Housing Fee		\$ -	Assumed exempt
811	Off Site Planting 50 Trees (or fee to be paid)		\$ 100,000	TC estimate
812	SDOT Street Use Fees		\$ 70,000	Per Sellen 1/21/25
Sub Total			\$ 1,546,896	
900	INSURANCE, FINANCING & TRANSACTION COSTS			
901	Builder's Risk Insurance		\$ -	Sellen carrying \$295k.
902	Additional General Liability Insurance		\$ 100,000	assume per TC
904	WSST - 10.25% (incl in above)		\$ -	
905	Performance & Payment Bond		\$ -	\$476k incl in Sellen estimate
907	Additional Bonds & Insurance		\$ -	
Sub Total			\$ 100,000	
Group Totals			\$ 138,009,199	
1000	CONTINGENCY			
1030	Escalation/Design/Owner Contingency		\$ 1,190,801	Sellen direct costs above include \$2.188M Contractor Contingency
1040			\$ -	
Sub Total			\$ 1,190,801	

ID#	Group	Original Budget (date)
TOTAL PROJECT BUDGET <sup>1</sup>		\$ 139,200,000

Sources <sup>1</sup>	
SPS	\$ 69,300,000
Seattle Center	\$ 37,000,000
State of Wa	\$ 3,950,000
MSR <sup>2</sup>	\$ 28,950,000
	\$ 139,200,000

1. Total Project Budget/Sources: Cost of sewer replacement, and related funding by Seattle Public Utilities (SPU), is not included in Project Budget and Sources above, as amount is still to be determined. 100% of sewer replacement costs will be funded by SPU, with cash flows and payments to be addressed in a City of Seattle interdepartmental agreement.

2. MSR Funding: Raised to Date Amount does not include (a) additional \$1.0M from a family foundation under discussion but not included, as allocation details are yet to be confirmed (e.g., capital v. programming) or (b) additional \$2.5M capital funding from the King County Parks Levy that may be added if approved by voters in August of 2025. Levy funding will directly support general construction for the capital project.



Att 2 Ex C - Project Schedule  
V1

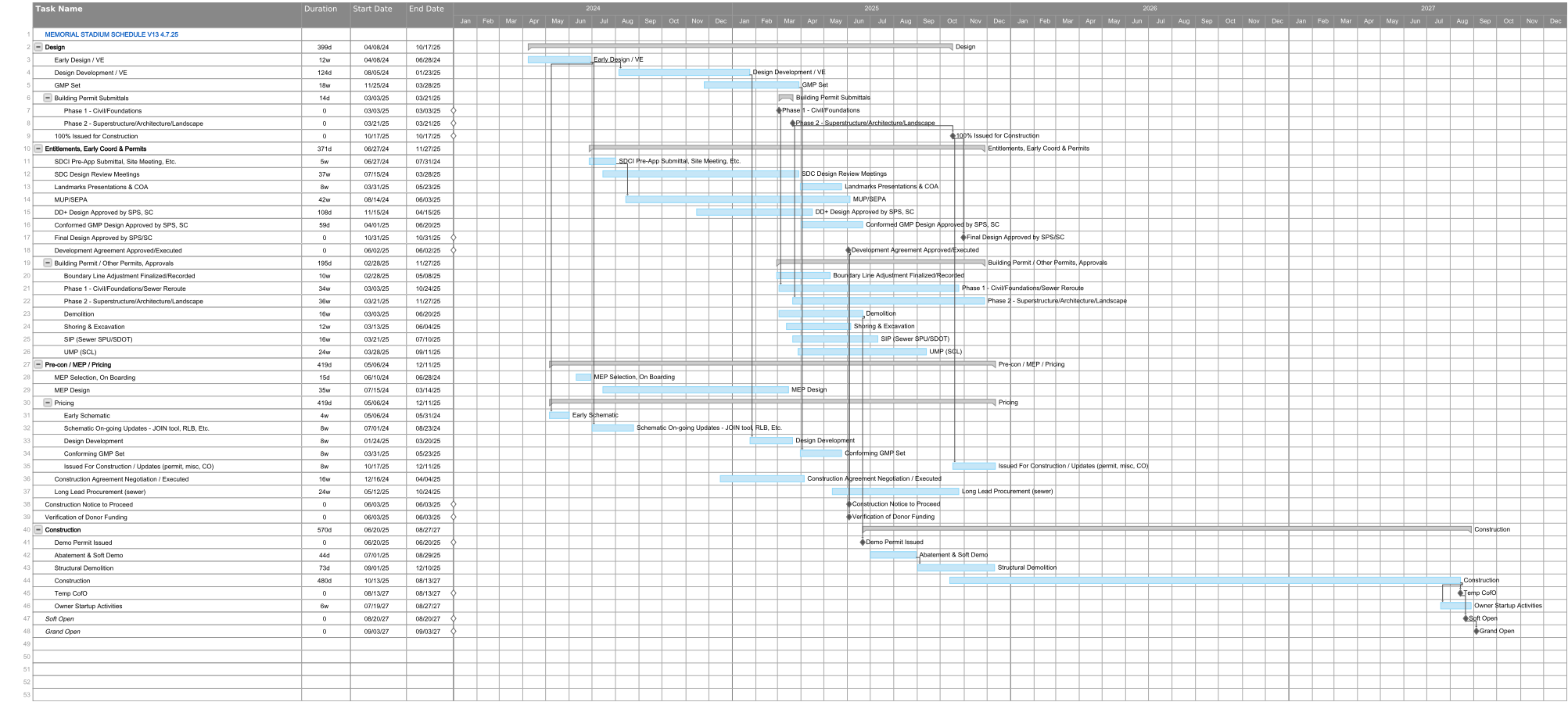


Exhibit D - Estimated Cash Flow Schedule

Memorial Stadium - Construction Cash Flow (As of 3.27.25)																			
	Sources/Uses			Q3'24			Q4'24			Q1'25			Q2'25			Q3'25			
		Pre-3/31/24	Q2'24	Jul'24	Aug'24	Sep'24	Oct'24	Nov'24	Dec'24	Jan'25	Feb'25	Mar'25	Apr'25	May'25	Jun'25	Jul'25	Aug'25	Sep'25	
	Hard Costs <sup>1</sup>	-	-	-	-	-	-	-	-	-	-	(100,000)	(400,000)	(500,000)	(1,000,000)	(1,200,000)	(2,600,000)		
	Soft Costs <sup>2</sup>	(500,000)	(500,000)	(200,000)	(200,000)	(700,000)	(300,000)	(600,000)	(700,000)	(300,000)	(400,000)	(1,300,000)	(1,400,000)	(1,000,000)	(800,000)	(700,000)	(300,000)	(500,000)	
	Contingency <sup>3</sup>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(100,000)	(100,000)	(100,000)	
	Total Costs	(500,000)	(500,000)	(200,000)	(200,000)	(700,000)	(300,000)	(600,000)	(700,000)	(300,000)	(400,000)	(1,400,000)	(1,800,000)	(2,400,000)	(1,300,000)	(1,800,000)	(1,600,000)	(3,200,000)	
		\$10.1m of MSR Funding Amount advanced by Seattle Kraken, for reimbursement																	
	SPS (fund monthly) <sup>4</sup>	69,300,000														-	900,000	12,200,000	
	Seattle Center <sup>5</sup>	37,000,000														-	500,000	1,100,000	
	WA State <sup>6</sup>	3,950,000														1,800,000	200,000	-	
	Private Donors	28,950,000	500,000	8,750,000	3,700,000		1,300,000	1,000,000		250,000				2,000,000				7,650,000	
	Total Funding	139,200,000	500,000	8,750,000	3,700,000	-	1,300,000	1,000,000	-	250,000	-	-	-	2,000,000	-	1,800,000	1,600,000	20,950,000	
	Cash Reserve <sup>7</sup>	-	8,250,000	11,750,000	11,550,000	12,150,000	12,850,000	12,250,000	11,550,000	11,500,000	11,100,000	9,700,000	7,900,000	7,500,000	6,200,000	6,200,000	6,200,000	23,950,000	
	Rolling 3-Month Cost (before contingency)	(1,200,000)	(900,000)	(1,100,000)	(1,200,000)	(1,600,000)	(1,600,000)	(1,600,000)	(1,400,000)	(2,100,000)	(3,600,000)	(5,600,000)	(5,500,000)	(5,400,000)	(4,500,000)	(6,300,000)	(8,200,000)	(11,100,000)	

Footnotes

1) Hard costs include direct costs for construction (Foundation work, demolition, roofing, plumbing/HVAC/Electrical, general conditions).

2) Soft Costs include bonds, insurance, permitting fees, and non-construction services (architects, consultants, legal)

3) Contingency includes Includes \$2.2m Construction Contingency held by Sellen + \$1.2m Design and Escalation Contingency

4) September payment by SPS and Seattle Center is estimated.

5) Seattle Center funding eligible to begin 1/1/25 and when Development Agreement signed.

6) WA State funding based on construction costs (not lump sum) and can not be applied to pre-demolition work

7) All public and private funding will be applied first to construction costs. Any excess cash reserve remaining at end of project related specifically to private funding above construction costs will be carried forward to fund stadium capital improvements and operations.

General Notes

SPS & SC funding begins upon signing of Dev Agreement (anticipated July 2025)

SPS & SC fund monthly based on actual invoices (split pro-rata) until funding caps out. The above schedule is an estimate based on project budget and cost curves.

Cost of sewer replacement, and related funding by Seattle Public Utilities (SPU), is not included in construction cash flow above, as amount is still to be determined. 100% of sewer replacement costs will be funded by SPU.

Payment Process - see DA Section 4.5

Memorial Stadium - Construction Cash Flow (As of 3.27.25)																
	Sources/Uses	Q3'25			Q4'25			Q1'26			Q2'26			Q3'26		
		Jul'25	Aug'25	Sep'25	Oct'25	Nov'25	Dec'25	Jan'26	Feb'26	Mar'26	Apr'26	May'26	Jun'26	Jul'26	Aug'26	Sep'26
Hard Costs <sup>1</sup>	(105,600,000)	(1,000,000)	(1,200,000)	(2,600,000)	(3,000,000)	(3,700,000)	(4,500,000)	(5,300,000)	(5,500,000)	(6,400,000)	(7,700,000)	(8,700,000)	(6,200,000)	(5,000,000)	(2,900,000)	(3,100,000)
Soft Costs <sup>2</sup>	(30,200,000)	(700,000)	(300,000)	(500,000)	(600,000)	(700,000)	(800,000)	(1,000,000)	(1,000,000)	(1,200,000)	(1,300,000)	(1,500,000)	(1,100,000)	(900,000)	(600,000)	(600,000)
Contingency <sup>3</sup>	(3,400,000)	(100,000)	(100,000)	(100,000)	-	(100,000)	(100,000)	(100,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(100,000)	(100,000)
Total Costs	(139,200,000)	(1,800,000)	(1,600,000)	(3,200,000)	(3,600,000)	(4,500,000)	(5,400,000)	(6,400,000)	(6,700,000)	(7,800,000)	(9,200,000)	(10,400,000)	(7,500,000)	(6,100,000)	(3,600,000)	(3,800,000)
SPS (fund monthly) <sup>4</sup>	69,300,000	-	900,000	12,200,000	1,350,000	2,900,000	3,500,000	4,200,000	4,400,000	5,100,000	6,000,000	6,800,000	4,900,000	4,000,000	2,300,000	2,500,000
Seattle Center <sup>5</sup>	37,000,000	-	500,000	1,100,000	700,000	1,600,000	1,900,000	2,200,000	2,300,000	2,700,000	3,200,000	3,600,000	2,600,000	2,100,000	1,300,000	1,300,000
WA State <sup>6</sup>	3,950,000	1,800,000	200,000	-	1,550,000											
Private Donors	28,950,000			7,650,000												
Total Funding	139,200,000	1,800,000	1,600,000	20,950,000	3,600,000	4,500,000	5,400,000	6,400,000	6,700,000	7,800,000	9,200,000	10,400,000	7,500,000	6,100,000	3,600,000	3,800,000
Cash Reserve <sup>7</sup>		6,200,000	6,200,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000	23,950,000
Rolling 3-Month Cost (before contingency)		(6,300,000)	(8,200,000)	(11,100,000)	(13,300,000)	(16,000,000)	(18,100,000)	(20,400,000)	(23,100,000)	(26,800,000)	(26,500,000)	(23,400,000)	(16,700,000)	(13,100,000)	(11,300,000)	(12,900,000)

Footnotes

- 1) Hard costs include direct costs for construction (Foundation work, demolition, roofing, plumbing/HVAC/Electrical, general conditions).
- 2) Soft Costs include bonds, insurance, permitting fees, and non-construction services (architects, consultants, legal)
- 3) Contingency includes Includes \$2.2m Construction Contingency held by Sellen + \$1.2m Design and Escalation Contingency
- 4) September payment by SPS and Seattle Center is estimated.
- 5) Seattle Center funding eligible to begin 1/1/25 and when Development Agreement signed.
- 6) WA State funding based on construction costs (not lump sum) and can not be applied to pre-demolition work
- 7) All public and private funding will be applied first to construction costs. Any excess cash reserve remaining at end of project related specifically to private funding above construction costs will be carried forward to fund stadium capital improvements and operations.

General Notes

SPS & SC funding begins upon signing of Dev Agreement (anticipated July 2025)

SPS & SC fund monthly based on actual invoices (split pro-rata) until funding caps out. The above schedule is an estimate based on project budget and cost curves.

Cost of sewer replacement, and related funding by Seattle Public Utilities (SPU), is not included in construction cash flow above, as amount is still to be determined. 100% of sewer replacement costs will be funded by SPU.

Payment Process - see DA Section 4.5

Memorial Stadium - Construction Cash Flow (As of 3.27.25)													
	Sources/Uses	Q4'26			Q1'27			Q2'27			Q3'27		Total
		Oct'26	Nov'26	Dec'26	Jan'27	Feb'27	Mar'27	Apr'27	May'27	Jun'27	Jul'27	Aug'27	
Hard Costs <sup>1</sup>	(105,600,000)	(3,400,000)	(4,300,000)	(4,100,000)	(4,600,000)	(4,900,000)	(5,000,000)	(4,400,000)	(3,100,000)	(1,400,000)	(1,200,000)	-	(105,600,000)
Soft Costs <sup>2</sup>	(30,200,000)	(700,000)	(800,000)	(800,000)	(900,000)	(1,000,000)	(1,000,000)	(900,000)	(800,000)	(500,000)	(400,000)	(700,000)	(30,200,000)
Contingency <sup>3</sup>	(3,400,000)	(100,000)	(200,000)	(200,000)	(200,000)	(200,000)	(100,000)	(200,000)	(100,000)	(100,000)	-	-	(3,400,000)
Total Costs	(139,200,000)	(4,200,000)	(5,300,000)	(5,100,000)	(5,700,000)	(6,100,000)	(6,100,000)	(5,500,000)	(4,000,000)	(2,000,000)	(1,600,000)	(700,000)	(139,200,000)
SPS (fund monthly) <sup>4</sup>	69,300,000	2,700,000	2,225,000									3,325,000	69,300,000
Seattle Center <sup>5</sup>	37,000,000	1,500,000	3,075,000	3,575,000								1,750,000	37,000,000
WA State <sup>6</sup>	3,950,000											400,000	3,950,000
Private Donors	28,950,000				3,800,000								28,950,000
Total Funding	139,200,000	4,200,000	5,300,000	3,575,000	3,800,000	-	-	-	-	-	-	5,475,000	139,200,000
Cash Reserve <sup>7</sup>		23,950,000	23,950,000	22,425,000	20,525,000	14,425,000	8,325,000	2,825,000	(1,175,000)	(3,175,000)	(4,775,000)	-	
Rolling 3-Month Cost (before contingency)		(14,100,000)	(15,500,000)	(16,300,000)	(17,400,000)	(17,200,000)	(15,200,000)	(11,100,000)	(7,400,000)	(4,200,000)	(107,900,000)	(700,000)	

Footnotes

- 1) Hard costs include direct costs for construction (Foundation work, demolition, roofing, plumbing/HVAC/Electrical, general conditions).
- 2) Soft Costs include bonds, insurance, permitting fees, and non-construction services (architects, consultants, legal)
- 3) Contingency includes Includes \$2.2m Construction Contingency held by Sellen + \$1.2m Design and Escalation Contingency
- 4) September payment by SPS and Seattle Center is estimated.
- 5) Seattle Center funding eligible to begin 1/1/25 and when Development Agreement signed.
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General Notes

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Cost of sewer replacement, and related funding by Seattle Public Utilities (SPU), is not included in construction cash flow above, as amount is still to be determined. 100% of sewer replacement costs will be funded by SPU.

Payment Process - see DA Section 4.5

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## **EXHIBIT E**

### **SEATTLE CENTER DESIGN REQUIREMENTS**

Capitalized terms that are defined in the body of the Development Agreement have the same meaning in this Exhibit E.

#### **Section 1. Design Principles and Design Guidelines**

The Design Principles and Design Guidelines in Section 1 are provided for MSR and the design consultant team to reference during the design of the Perimeter Area. Design Principles and Guidelines:

- Century 21 Architectural Design Guidelines, section entitled Campus-Wide Design Guidelines;
- Seattle Center Landscape Management Plan (Jan. 2009);
- Seattle Center Signage Guidelines (2021); and
- Seattle Center Pedestrian Lighting Concept Plan (2021).

Memorial Stadium design should apply the following significant Seattle Center Century 21 Master Plan Planning and Design Principles, in each case to the extent applicable to Stadium design:

- a. The International Fountain and open space around it should be preserved as the “heart” of Seattle Center.
- b. Open spaces should be increased wherever possible.
- c. Development should invigorate and update the campus to appeal to the next generation of users, yet changes should honor the campus’ historic character.
- d. Pedestrian friendly planning should unify the campus, enhancing the comfort and safety of people on foot.
- e. All planning and design work should aim to promote environmental sustainability.
- f. Visual access into and through the campus should draw people to the center of the grounds.

#### **Section 2. Trade Shops and Fleet Space**

The Minimum Scope requested incorporates on-site space to house Seattle Center’s trade shops, event support, and building and grounds laborers, unless otherwise approved by the City Representative. These are currently housed in Center Park (approx. 12,000 SF) and an offsite leased shops facility (approx. 20,000 SF) plus associated parking.

The design of the City Trade Shops, and Fleet Space will take into consideration the City’s programmatic requirements for the space as described in this Section 2. The Seattle Center trades currently include approximately 60 full time staff, with approximately 15-20 additional intermittent

## Att 2 Ex E – Seattle Center Design Requirements

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laborers reporting to campus on a heavy event day. The group requires access to a break room, locker room, showers, conference rooms, a shared office/computer room, restrooms, and a minimum of 6 offices for crew chiefs and workspaces. The trade shops need shop-specific workspace and storage space. Examples of specific requirements of trades and laborers are as follows:

- Carpentry requires vacuum and ventilation
- Electrical requires dry, conditioned storage space
- Metal requires vacuum and ventilation
- Painting requires conditioned space, special ventilation for an industrial paint booth, and storage space for paint
- Labor and Grounds requires temperature controlled interior storage/pallet racking for bulk materials and equipment, minimum 18' overhead clearance, locker room, and mud room.
- Secure, partially covered area with access to charging stations and easy ingress/egress for a significant portion of Seattle Center maintenance fleet vehicles which currently include:
  - 22 electric golf carts (with charging ability)
  - 2 pickup trucks
  - 1 van,
  - 1 garbage truck,
  - 2 sweeper trucks,
  - 1 tractor,
  - 1 trailer,
  - 5 forklifts,
  - 1 emergency services SUV

### **Section 3. Warehouse and Shipping/Receiving**

The Minimum Scope includes a replacement for the City's warehouse and shipping/receiving space currently located under the north stands of Memorial Stadium, which replacement shall be no less than 8,700 SF (inclusive of high bay storage), plus associated parking. The design of the Shop/Warehouse Space will take into consideration the City's programmatic requirements for the space as described in this Section 3.

For context, the area currently includes high bay storage for seasonal event related equipment, heavy rigging boxes, and regularly used supplies for event production and maintenance. The Minimum Scope for the new Shop/Warehouse Space includes the following:

- 10'x20' space for controlled recycling of batteries, electronics, fluorescent bulbs, ballast, paint, etc.
- 10'x10' space which must be able to be locked and must be registered with the fire department for storage of hazardous materials.
- Propane storage currently that exists in the northwest corner of the stadium site.
- An office space for one full-time on-site Senior Warehouse
- A loading space to provide access to daily truck loading activity, anticipating increased traffic in advance of Seattle Center special events.
- Minimum of 3,000 SF of space for dumpsters adjacent to the warehouse, plus use of the existing City dumpster/compactor location outside of the Stadium north stands, and operations space for loading and access to these facilities, which spaces may be shared with the stadium as detailed in the approved DD+ Design.

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#### **Section 4. Pedestrian Circulation**

The Final Project Design must include site circulation and access that maintains or improves pedestrian access connecting Republican St. and Harrison St. within the Development Site.

Paving and hardscape in the Perimeter and City-owned easement areas should be consistent with the guidelines in the Seattle Center Landscape Management Plan. Hardscape treatment on vehicular and pedestrian streets through the campus including Harrison St., August Wilson Way, and Third Ave N. are subject to approval by the City Representative.

The area surrounding the fountain including 3<sup>rd</sup> Ave N is finished with scoured concrete with an effort to use pavers where appropriate in pedestrian zones. Paver and pattern, if applicable, to be determined by the City Representative.

#### **Section 5. Vehicular Site Circulation**

All vehicular access routes to major rentable areas must be designed to accommodate emergency (non-fire) vehicles, merchandise trucks, motor coaches, box trucks, service vehicles, etc. These access routes include Harrison St., 3rd Ave. N., and August Wilson Way. Existing fire access routes will be maintained, other than 3<sup>rd</sup> Ave. N. and new fire access routes (if required) will be coordinated with Seattle Fire Department and SDCI.

#### **Section 6. Signage**

Signage will comply with the Seattle Center Campus Subarea Sign Overlay District and Ch. 23.55 SMC, as applicable. The MSR Representative and the City Representative will discuss and the Seattle Center will approve methods to design the exterior wayfinding signage in the Perimeter Area (including City-owned easement areas) using similar or compatible colors, fonts, materials, and quality/durability with existing Seattle Center signage. Any signage included in the Final Project Design or added before Final Acceptance, whether or not a Material Change, shall meet the following standards for signage:

- a. The City Representative's approval of any signage located within the South and West Perimeter Area or located on City-owned or City-managed property, and signage on the Stadium exteriors facing Seattle Center campus or projecting onto Seattle Center campus.
- b. Any existing Seattle Center campus signage displaced by the Project shall be relocated to a new location approved by the City Representative and with the cost to be borne by the Project.

#### **Section 7. Pedestrian Lighting**

Pedestrian lighting in the Perimeter Area (including City-owned easement areas) should be consistent with illumination levels and light temperatures described in the Seattle Center Pedestrian Lighting Concept Plan (2021) including average maintained horizontal light levels in the range of 0.8-1.0 foot candles and circulation-area light temperatures of 3000. New pathway lighting fixtures must match Seattle Center campus standard specifications. If there are questions, design should

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refer to the Century 21 Master Plan Lighting Plan and Guidelines.

## **Section 8. Century 21 Master Plan Landscape Management Plan**

Landscaping within the Perimeter Areas should be consistent with the Century 21 Master Plan Landscape Management Plan.

Trees replaced on the Project site must be replaced with a selection that is site appropriate, climate adapted, and wherever feasible the largest species (at maturity) to maintain a minimum 15% tree canopy cover per the Seattle Center Century 21 Master Plan Landscape Management Plan.

All existing trees in the Perimeter Area which are to remain after the design and construction of the Project is completed shall be protected during construction. MSR shall plant three (3) trees for each healthy, site-appropriate tree or two (2) trees for each dead, hazardous, or invasive tree removed for the easement areas in mutually acceptable on- or off-site locations. See Executive Order 2023-03: One Seattle Tree Plan: Growing and Fostering an Equitable Tree Canopy on Public Land.

Specific trees on the Seattle Center campus are designated as Legacy Trees and cannot be removed without City Representative approval. MSR shall use commercially reasonable efforts to maintain any Legacy Tree.

## **Section 9. Existing Assets**

Any and all existing assets of Seattle Center including, but not limited to signage, pedestrian light fixtures, and utilities that are or will be displaced by the Project must be identified prior to the for-construction Milestone, such that MSR and SC will (as applicable) store such assets securely and replace or re-install them in the same or better condition in a new location approved by the City Representative, with the cost to be borne by the Project.

## **Section 10. McCaw Hall South Facade**

Following demolition and exposure of the lower portion of the McCaw Hall south façade that is currently hidden behind the existing Stadium north stands, the Project will design and build a new expansion joint to replace the existing expansion joint to be demolished by the Project and add matching metal panel to the newly exposed portion(s) of the McCaw Hall façade.



## **EXHIBIT F to Agreement Regarding**

### **Memorial Stadium Development**

#### **INCLUSION OF WOMEN AND MINORITY BUSINESSES, LABOR AND SOCIAL EQUITY PROVISIONS FOR DEVELOPMENT PROJECT**

##### **Section 1 – Definitions**

Any capitalized term that is used in this Exhibit but not specifically defined in this Exhibit shall have the meaning provided in the body of the Development Agreement. As used in this Exhibit, the following Capitalized words have the meaning provided below.

“Acceptable Work Site” is defined as a Work Site that is appropriate, productive, and safe for all workers. An Acceptable Work Site is free from behaviors that may impair production or undermine the integrity of the work conditions including but not limited to job performance, safety, productivity, or efficiency of workers.

“Affirmative Efforts” means the good faith efforts for inclusion of women and minority-owned firms (WMBEs) documented in the Prime Contractor and Subcontractor Inclusion Plan.

“Apprentice” means a laborer, worker, or mechanic employed to perform the work for whom an apprentice agreement is established through a Training Program that is registered and approved by the Washington State Apprenticeship and Training Council (WSATC). Per RCW 39.12.021 and RCW 49.04, Apprentices must be paid the applicable prevailing hourly rate for an apprentice of that trade. Apprenticeship prevailing wages are subject to SCWA Articles III and IV.

“Apprentice Training Program” means a program registered and in compliance with the Washington State Apprenticeship and Training Council as defined by RCW Chapter 49.04, WAC 296-05-011, and WAC 296-05-013.

“City” means the City of Seattle.

“Contractor” means the Prime Contractor and Subcontractors of any tier for the Project.

“Contractor Inclusion Plan” – see “Inclusion Plan, Contractor”.

“Dispatch” means the process by which a union refers workers for employment on the Project as provided in the SCWA.

“Dual Benefits” means the payment by an Open-Shop Contractor or Subcontractor into both an existing employer-sponsored benefit plans while also making required payments into a Trust Fund.

“Inclusion Plan, Contractor” means the Prime Contractor’s plan, provided on the City-approved form that documents the proposed and/or guaranteed utilization of WMBEs on the Project.

“Inclusion Plan, Subcontractor” means the plan of first-tier Subcontractors, described in Section 2.1 and to be provided on the City-approved form, that documents the proposed and/or guaranteed utilization of WMBEs on the Contract for individual bid packages.

“Job and Training Advisor” means the City employee that facilitates the hiring of SPS Priority Workers in collaboration with Contractors and Union Dispatch.

“Journey-Level” means an individual who has sufficient skills and knowledge of an occupation, either through a formal Apprentice Training Program or through practical on-the-job work experience, to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the work of the occupation. Practical experience must be equal to or greater than the term of apprenticeship.

“Labor Hours” means hours performed on the Development Project by workers who are subject to the wage requirements defined in SCWA Article III.

“Letter(s) of Assent” means the letter that is required of the Prime Contractor and all Subcontractors working on the Project that commits the Contractors to be bound to the SCWA.

“Open-Shop Apprentice” means an employee of an Open-Shop Contractor that meets the criteria established under Article IX, Section 1,2 of the SCWA.

“Open-Shop Contractor” means a Contractor that is not a signatory to a collective bargaining agreement with a Union representing the trade(s) of the Contractor's workers, also known as non-union Contractors.

“PC” means Purchasing and Contracting, a division of the City of Seattle Department of Finance and Administrative Services.

“Project” is defined in the body of the Development Agreement.

“Pre-Apprentice Training Program” means an education-based program, recognized by the State of Washington Apprenticeship and Training Council and endorsed by one or more registered apprenticeship sponsors, with a focus on educating and training students to meet or exceed minimum qualifications for entry into an Apprentice Training Program.

“Preferred Entry” means individuals that graduate from a recognized pre-apprenticeship program and meet entry standards for a particular apprenticeship program.

“Prime Contractor” means the prime contractor, general contractor, GC/CM or a design- build contractor.

“SCWA” means the Seattle Public Schools Student and Community Workforce Agreement dated October 1, 2020, and amended June 30, 2021, as amended by the SCWA Addendum applicable to the Project and attached as Exhibit G to the Development Agreement.

“Social Equity Plan” means the Contractor’s plan outlining apprenticeship requirements and labor projections, which is required by or before the start of construction. Subsequent updates may be requested by PC or MSR any time during the Development Project.

“SPS Priority Hire” means in order of priority:

1. SPS students (former students, graduates and those who have an SPS high school of origin regardless of graduation status); and/or
2. Workers who have a currently enrolled SPS student in their household; and/or any resident of an Economically Distressed Zip Code within the SPS boundaries (see Attachment B of the SCWA).

“SPS Diversity Hire” means: (1) People of color who self-identify in any race/ethnic category except Unspecified and White (Caucasian). People of Color includes workers identifying as Other, African American, Hispanic/Latinx, Asian, Pacific Islander, Native American or any other categories established by SPS for tracking and reporting (those who identify as "Unspecified" will not be counted in either White or People of Color); and/or (2) Women.

“Student and Community Workforce Agreement” means the Seattle Public Schools Student and Community Workforce Agreement dated October 1, 2020 (“SCWA”) and as amended June 30, 2021, as amended by the SCWA Addendum applicable to the Project and attached as Exhibit G to the Development Agreement.

“Subcontractor” means a business contracted to perform a portion of the Work under the Prime Contractor or subcontracted at any tier.

“Subcontractor Inclusion Plan” – see “Inclusion Plan, Subcontractor”.

“Unions” means the Seattle King County Building and Construction Trades Council, and Western State’s Regional Council of Carpenters, acting on their own behalf and on behalf of their respective affiliates and members.

“WMBE Implementation Plan” City-approved plan that will outline the WMBE commitments made by the Prime Contractor and provide additional details on capacity-building, technical assistance, outreach efforts and reporting.

“Women or Minority Business Enterprise or WMBE” means a business that self-identifies to be at least 51 percent owned by women and/or minority group members including, Black/African Americans, Native Americans, Asians/Pacific Islanders, and Hispanic/Latinx or is certified by the Office of Minority and Women’s Business Enterprise.

“Work” means the provision of all labor, materials, equipment, supplies, and everything needed to complete the construction of the Development Project.

“Work Site” means the Development Site and Licensed Areas and any field or company offices, construction license area, or staging area used to perform the construction of the Development Project.

## **Section 2 – Affirmative Efforts, Non-Discrimination, Social Equity Requirements**

### **2.1 Affirmative Efforts**

MSR shall require its selected Prime Contractor to use the PC-approved Prime Contractor Inclusion Plan detailing Affirmative Efforts to solicit and contract with WMBEs on subcontracting and supply opportunities for the Development Project. MSR shall require its Prime Contractor to require each first-tier Subcontractor to submit a WMBE Subcontractor Inclusion Plan as a material condition of their subcontract, except that, upon PC's review of Subcontractor bid packages, PC may either (i) waive this Subcontractor Inclusion Plan requirement, or (ii) approve adjustments to certain elements of the Subcontractor Inclusion Plan template for those bid packages, including, but not limited to, adjustments to standards for scoring and rejection of bidders and for advance mobilization pay. Such waiver or adjustment approval may be provided via an email from PC to MSR and/or the Prime Contractor. PC will monitor for compliance with these requirements. The Prime Contractor and any Subcontractor interested in obtaining assistance or information may contact PC at (206) 684-0444.

2.1.1. Affirmative Efforts must include efforts to achieve the activities specified in the WMBE Inclusion Plans submitted by the Prime Contractor and first-tier Subcontractors. MSR is solely responsible for any efforts made and costs incurred to comply with WMBE requirements.

2.1.2. Reporting Requirements:

- a. The Prime Contractor must submit a copy of its WMBE Inclusion Plan to PC for review and approval prior to beginning of construction.
- b. Prior to final award of the first-tier subcontracts, the Prime Contractor must submit the first-tier Subcontractor Inclusion Plans to PC for review and comment. The Prime Contractor will consult with PC on appropriate WMBE past performance percentages for each subcontract and post in subcontract advertisements. Prior to final award of the first-tier subcontracts, the Prime Contractor must submit first-tier Subcontractor Inclusion Plans to PC for review and comment.
- c. The Prime Contractor may reject any Subcontractor that is required to submit a WMBE Subcontractor Inclusion Plan and fails to demonstrate good faith efforts to use WMBE firms by failing to obtain a passing score as required in the instructions of the plan.
- d. Monthly report to include a WMBE status report using format and content approved by PC.
- e. The Prime Contractor must submit to PC a Social Equity Plan for review prior to commencement of construction. Subsequent updates can be requested by PC or MSR any time during the Development Project.

f. The Prime Contractor and Subcontractors, as applicable, must submit to PC Subcontractor Payment Reports electronically through B2Gnow:

<https://seattle.diversitycompliance.com/>

2.1.3. The Prime Contractor and Subcontractors, as applicable, must submit the first Subcontractor Payment Report in B2GNow by the 15th Day of the first month after the date specified in the notice to proceed with construction.

2.1.4. Subsequent monthly Subcontractor Payment Reports must be submitted by the 15th day of every month thereafter. When no work is performed during a reporting period, the Contractor must submit monthly reports indicating that no work was performed.

2.1.5. The last Subcontractor Payment Report must be marked as ‘final’ and must be submitted no later than 30 Days after the Final Completion of the Development Project. The final report must list the name of a dollar amount paid to each Subcontractor and Supplier used by the Prime Contractor and Subcontractor, as applicable. The City and SPS will not establish the completion date until the completed final Subcontractor Payment Report Form has been received.

2.1.6. Changes to named Subcontractors or Suppliers: If a named Subcontractor or Supplier includes any WMBE firm or business named on the Inclusion Plan as a WMBE guarantee, any named Subcontractor that the Prime Contractor, or first-tier Subcontractor as applicable, wishes to substitute during the Project must be for a demonstrated “good cause” and is subject to the City’s approval.

“Good cause” includes:

- a. Failure of the Subcontractor to execute a written contract after a reasonable period of time;
- b. Bankruptcy of the Subcontractor;
- c. Failure of the Subcontractor to provide a bond if required;
- d. The Subcontractor is unable to perform the Work because it is debarred, is not properly licensed, or does not comply with the Subcontractor approval criteria,
- e. Failure of the Subcontractor to comply with a requirement of law applicable to subcontracting;
- f. The death or disability of the Subcontractor if the Subcontractor is an individual;
- g. Dissolution of the Subcontractor if the Subcontractor is a corporation or partnership;
- h. If there is a series of failures by the Subcontractor to perform as specified in previous contracts; or
- i. Failure or refusal of the Subcontractor to perform the Work.

j. Other circumstance by approval from PC Director.

If the Prime Contractor or if the first-tier Subcontractor includes a WMBE guarantee in its WMBE Inclusion Plan and makes a change to a WMBE guarantee, then the applicable Contractor must use good faith efforts to recruit another WMBE Subcontractor to do the Work.

## **2.2 Employment and Non-Discrimination Requirements**

The City and SPS expects Contractors on the Project to employ a workforce reflective of the region's diversity. MSR must include in its construction contract with the Prime Contractor and must include a requirement in every subcontract (and require Subcontractors to include in lower-tier contracts) that Contractors must comply with the non-discrimination requirements as set forth in federal, state, and City laws and regulations.

MSR shall include contract requirements that the Prime Contractor must not discriminate against any employee or applicant for employment, and will make Affirmative Efforts to solicit and employ women and minorities, and to ensure that applicants are treated during employment without regard to race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin; or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Such Affirmative Efforts include efforts relating to: employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of payment and selection for training, including apprenticeship. The Prime Contractor shall include requirements in its contracts with Subcontractors requiring this provision to be flowed down to all lower-tier contracts.

MSR must include a provision in its construction contract with the Prime Contractor and the Prime Contractor must include provisions in its subcontracts allowing PC to audit the Prime Contractor's and Subcontractors' non-discrimination policies and practices, including Affirmative Efforts to employ women or minority employees.

Equal Employment Opportunity Officer: The Prime Contractor must have a designated Equal Employment Opportunity Officer (EEO Officer).

Each Contractor must ensure that all employees, particularly supervisors, are aware of, and comply with their obligation to maintain a working environment free from discriminatory conduct, including, but not limited to, harassment and intimidation of minorities and women, or WMBE businesses.

## **2.3 Prompt Payment**

This Section requires every Contractor of any tier to pay every Subcontractor who is also a small business, within 30 calendar days of satisfactorily completed work and delivered materials. A Subcontractor who is also a small business is defined as a business or person the higher-tier Contractor has engaged by agreement to provide labor or materials for the Project, including a person or persons, mechanic, Subcontractor, supplier or material person, that is (i) registered as a

WMBE firm with the City of Seattle, or (ii) is a business certified by the King County Small Business Concerns Program, or (iii) is certified by the State of Washington as a DBE or by the State of Washington as a WMBE firm.

Payment is considered made when mailed or personally delivered to the contractor; an invoice is considered received when date-stamped or marked as delivered. If not date-stamped or marked as delivered, the invoice date is the date recorded by the contractor.

The Prime Contractor or Subcontractor, as applicable, must promptly pay, no later than 10 Working Days of receipt of a progress payment from the Owner for all other work by Subcontractors which are not small businesses.

Contractors of any tier must pay such Subcontractors, less any retainage allowed under the contract, for all work that the applicable Contractor has found to comply with the quality and performance agreed on with their Subcontractor. This includes payment for actual mobilization costs incurred. This also includes work that has been directed to the Subcontractor when the price has been agreed to by MSR, Prime Contractor, and Subcontractor, whether MSR has provided payment or executed a Change Order to the Prime Contractor. Amounts withheld are limited to the value of the portion of work that has not been satisfactorily completed, with a documented dispute per contract provisions. Such withheld amount cannot exceed 150 percent of the disputed amount.

If any work or product is unsatisfactory and subject to withholding of payment, the higher tier Contractor must provide written notification to its Subcontractor and MSR of corrective actions required by the Subcontractor including a date to be completed. Such written notice must be provided as soon as practicable after work has been performed.

After the Subcontractor satisfactorily completes the corrections, the Contractor must pay the Subcontractor within ten working days the remaining amounts withheld, less retainage. Should a Contractor find a Subcontractor's work unsatisfactory without reasonable cause, fail to provide written notification within a reasonable time, or otherwise fail to comply with the scheduled days herein, the Prime Contractor may be found to be in breach of the contract with MSR or a Subcontractor may be found in breach of the contract with a lower tier Subcontractor, as applicable, subject to all remedies.

The Subcontractor must make a written request to the applicable Contractor for the release of the Subcontractor's retainage or retainage bond.

Within 10 working days of the request, the Prime Contractor, or Subcontractor if applicable, must determine if the subcontract has been satisfactorily completed and must notify the Subcontractor, in writing, of the determination.

If the Contractor determines that the subcontract has been satisfactorily completed, the Subcontractor's retainage or retainage bond must be released by the applicable Contractor within 10 working days from the date of the written notice.



If the Contractor determines that the Subcontractor has not achieved satisfactory completion of the subcontract, the Contractor must provide the Subcontractor with written notice, stating specifically why the subcontract work is not satisfactorily completed and what must be done to achieve completion. The Contractor must release the Subcontractor's retainage or bond, if one is required, within 10 working days after the Subcontractor has satisfactorily completed the work identified in the notice.

In determining whether satisfactory completion has been achieved, the Contractor may require the Subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered Subcontractors, suppliers of material and equipment, and others involved in the Subcontractor's work have been paid in full. Contractors may also require any documentation from their Subcontractor that is required by the subcontract or by the Contract between the Prime Contractor and MSR or by law, such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the Subcontractor's work.

If a Contractor fails to comply with the requirements of this Section and a Subcontractor's required retainage or bond release is wrongfully withheld, the affected Subcontractor may seek recovery against the applicable Contractor under any remedies provided for by the subcontract or by law.

## **2.4 Equal benefits**

MSR shall require the Prime Contractor to comply with SMC 20.45 and the Equal Benefits Program Rules implementing such requirements, under which the contractor is obligated to provide the same or equivalent benefits (equal benefits) to its employees with domestic partners as the Prime Contractor provides to its employees with spouses. At MSR's request, the Prime Contractor must provide complete information and verification of compliance with SMC 20.45.

For further information about SMC 20.45 and the Equal Benefits Program Rules, call the City at (206) 684-4525 or refer to: <https://www.seattle.gov/purchasing-and-contracting/social-equity/equal-benefits>

Evaluation of the Prime Contractor's compliance with the Equal Benefits requirement will be based on these criteria:

1. A domestic partner is a person, either same sex or opposite sex partner, whose domestic partnership is registered either with the employer's internal registry or with a local government entity, per State or local law.
2. Any and all benefits must be provided equally to spouses and domestic partners, including but not limited to health insurance, dental insurance, vision insurance, pension, company discounts, and credit union membership.
3. The conditions for use of benefits including but not limited to bereavement leave, family medical leave, childcare leave, employee assistance programs, and relocation and travel benefits, must be applied equally with respect to spouses and domestic partners.



4. Equal benefits must be offered to all employees at all offices where substantive work on the Development Project is being performed.

Reporting Requirements: MSR shall require the Prime Contractor to submit the Equal Benefits Compliance Declaration to the PC representative within three Business Days after request.

Any violation of this Section is a breach of this Agreement for which the City may exercise any of its remedies under the Agreement or impose such other remedies as specifically provided for in SMC 20.45 and the Equal Benefits Program Rules promulgated there under.

## **2.5 Labor Standards and Paid sick and safe time (required for all business in Seattle)**

As noted in SMC 14.16, 14.17, 14.19, and 14.20, The City has adopted a comprehensive set of wage theft prevention and labor harmonization standards to better protect those individuals who conduct business within City limits. These protections include paid sick and safe time, fair chance employment, and minimum wage and wage theft. Contractors who conduct business inside City limits, including attending meetings, must comply with SMC 14.16, 14.17, 14.19, and 14.20. See <https://www.seattle.gov/laborstandards/ordinances>,

for more information.

## **2.6 Acceptable Work Site**

MSR shall include provisions in its construction contract which require the Prime Contractor to ensure an Acceptable Work Site and to include the requirements of this Section in all subcontracts for the Development Project. This is a material provision and enforceable accordingly.

The intent of the person that appears to violate the Acceptable Work Site is not a measure of whether such behaviors are appropriate; rather the standard is whether a reasonable person should have known that such behavior would cause a worker to be humiliated, intimidated, or otherwise treated in an inappropriate, discriminatory, or differential manner.

Behaviors that violate an Acceptable Work Site include but are not limited to:

1. Persistent conduct that to the reasonable person would be perceived as offensive and unwelcome;
2. Conduct that a reasonable person would perceive to be harassing or bullying in nature;
3. Conduct that a reasonable person would perceive to be hazing;
4. Verbal references that a reasonable person would perceive to be offensive stereotypes or racial/gender slurs;
5. Jokes about race, gender, or sexuality that a reasonable person would perceive to be offensive;

6. Assigning undesirable tasks, unskilled work to trained apprentices and journey-level workers, manual work in lieu of work with appropriate equipment, unsupervised work, or dangerous work in disproportionate degrees to apprentices, women, or workers of color;
7. Language that a reasonable person would perceive to be offensive based on race, gender or oriented towards sexuality;
8. Name-calling, cursing or unnecessary yelling, including from a supervisor, foreman or other more senior person that a reasonable person would perceive as offensive;
9. Repeating rumors about individuals in the Work Site that a reasonable person would perceive as harassing or harmful to the individual's reputation;
10. Refusal to hire someone based on race, gender, sexuality, or any other protected class;
11. References to or requests for immigration status (other than required by law), religious affiliation, gender affiliation, criminal background, or other related aspects of a worker unless mandated by federal law.

The Prime Contractor and all Subcontractors must ensure that all employees, particularly supervisors, are aware of, and comply with their obligation to maintain a working environment free from discriminatory conduct, including, but not limited to, harassment and intimidation of minorities and women, or WMBE businesses. The Prime Contractor must display at each Work Site location the materials supplied by PC regarding Acceptable Work Sites.

An Acceptable Work Site shall include Contractors' assignment of work in a manner that respects training objectives for apprentices, and ensures an equitable distribution of meaningful work, training, and assignments among all workers, including women, people of color, or other defining characteristics.

MSR will use its best efforts to enforce its contract requirements with its Prime Contractor regarding Acceptable Work Site and the Prime Contractor shall do the same with its Subcontractors. PC will be given access to the Development Project Work Site to monitor compliance with the Acceptable Work Site provisions. Monitoring may include proactive observations of the Work Site, interviews of individuals familiar with the Work Site, data that may evidence disparities, investigation of complaints by an individual familiar with the Work Site, or other evidence. Except for unusual circumstances that require confidentiality, should situations arise that may require attention; PC will collaborate with the MSR Representative to discuss appropriate remedies, and may likewise notify subcontractors and appropriate unions when necessary for the resolution of the situation. MSR shall require its Prime Contractor to correct and document all Acceptable Work Site issues, including steps to prevent reoccurrence and resolution and will submit documentation to MSR and PC within one week of resolution.

A remedy may include, but is not limited to, PC's right to request that MSR direct the Prime Contractor to remove personnel from a Work Site if the City finds that individual to have violated or failed to enforce the Acceptable Work Site provision, given the appropriate contractual and procedural protections to the affected individual.

This Section is for the benefit of the City and SPS and their respective interest in the Development Project. It shall not create any third-party beneficiaries or form the basis of any action against the City or SPS or MSR by a third party.

## **2.7 Acceptable Work Site Training**

1. The Prime Contractor must participate in an Acceptable Work Site training program as specified in this Section to support a Work Site free from bullying, hazing, harassment, and other behaviors specified in Section 2.6 above.

a. Acceptable Work Site Training: The Prime Contractor's key project management personnel, including the project manager, project engineer, superintendent, and other project or site-related management and supervisory staff, must attend a 3-hour introductory training conducted by PC. The training will include topics and resources to support and enhance the implementation of an "Acceptable Work Site." The project management training will also include information and materials to facilitate the mandatory worker 10-minute orientation and 5-minute monthly talks, as specified below.

1) Acceptable Work Site Training will be scheduled to take place prior to the Notice to Proceed Date.

2) The Prime Contractor must notify the PC, SPS, and MSR of new or replacement management personnel assigned to the project within 1 week after the change.

3) The Prime Contractor must submit written notification of changes in management personnel to the Engineer within 2 weeks after the change to allow for the scheduling of additional Management Staff Training.

b. Worker Acceptable Work Site Orientation: Prime Contractor shall require all laborers, workers, and mechanics to attend a 10-minute Acceptable Work Site orientation before starting with any physical work on the project. All training materials; including videos, printed materials, and attendance tracking sheets will be provided by PC.

c. The Prime Contractor must provide a location at each job site location for information provided by PC on Acceptable Work Sites to be posted by the Prime Contractor. The location must be in a prominent location and be at least 18-inches-wide and 24-inches tall.

d. Job Box Talks: At least once per month, from the Notice to Proceed Date to Physical Completion, the Prime Contractor must conduct a minimum 5-minute-long Job Box Talk (defined as Acceptable Work Site topics introduced in the Acceptable Work Site Training) as a part of a regularly scheduled all staff meeting (such as safety talks, work assignment meeting, or other on-site check-ins.) Attendees must include all laborers, workers, and mechanics, including subconsultants of all tiers, who are at the Project Site at the time the talk is taking place. The first Job Box Talk must take place within 1 month

of the Notice to Proceed Date. All required materials for the Job Box Talks will be provided by the PC Job and Training Advisor.

e. At the Contractor’s request, PC will provide up to 16 hours per year of technical assistance to conduct or aid in conducting the Acceptable Work Site training or Job Box Talks. Contact PC Job and Training Advisor to request such assistance.

2. The Prime Contractor must provide Project Site access to PC Job and Training Advisor as required to administer Acceptable Work Site training, support, and monitoring. Monitoring may include worker interviews, verification of Acceptable Work Site orientation and Job Box Talks, and collection of data. If full, unfettered access cannot be granted for PC Job and Training Advisor, MSR or the Contractor will escort PC Job and Training Advisor throughout the Project Site as needed. Acceptable Work Site training and monitoring will be as minimally disruptive to the Work as possible.

3. Except as provided in this Section, all Contractor staff and worker costs associated with the Acceptable Work Site training program must be included in the Final Project Budget. PC, through a grant from King County to SPS, will pay for the costs of the PC Job and Training Advisor to provide training to the project management team.

### **Section 3 – SPS Priority Workers and Diversity Hiring, Student and Community Workforce Agreement, Apprentices and Trust Fund Contributions**

MSR will require its Prime Contractor agree to comply with the SPS SCWA. It is MSR’s responsibility to inform its Prime Contractor of SCWA and “SPS Priority Hire” requirements in this Section. Additionally, MSR shall require its Prime Contractor to inform all Subcontractors of the requirements. The Prime Contractor is responsible for meeting the “SPS Priority Hire” requirements of the Contract. Project Contractors may obtain guidance or information about the requirements under this Section by contacting PC at 206-684-0444.

It is the goal of all the parties to increase the participation of underrepresented groups and those that are of special concern to the parties. As provided in the SCWA, Contractors shall seek to first hire SPS Priority Hires and SPS Diversity Hires (see DEFINITIONS), so as to meet or exceed the required percentages. The Prime Contractor may require subcontractors to utilize SPS Priority Workers and SPS Diversity Hires in order to ensure attainment of the requirement set for the Project For additional details on Preferred Entry see Section 3.11 and the SCWA.

Requirement	Utilization Rate	Explanation
Apprentice Utilization	15%	<i>Hours assigned to workers who are enrolled in a WSATC Apprentice Training Program, as a percentage of total Contract Labor Hours.</i>
<b>Requirements</b>		

SPS Student	5%	<i>Hours assigned to former students, graduates and those who have an SPS high school of origin regardless of graduation status</i>
SPS Wage Earner	8%	<i>Hours assigned to workers who have a currently enrolled SPS student in their household</i>
SPS Distressed Zip Code Apprentice	3%	<i>Hours assigned to Apprentices who are a resident of an Economically Distressed Zip Code within the SPS boundaries</i>
SPS Distressed Zip Code Journey	5%	<i>Hours assigned to Journey Level workers who are residents of an Economically Distressed Zip Code within the SPS boundaries</i>
Preferred Entry	1:5	<i>Ratio of Preferred Entry Apprentices hired to total Apprentices hired. Preferred Entry Apprentices must have completed a Pre-Apprentice Training Program and work at least [350 or 700] hours on the project</i>
<b>Aspirational Goals</b>		
Women		
Journey	4%	<i>Hours assigned to Journey Level workers who are women, as a percentage of the Contract Labor Hours worked by Journey Level workers</i>
Apprentice	11%	<i>Hours assigned to Apprentices who are women, as a percentage of the Contract Labor Hours worked by Apprentices</i>
Black, Indigenous, People of Color (BIPOC)		
Journey	36%	<i>Hours assigned to Journey Level workers who are people of color, as a percentage of the Contract Labor Hours worked by Journey Level workers</i>
Apprentice	42%	<i>Hours assigned to Apprentices who are people of color, as a percentage of the Contract Labor Hours worked by Apprentices</i>
<b>WMBE Goals</b>		
MBE	20%	<i>A business that self-identifies or is certified by the Office of Minority and Women's Business Enterprise (OMWBE) to be at least 51 percent owned minority group members including, African American/Black, Hispanic/Latino, Asian American, Pacific Islander, Native Hawaiian, Alaska Native, or Native American.</i>
WBE	6%	<i>A business that self-identifies or is certified by the Office of Minority and Women's Business Enterprise (OMWBE) to be at least 51 percent owned by women</i>

### **3.1 Good Faith Efforts**

The Contractor has six required priority hiring categories (Section 3). These categories are:

- SPS Distressed ZIP Code – Apprentice Level
- SPS Distressed ZIP Code – Journey Level
- SPS Student
- SPS Wage Earner
- Apprentice Utilization
- Apprentice – Preferred Entry

The Prime Contractor is compliant if the requirement for each category has been met or exceeded by substantial completion. If the Prime Contractor does not meet or exceed one or more requirement, MSR and PC may consider the Prime Contractor to be compliant if they provide documentation of good faith effort(s).

Acceptable documentation of good faith effort(s) includes:

- Copies of Craft Employee Request Forms submitted by the Prime Contractor and/or Subcontractors to the applicable union halls requesting new dispatches for SPS Priority Workers and/or preferred entry apprentices AND written documentation showing that the requests were not filled with SPS Priority Workers and/or Preferred Entry Apprentices. If the request was filled with non-SPS Priority Workers and/or non-preferred entry apprentices, the written documentation must also provide the names of said workers. Copies of emails between the Prime Contractor or Subcontractors and applicable union halls showing that new dispatches for SPS Priority Workers and/or preferred entry apprentices were requested may be considered in lieu of the Craft Employee Request Form.
- Copies of good faith letters from the applicable union halls acknowledging that the Contractor requested new dispatches for SPS Priority Workers and/or Preferred Entry Apprentices, but the requested workers were unavailable at that time. If the request was filled with non-SPS Priority Workers and/or non-preferred entry apprentices, written documentation must be provided identifying said workers by name.
- Documentation showing that a worker resided in an Economically Distressed ZIP Code identified in SCWA Attachment B at the date of dispatch, but later moved to a ZIP code not in SCWA Attachment B. The Contractor or Subcontractor must notify PC of the employee name and date their address changed.
- Written documentation notifying SPS, the City and the MSR of discharge or layoff of a Priority Worker and/or Preferred Entry Apprentice. The Prime Contractor or Subcontractors must also provide a copy of the Craft Employee Request Form showing the Contractor tried to replace the discharged worker with another Priority Worker and/or preferred entry apprentice, but the applicable union hall did not have SPS Priority Workers and/or preferred entry apprentices available at the date of the request. If the

request was filled with non-SPS Priority Workers and/or non-preferred entry apprentices, the written documentation must also provide the names of said workers.

- Copies of emails between the Prime Contractor or Subcontractors and applicable Pre-Apprentice Training Program staff or Job & Training Advisor showing efforts to hire Preferred Entry Apprentices (see SCWA Article XII), but such workers were not available at the date of the request. If non-preferred entry apprentices were hired due to the unavailability of preferred entry apprentice, written documentation must be provided identifying said workers by name.
- Other documented substantive efforts to hire and retain SPS Priority Workers and Preferred Entry Apprentices as approved by SPS and PC.

### **3.2 Social Equity Meeting**

Prior to the start of construction, the Prime Contractor must attend the Social Equity Meeting with PC to review the following:

1. SCWA provisions, SPS Priority Hire requirements, and other Social Equity requirements for the Development Project.
2. Review the Social Equity Plan to compare the projected Priority Hire hours, including the existing workforce and new hires, to the projected total project labor hours to ensure that the Social Equity Plan shows a clear pathway to meet the requirements for the Development Project (Social Equity Plan Sections 3).

PC may offer the Social Equity Meeting for Subcontractors to attend after the Prime Contractor has fulfilled this requirement.

### **3.3 Pre-Job Package and Letter of Assent**

Prior to the start of construction, the Prime Contractor shall submit the Pre-Job Package for self-performed work along with the project specific safety plan to PC and attend a pre-job conference with Unions and PC per SCWA Article II (Project Conditions). The Prime Contractor must attend a pre-job conference at least two weeks prior to commencing Work, but not more than 90 days prior to commencing Work. The Prime Contractor's Pre-Job Package shall include a copy of the signed Letter of Assent that was provided to the MSR before Contract Execution.

Each Subcontractor shall submit the Pre-Job Package three weeks prior to commencing work to the Prime Contractor who then submits it to PC. The Subcontractor shall attend a pre-job conference with Unions and PC at least two weeks prior to commencing work, but not more than 90 days prior to commencing work. The Prime Contractor may attend with the Subcontractor but is not required.

The Pre-Job Package includes the Letter of Assent, Pre-Job Form, and if applicable the Core Worker list and supporting documentation. See SCWA Article IX and Core Workers Article XI.

### **3.4 Core Workers**

An Open-Shop Contractor may bring as many as 3 Core Workers onto the Project and up to 2 apprentices enrolled in a WSATC program for each contract accordingly, provided that the ratio



of apprentices to journey level workers is in compliance with the applicable apprenticeship program standards. All subsequent Open-Shop Contractor workforce needs will be fulfilled through the respective Union hiring hall or by agreement between the Open-Shop Contractor and the respective union.

Core Workers are those that have worked on the applicable Contractor's payroll a minimum of one thousand five hundred (1,500) hours within the craft classification over the last two-year period from the date of dispatch to the Project and have also been on the contractors active payroll for at least sixty (60) out of the ninety (90) calendar days prior to the execution of the contract for the affected contractor. All Core Workers shall meet the minimum journey level qualifications of the craft they are performing and shall hold all required licenses and certifications for the work of their craft.

Apprentices are those that are enrolled in a WSATC program and are also one of the following: (1) a Priority Worker, (2) a Pre-Apprenticeship program graduate, (3) or an individual who furthers the City's aspirational goals for women and people of color.

### **3.5 Worker Dispatch**

Each Contractor shall use the SPS Craft Request Form when requesting a new employee for dispatch on the Project and shall copy PC on all SPS Craft Request Forms submitted to the Unions. MSR shall require its Prime Contractor to maintain copies of all Craft Request Forms used on the Project, including forms submitted by Subcontractors. PC may review and inspect any Craft Request Forms, upon request. Core Workers of Open-shop Contractors are also required to be Dispatched from Union hiring halls as further detailed in the SCWA addendum.

### **3.6 Project Administrative Committee (PAC)**

The parties agrees to participate in a Project Administrative Committee (PAC) to address safety, targeted hiring, apprenticeship utilization, preferred entry, job progress and any other relevant issues that affect the Project. The parties agree to address issues as they arise and resolve them in a timely manner. Only signatory parties to this Agreement shall have voting rights when the PAC makes a decision by vote. The Prime Contractor shall attend the monthly Project Administrative Committee meetings.

### **3.7 Parking**

The Prime Contractor will ensure no-cost parking is available to workers within a four (4) block area from the project work site. Such parking may be either on-site parking, nearby off-site dedicated parking, or free on-street parking in the immediate residential area that is not restricted by designated neighborhood parking zone limitations during the project work hours.

If the Prime Contractor determines such parking is not available, then the Prime Contractor will provide transportation between the project worksite and a designated parking location that the Prime Contractor provides, all at no cost to the worker. In such situations, workers shall leave their place of work 15 minutes before end of shift for travel. Such transportation between the site and the parking shall be available to the workers throughout each scheduled workday.



### **3.8 Hours of Work**

The standard workday shall consist of eight (8) hours of work scheduled between 7 a.m. and 7 p.m. with one-half hour designated as an unpaid lunch. The starting time may be different (staggered) on a crew basis. The standard workweek shall be five (5) days of work, Monday through Friday. Per SCWA Article IV, Section 1, shift may be established for some or all crews when considered necessary by the Contractor. All shift work must follow the provisions outlined in SCWA Article IV, Section 2.

### **3.9 Rest Facilities**

Rest Facilities. Article II, Section 5, Safety, Rest Facilities, is amended as provided in the SCWA addendum.

### **3.10 Apprenticeship Hiring Priorities and Requirements**

The City and SPS have determined that there is a need for increased training and apprenticeship opportunities in the construction industry and that a diverse and well-trained workforce is critical to the economic and social vitality of the region. In establishing requirements for the use of apprentices on the Project, it is the City and SPS intent to encourage the training and promotion of apprentices to journey level status. MSR shall include the requirements of this Section in its contract with its Prime Contractor.

The Prime Contractor must ensure that 15 percent of the total Contract Labor Hours performed on the Project are performed by Apprentices registered with the Washington State Apprenticeship Training Program.

Total Contract Labor Hours include additional hours worked as a result of Change Orders, and exclude hours worked by foremen, superintendents, supervisors, MSR Representative, and workers who are not subject to SCWA wage requirements. However, it may be determined that they are subject to SCWA wage requirements under the following criteria of WAC 296-127-015: 2 supervisors (e.g. foreman, general foreman, superintendents) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:

- a. For each hour spent in the performance of manual or physical labor if it is for more than 20 percent but less than 50 percent of their hours worked on a project during any given week.
- b. For all hours worked in any given week if they perform manual or physical labor for 50 percent or more of their hours worked on a project during such week.

MSR shall require its Prime Contractor to include the Apprentice utilization requirements of this Section in all subcontracts executed for the Project and ensure that all Subcontractors working on the project are notified of the apprentice utilization requirements. The Prime Contractor is responsible for meeting the Apprentice utilization requirements of the Contract, including overall compliance on all Contract Labor Hours worked by Subcontractors.

Additionally, the Prime Contractor must make good faith efforts to:

- a. Ensure that Apprentice hours worked are equally distributed in each trade/craft and consistent with the apprentice utilization percentage requirement of the Contract.
- b. Recruit and hire minority and women Apprentices for the Project. Of the total Apprentice utilization requirement percentage, the Contractor must pursue a goal of using minority and women apprentices as stated in Apprentice and SPS Priority Hire Requirements and Aspirational Goals table.

The Prime Contractor must ensure compliance with RCW 49.04, WAC 296-05, and the apprenticeship training standards for each trade/craft classification used on the Project, as set forth by L&I.

On a mutually agreeable date, but prior to the start of construction, the Prime Contractor must submit to PC a Social Equity Plan outlining how the Apprentice and Priority Hire utilization requirements will be met on the total Contract Labor Hours. The plan must be submitted on a form provided by the City or by accessing <http://www.seattle.gov/contracting/apprentice.htm> and must be updated by the Contractor upon request by PC or the MSR.

PC will be available to provide assistance in directing the Prime Contractor to available resources for hiring apprentices. The MSR Representative, Prime Contractor, and PC must meet to discuss any changes to the Apprentice utilization percentage.

If the Prime Contractor determines that it will be unable to achieve the Apprentice utilization percentage, the Prime Contractor may make a written request to MSR to reduce the required Apprentice utilization percentage. The request must include documentation of the Contractor's good faith efforts to hire apprentices registered with WSATC approved programs. These documents must demonstrate:

- a. That an inadequate number of Apprentices are available to comply with the required apprentice utilization percentage or that there is a disproportionately high ratio of material costs to labor hours, which does not make the required minimum levels of apprentice participation possible for this Contract; and
- b. That the Contractor has made good faith efforts to comply with the requirement.

MSR shall submit the request to PC for evaluation and determination regarding whether the request has merit. If PC determines the change to be appropriate, PC will authorize the reduction in writing. If PC determines that a reduction in the required utilization percentage is not justified, PC will communicate the decision in writing to the MSR and Prime Contractor.

MSR shall require the Contractor and every Subcontractor to submit a profile for each worker into LCP Tracker through an online portal at <https://prod-cdn.lcptracker.net/login/login> including but not limited to gender, ethnicity, and apprenticeship status of each worker.

MSR shall require the Prime Contractor to submit other information as may be requested by PC to verify compliance with the Apprentice utilization requirements of the Contract. PC may add, delete, or change the information required of the Prime Contractor for determining compliance, as necessary.

### **3.11 Preferred Entry to Apprenticeship**

MSR shall require its Prime Contractor to ensure compliance with the preferred entry requirement that one (1) of every five (5) Apprentices who have worked at least 700 hours on the project is from a WSATC-recognized Pre-apprentice Training Program and receive Preferred Entry into apprenticeship and on to the Project per the processes in the SCWA Article XV (preferred entry). Once employed and actively performing work on the Project, Preferred Entry candidates must meet all of the following qualifications to be counted toward the Preferred Entry requirement:

1. Graduate of a recognized Pre-apprentice Training Program defined in the Community Workforce Agreement or Helmets to Hardhats referral;
2. Be employed at least 700 hours on the project; and
3. Be an active registered Apprentice in an Apprenticeship Training Program.

MSR's Prime Contractor shall flow down Apprenticeship and preferred entry requirements to Subcontractors as needed to comply with these requirements.

### **3.12 Trust Fund Contributions and Dual Benefits**

1. Under the SCWA Article III Section 6. (Trust Fund), the Prime Contractor and all Subcontractors are required to pay into a joint labor/management employee welfare benefit trust fund(s) ("Trust Fund"), regardless of whether they participate in an employer-sponsored benefit plan. The Prime Contractor and all Subcontractors are required to complete trust documents and submit the documents to the Union for each worker and to pay into the Trust Fund as required by that Trust Fund's schedule.
2. If any Subcontractor does not pay into the Trust Fund, the Union may provide notice and documentation to the Prime Contractor, PC and MSR in the form of a grievance or other communication.
  - a. If after ten (10) business days from such notice, delinquencies remain unpaid, the Prime Contractor (if different) shall withhold an amount to cover the delinquency from any unpaid funds otherwise due and owing to the delinquent Subcontractor and shall not release such withholding until the delinquent Subcontractor is in compliance.
  - b. The delinquent Subcontractor, and Contractor (if different), by mutual agreement, may identify other agreeable solutions that assure timely payment to the Trust Fund. If the delinquent amounts are undisputed in whole or in part between the Trust Fund and the delinquent subcontractor, the Prime Contractor (if different) shall issue a joint check to the Trust Fund with the Subcontractor named in the amount of the undisputed delinquency.

3. Open-Shop Contractors that pay Dual Benefits are eligible for reimbursement from MSR of the applicable portion of the employer-provided usual benefits as defined by WAC 296-127-014. Contractors are required to submit prior to substantial completion a Dual Benefit Reimbursement Form, invoice and other supplemental information to PC at LaborEquity@seattle.gov. Open-Shop Contractors and Subcontractors must apply for reimbursement at least once per year but may apply as frequently as once per month. In order to be considered for reimbursement, Open-Shop Contractors must submit all of the following:
  - a. Dual Benefit Reimbursement Form
  - b. Invoice specifying amount for which reimbursement is being requested
  - c. Copy of employer-provided benefit plan(s) which provide proof of coverage for usual benefits
  - d. Receipts or other proof of payments to the employer-provided plan(s) for each worker showing that they received employer-provided benefits within the last 90 days prior to starting work on the project
  - e. Receipts or other proof of payments to the employer-provided plan(s) for each worker during the period of time for which reimbursement is being requested
  - f. Receipts or other proof of payment to the Joint Health and Pension Trust Fund during the period of time for which reimbursement is being requested.
  - g. Up to date certified payroll records in LCPtracker during the period of time for which reimbursement is being requested

#### **Section 4 – PREVAILING WAGE REQUIREMENTS**

MSR shall require that the Prime Contractor and Subcontractors of every tier comply with the Prevailing Wage Statute at RCW Chapter 39.12 and adhere to the prevailing rates for all craft workers in effect under SCWA Article III. The SCWA is silent on zone pay. Consistent with Article 1, Sect. 1 of the SCWA, if an applicable local craft collective bargaining agreement requires zone pay, MSR shall require that the Contractors of every tier adhere to the zone pay requirements under the applicable local craft collective bargaining agreement.

The Contractor is responsible for assigning the appropriate classification to all laborers, workers, or mechanics that perform any work under this Contract. Classifications must be in conformance with the scope of work descriptions and determinations established by the Washington State Department of Labor and Industries (L&I) and subject to Jurisdictional Disputes processes provided in the SCWA, Article IX, Article X, and Article VIII where applicable.

Contractors must incorporate all increases in prevailing wage rates twice per year as provided under Section 2.4 of the SCWA Addendum. Such increases must be included in the Final Project Budget without additional cost to SPS or the City. If a prevailing wage rate decreases, such decreases will not be recognized. Any scopes of work not covered by the SCWA will still be required to pay the prevailing wages defined by L&I in effect at the time each subcontract is executed and to increase every September to the rates in effect at that time.

MSR shall ensure compliance with the following Overtime wage and Apprentice wage requirements on the Project:

#### **4.1 Overtime**

The SCWA requires additional payment for overtime beyond these requirements. Examples are overtime payments for missed meals and 2nd and 3rd shift overtime above specified shift hours. Overtime for hours worked in excess of eight (8) hours per day, or 40 hours per week, or on Saturdays, Sundays, and holidays, or outside of the regular shift shall be determined by the L&I overtime and holiday code for the applicable trade. Work performed on the Project wherein the employee will work up to 10 hours per Day in a 4-Day week to accomplish 40 hours of work shall be permissible without the requirement of overtime rates if the applicable craft's Collective Bargaining Agreement allows for 4-10 shifts. No written 4-10 agreement is necessary. Contractors shall reference the applicable craft's Collective Bargaining Agreement to determine if 4-10 shifts are permissible. If an overtime or 4-Day at 10 hours per Day shift agreement is established through a Collective Bargaining Agreement provision, the Contractor must submit a copy of the Collective Bargaining Agreement provision via the online reporting portal: <http://www.LCPtracker.net>

#### **4.2 Prevailing Wage for Apprentices**

Per RCW 39.12.021 and RCW 49.04, Apprentices must be paid the applicable prevailing hourly rate for an apprentice of that trade. Apprenticeship prevailing wages are subject to SCWA Articles III and IV.

#### **4.3 Monitoring for Compliance with Wage Requirements**

##### **4.3.1. Payroll Reports**

Payroll reports for the Prime Contractor, every Subcontractor, and all other individuals or firms required to pay prevailing wages for Work performed on the construction project must be submitted weekly via an online reporting portal: <http://www.LCPtracker.net>.

The Prime Contractor is responsible for approving electronically the payrolls submitted by all Subcontractors. Payroll reports must contain the following information:

1. Name and residence address of each worker
2. Classification of work performed by each worker. The classification must be specific and match the classification categories listed in the applicable wage schedule
3. Total number of hours employed each Day
4. Total number of hours employed during the payroll period
5. Straight time and overtime hourly rate of wages paid to each worker
6. Total or gross amount earned by each worker
7. Deductions for medical insurance, FICA, federal withholding tax, and any other deductions taken
8. Net amount paid each worker
9. Prime Contractor's or Subcontractor's name and address
10. All Days during the pay period
11. Date of final Day of pay period
12. Whether fringe benefits were paid to each worker as part of the hourly wage rate or whether fringe benefits were paid into an approved plan, fund, or program; and the hourly rate of fringe benefits paid.

The last payroll submitted for the Work for both the Prime Contractor and each Subcontractor must be labeled 'Final'. If no work is performed for the week, the Contractor must submit a certified payroll noting that no work has been performed.

The Prime Contractor, every Subcontractor, and all other individuals or firms required to pay prevailing wages for Work performed on the Project are subject to investigation by MSR and PC regarding payment of the required prevailing wage to workers, laborers, and mechanics employed on the project. If the investigations result in a finding that an individual or firm has violated the requirement to pay the prevailing rate of wage, PC will meet with MSR to address the appropriate enforcement actions and remedies.

Each Contractor shall submit statements of intent to pay prevailing wages and affidavits of wages paid to PC for review and approval using the City approved forms (see Section 6).

#### **4.3.2 Monitoring Prevailing Wages – Site Visit**

PC will make routine visits to the Project Site for prevailing wages contract compliance. The Prime Contractor and Subcontractors shall cooperate with PC and allow PC unfettered access to the Project Site and records, including any work performed off site.

#### **4.3.3 Records**

MSR must require the Prime Contractor to maintain relevant records and information necessary to document the Prime Contractor's and Subcontractors' compliance with these requirements for at least 24 months after the construction work is complete. The City has the right to inspect and copy such records. MSR must also require the Prime Contractor to enforce these same requirements on its Subcontractors by including appropriate language in its subcontracts.

### **Section 5 - Monitoring and Compliance of WMBE, SCWA and Priority Hire Requirements**

#### **5.1 Records and Reporting**

MSR must require the Prime Contractor to demonstrate compliance with SMC 20.42, through the submission of the Inclusion Plans, Social Equity Plan, and other reports as specified herein. MSR must require the Contractor to allow access to its records of employment, bidding, and subcontracting, and other pertinent data requested by the City to determine compliance with these requirements. Records must be available at reasonable times and places for inspection by authorized representatives of The City.

MSR must require the Contractor to maintain relevant records and information necessary to document the Contractor's Affirmative Efforts to use WMBEs and other businesses as Subcontractors and Suppliers under the Contract for at least 24 months after the construction work is complete. The City has the right to inspect and copy such records. MSR must also require the Prime Contractor to enforce these same requirements on its Subcontractors by including appropriate language in its subcontracts.



## **5.2 Apprentice**

All Contractors will upload proof of apprenticeship registration via LCPTracker at the time a request of apprentice approval is submitted. PC will verify the registration of each Apprentice used on the project with the WSATC. PC will monitor the Apprentice utilization data provided by the Contractor.

## **5.3 Site Visits**

The City will make routine visits to the Project Site for the purpose of verifying wages paid, confirming the use of apprentices and monitoring WMBE, Acceptable Work Site, Priority Hire and general compliance with the SCWA and these provisions. The Prime Contractor and Subcontractors shall cooperate with PC and allow PC unfettered access to the Project Site and records.

## **5.4 Monitoring Priority Hire**

PC will monitor the Priority Hire and Apprentice utilization data provided by the Prime Contractor.

## **5.5 Monthly Reports and Meetings**

PC shall facilitate a monthly meeting to review each of these requirements. At the meeting the Prime Contractor will prepare a report that summarizes the progress and performance on each of these requirements in a format approved by PC.

## **5.6 Monitoring WMBE**

PC will monitor compliance with the WMBE requirements of the construction contract, including the review and approval of Subcontractor Inclusion Plans prior to bidding of subcontract work and review and approval of the Prime Contractor's Social Equity Plan and Social Equity Monthly Report.

## **5.7 Progress Reviews**

In the event PC has concerns regarding compliance with the SCWA, Apprenticeship, WMBE, or Prevailing Wage, PC will meet with MSR to facilitate solutions to achieve compliance. Options to consider include:

- Step 1: Notification of default with cure opportunity
- Step 2: Withholding Payment
- Step 3: Suspension of Work
- Step 4: Termination of Subcontractor

## **Section 6 - Forms**

The following forms have been provided to MSR for use with the construction contract with the Prime Contractor and Subcontractors, as applicable.

1. Student and Community Workforce Agreement and Pre-Job Package
2. General Contractor Inclusion Plan
3. Subcontractor Inclusion Plan
4. WMBE Implementation Plan
5. Social Equity Plan
6. Sample Social Equity Monthly Report

7. Craft Request Form (SCWA dispatch form)
8. Equal Benefits Form
9. Dual Benefit Reimbursement Form
10. Acceptable Worksite Poster
11. Statement of Intent to Pay Prevailing Wages
12. Affidavit of Wages Paid



Att 2 Ex G – SCWA Addendum  
V1

## **Exhibit G ADDENDUM**

### **ADDENDUM RE: Memorial Stadium Redevelopment Project SEATTLE/KING COUNTY BUILDING TRADES COUNCIL WESTERN STATES REGIONAL COUNCIL OF CARPENTERS**

This addendum (“Addendum”) supplements and is made a part of the Student Community Workforce Agreement (SCWA) dated October 1, 2020, and as amended June 30, 2021. This Addendum is effective as provided under Section 3.

#### **Recitals**

Seattle Public School District (“SPS”) and the Seattle King County Building and Construction Trades council and the Western States Regional Council of Carpenters, acting on their own behalf and on behalf of their respective members and affiliates who have subscribed to the SCWA (collectively, the “Unions”) are parties to the SCWA, which is applicable to “Covered Projects” as defined in the SCWA.

SPS, the City of Seattle (the “City”), and Memorial Stadium Redevelopment LLC (“MSR”), through its contract with the Prime Contractor (defined below) that will employ construction workforce and/or subcontract with other construction workforce employers, have entered into separate agreements to jointly fund, design, and construct a new SPS-owned Memorial Stadium and associated improvements to the City-owned Seattle Center campus (the “Memorial Stadium Project”).

The separate agreements between SPS, the City, and MSR provide that MSR will enter one or more construction contracts with the Prime Contractor and deliver the Memorial Stadium Project to SPS and the City as a turn-key project for SPS’s ownership of the completed stadium; the City’s ownership of Seattle Center improvements; the priority use of the stadium by SPS, with additional use by the City and MSR; and all for the benefit of SPS students, youth, and the public.

MSR has engaged or will, prior to the effective date of this Addendum, engage Sellen Construction Co. Inc. as the prime contractor for the Memorial Stadium Project (the “Prime Contractor”), who was selected utilizing a competitive process. The Prime Contractor will construct the Memorial Stadium Project on behalf of MSR and comply with the development requirements of the separate agreements (including, but not limited to, the social equity requirements). MSR and the Prime Contractor are collectively referred to as “the Developer.”

SPS, the City, and the Developer have a shared interest in extending the benefits and protections of the SCWA to the Memorial Stadium Project, including, but not limited to, protections regarding labor peace and workforce development, and furthering mutual policy interests in promoting equitable labor outcomes, youth education and career development opportunities, and livable wages.

The purpose of this Addendum is to apply the SCWA to the Memorial Stadium Project and to set forth specific provisions that are applicable to the Memorial Stadium Project only.

Now therefore, SPS, the City, Prime Contractor, and the Unions (collectively, the Parties to this Addendum) agree as follows:

Att 2 Ex G – SCWA Addendum  
V1

## **1. Memorial Stadium Project Under SCWA**

1.1 As used in this Addendum, the “Memorial Stadium Project” means the demolition of most of the existing Memorial Stadium structures, the preservation of the landmark-designated Memorial Wall structure, and the construction of a new Memorial Stadium and associated improvements to adjacent Seattle Center campus as defined in the final project documents approved by SPS, the City, and the Developer.

1.2 The Memorial Stadium Project shall be a “Covered Project” under the SCWA. Except as expressly provided otherwise in this Addendum, all terms and conditions of the SCWA shall apply to the Memorial Stadium Project.

## **2. Specific Provisions under this Addendum**

For purposes of the Memorial Stadium Project only, the SCWA is amended as provided under this Section 2.

2.1 Developer’s Role (Article I, Section 7). With the exception of Article I, Section 7, all references to “SPS” in the SCWA that by their context and meaning would apply to SPS as the owner of the Covered Project shall be deemed to refer to MSR, the City, and SPS solely for the purposes of MSR carrying out the Memorial Stadium Project as a turnkey project according to the terms of their agreements.

2.2 Acceptance and Termination (Article I, Section 7). Article I, Section 7 is amended as follows: This Addendum shall remain in full force and effect until the SPS Board has accepted Developer’s completion of the Memorial Stadium Project and the City has accepted the improvements to Seattle Center campus.

2.3 Rest Facilities (Article II, Section 5). Article II, Section 5, Safety, Rest Facilities, is amended as follows:

Separate toilet facilities, with access to running water for handwashing, and handwashing stations shall be provided at the site of work and in equally accessible locations for both men and women. The facilities shall be clearly marked “Men” and “Women.” The Women facilities shall have a lock on the outside, with keys provided to women for access. All facilities shall be inspected prior to the start of each shift to ensure they are clean and that sanitary toilet paper, soap, and paper towels are stocked. The Women facilities shall maintain a supply of appropriate hygiene products for women.

2.4 Wages. Article III, Wages, shall be amended as follows:

Each March and September, Contractors of every tier shall incorporate all increases to such rates that are announced by the State or Federal government, as applicable, for the duration of each Covered Project. Such increases shall be made effective the first full payroll period following the effective date.

2.5. Holidays. Article IV, Section 4, shall be amended as follows: Martin Luther King Jr. Day shall be added as a recognized holiday.

2.4 Project Oversight and Administration (Article VI, Section 2). SPS has determined that SCWA oversight and administration will be through the City of Seattle’s Department of Finance and Administrative Services acting as the third-party administrator for the SCWA.

Att 2 Ex G – SCWA Addendum  
V1

**2.5 Dispatch (Article VIII, Section 1).** Article VIII, Section 1, shall be amended as follows:

Contractors shall use the dispatch resources or procedures of the signatory Unions to acquire workers, unless otherwise required by this SCWA. All workers shall be dispatched to the project prior to starting work. Failure to properly comply with this requirement may lead to the subcontractor and/or workers being removed from the project until workers are properly dispatched. There shall be no discrimination against any employee or applicant for employment because of their membership or non-membership in the union or based upon race, creed, color, sexual orientation, gender identity, age or national origin of such employee or applicant.

**2.6 Priority Workers (Article X, Section 1).** In addition to the general requirements of Article X, Section I, by separate agreement SPS, the City, and the Developer will establish the percentage of labor hours that SPS Priority Hire Workers must perform of the total labor hours on the Memorial Stadium Project. The City and SPS will consult with the Unions prior to establishing the goals. The Prime Contractor shall require subcontractors to utilize SPS Priority Hire Workers in order to ensure attainment of the requirement set for the Memorial Stadium Project.

### **3. Effect of Addendum; Order of Priority**

This Addendum shall not be effective unless signed by an authorized representative of SPS, the City, Prime Contractor, and the Unions, following authorization by the Board of Directors for Seattle Public Schools and The Seattle City Council. Additionally, this Addendum shall automatically terminate if for any reason SPS and the City terminate their respective agreements with the Developer for delivery of the Memorial Stadium Project as a turnkey project. Otherwise, this Addendum shall remain in effect with respect to the Memorial Stadium Project until acceptance and termination as provided under Section 2.2 above, at which time this Addendum shall have no further effect. If there is any conflict between the SCWA and this Addendum, this Addendum shall govern with respect to any matter specifically addressed herein, but only to the extent necessary to resolve the conflict.

All other terms and conditions of the SCWA remain in full force and unchanged for purposes of any SPS Covered Project other than the Memorial Stadium Project. All capitalized terms used herein without definition shall have the meanings assigned to them in the SCWA.

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

Signed:

By: \_\_\_\_\_  
Monty Anderson, Seattle/King County Building and Construction Trades Council

By: \_\_\_\_\_  
Antonio Acosta , Western States Regional Council of Carpenters

Att 2 Ex G – SCWA Addendum  
V1

By: \_\_\_\_\_  
[insert], Seattle Public Schools

By: \_\_\_\_\_  
Presley Palmer, City of Seattle Finance and Administrative Services

By: \_\_\_\_\_  
*[insert name of signatory]*, Sellen Construction Co., Inc.



**Seattle**  
Department of  
Transportation

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**MEMORANDUM - Concurrence Coversheet**

Date: September 8, 2021

To: Candida Lorenzana, Transit and Mobility Division Director  
Adiam Emery, Transportation Operations Division Director

From: Ruth Harper, Senior Transportation Planner

Subject: For Your Signatures

**Short Summary/Reason for Request:**

Please sign the attached **updated** Memorandum of Agreement (MOA) for Event Curbside Management between SDOT and Seattle Center (SC).

This updated MOA comes about as a result of the new Climate Pledge Arena, but it also serves to formalize current curbside reservation practices between the two departments. This version removes the prior Reservation Type restrictions and allows Seattle Center to temporarily use on-street curbspace per the updated blockface list included here. Seattle Center will strive to minimize impacts (extent and duration) wherever possible, in adhering to a policy of careful and judicious use of public right of way. It also memorializes current curbspace reservation policies practices. The Parking Enforcement Division has also reviewed this agreement and concurred.

Date	Name/Extension	Signature
Requestor		
9/8/2021	Ruth Harper, 206.584.3443	<u>Ruth Harper</u> Ruth Harper (Sep 8, 2021 18:11 PDT)
Manager Approval		
09/13/2021	Mike Estey, 206.604.1826	<u>Mike Estey</u> Mike Estey (Sep 13, 2021 09:48 PDT)
Manager Approval		
09/13/2021	Matt Beaulieu, 206.379.4177	<u>Matt Beaulieu</u> Matt Beaulieu (Sep 13, 2021 09:51 PDT)



**Seattle**  
Department of  
Transportation



## **Seattle Department of Transportation / Seattle Center**

### **MEMORANDUM OF AGREEMENT for Event Curbside Management**

Seattle Center is an important gathering place - since its inception it has existed to provide cultural, community, sports and arts events for the entire region. Many of these events require use of public right-of-way for loading and staging. When the Seattle Department of Transportation (SDOT) installed on-street paid parking in Uptown in 2006, it was agreed that the fees for temporary use of the curbspace for Seattle Center events should be waived, in accord with decades-long precedent, and in acknowledgment of Seattle Center's unique contributions to the city. This version of the Memorandum of Agreement removes the prior Reservation Type restrictions and allows Seattle Center to temporarily use on-street curbspace per the list included here. Seattle Center will strive to minimize impacts (extent and duration) wherever possible, in adhering to a policy of careful and judicious use of public right of way.

#### **Agreement**

- This Memorandum of Agreement between the Seattle Department of Transportation (SDOT) and Seattle Center describes procedures for Seattle Center to reserve right-of-way curbspace for loading, unloading and staging of events at Seattle Center. The agreement covers the following uses, to be detailed within the reservation applications submitted to SDOT by Seattle Center staff or their designees and as marked on temporary no-park signage corresponding to specific curb use:
  - Short-term loading zones as needed
  - Staging of vehicles and equipment
  - Trailer parking
  - No parking (*e.g., walk/run route necessitating no vehicles along the event course*)

More than one reservation type may be used along a single curb face as needed, provided use-specific signage is located to clearly delineate each type of use.

### **Procedure for Reservations**

1. Seattle Center staff or their designee will complete an online application through the Seattle Services Portal (see Appendix Link 1) for Temporary No Parking (TNP) for paid areas. Choose “barricade”, and SDOT will waive fees and approve. No online verification (now called “public notification”) is required for TNP (paid area). The application identifies dates, times, and specific space numbers to be removed from paid parking operation for the duration of the curb use period.
  - a. Space numbers can be referenced from the web map (see Appendix Link 2).
  - b. Application must be received by SDOT Permits desk no later than 24 hours prior to the start of Seattle Center curb use.
2. Seattle Center Technical Facilities Management (TFM) crews shall place temporary no-park signage (gorilla posts or A-frames) at minimum 24 hours prior (and preferably 72 hours prior for A-frame signs in non-paid areas) to the start of the curb use period.
  - a. For gorilla posts, at the time of no-park signage placement, Seattle Center TFM will document on tags the date and time no-park signage was placed which they will affix to at least one gorilla post on that block.
    - i. In addition to date and time, Seattle Center TFM will document on the tag any vehicle license plate numbers currently parked in these curb spaces.
  - b. Temporary no-park signage may be customized by Seattle Center staff or their designee and must include the date(s) and time(s) of curb use.
  - c. Public notification is required for A-frame No Park signage in non-paid areas and is generated through the Temporary No Parking Non-Paid (TNP-N) application process which Seattle Center must complete through the Seattle Services Portal (see Appendix Link 1).
  - d. No online verification (“public notification”) is required for gorilla post no-park signage.
3. For curb used to stage commercial trailers, commercial vehicles and trucks, Seattle Center shall obtain a Restricted Area Parking Permit, to be placed in/on each truck at all times the vehicle is located along the curb.

### **Procedure for Reservations for Special Events**

1. For events operating under a Special Events Permit (e.g., festivals, walks/runs utilizing public right-of-way as part of their route), curb use is included within the

Special Event Permit. Curb space needs to be reserved, either by Special Events personnel or by Seattle Center personnel, via the TNP process outlined above.

2. Where applicable, Seattle Center TFM crews shall place temporary no-park signage (gorilla posts or A-frames) at minimum 24-hours prior (and preferably 72 hours prior for A-frame signs in non-paid areas) to the start of the curb use period. Seattle Center shall follow the procedures identified above ("Procedure for Reservations" Section 2) for temporary sign placement.

### **School Bus Parking**

Select curb spaces have been designated for use by school buses Monday-Friday, 9:00 am – 3:00 pm in order to accommodate activities programmed for school-aged children at Seattle Center and Seattle Center resident organizations. School bus parking zones are not actively managed by Seattle Center or Seattle Center resident organizations.

School bus parking zones are signed as such and located on the following blocks:

- 1<sup>st</sup> Ave N, east side, between Thomas St and Harrison St
- 4<sup>th</sup> Ave N, west side between Republican St and Mercer St
- 5<sup>th</sup> Ave N, east side, north of Harrison St

### **Climate Pledge Arena**

Curb space may be utilized by Climate Pledge Arena for event use only, on the specific blocks identified below. Use will be coordinated with Seattle Center event representatives, and Seattle Center staff will make the requests. Climate Pledge Arena and/or Seattle Center shall follow the procedures identified above for application and temporary sign placement ("Procedure for Reservations" Section 2).

This MOA also recognizes that there might be brief challenges between the Arena ingress and egress procedures for large events and Seattle Center's use of curbspace for their large events and festivals. As stated in the Transportation Management Plan (TMP) for the Climate Pledge Arena (which is signed by SDOT, Seattle Center, SDCI and the Climate Pledge Arena General Manager), Seattle Center has oversight for the Seattle Center campus which includes Climate Pledge Arena and numerous other venues and resident organizations.

Seattle Center operates the campus as a whole including agreements regarding the use of parking garages and curb space. Seattle Center will actively partner with the Climate Pledge Arena regarding the use of curbspace.



### **Curb Space Included in this Memorandum Agreement for Temporary Use**

- Thomas St, both sides between 1<sup>st</sup> Ave N & 2<sup>nd</sup> Ave N \*
- Warren Ave N, both sides between Thomas St & John St\*
  - The west side of this block will not be available for Seattle Center use between 5 PM and midnight during Climate Pledge Arena events with over 10,000 anticipated attendees
- 2<sup>nd</sup> Ave N, both sides between Thomas St & John St \*
- Republican St, both sides between 1<sup>st</sup> Ave N & Warren Ave N
- Warren Ave N, both sides between Mercer St & Republican St
- 2<sup>nd</sup> Ave N, west side between Mercer St & Roy St
- 2<sup>nd</sup> Ave N, east side between Mercer St & Roy St, northern half only
- 4<sup>th</sup> Ave N, both sides between Mercer St & Republican St \*
- Republican St, both sides between 4<sup>th</sup> Ave N & 5<sup>th</sup> Ave N \*
- Mercer St, north side between 3<sup>rd</sup> Ave N & pedestrian bridge
- Taylor Ave N, east side between Harrison St & Thomas St (parallel parking configuration only)

*\*Eligible for use by Climate Pledge Arena*

### **Signage**

Seattle Center shall purchase and maintain a sufficient number of gorilla posts and A-frame signs to effectively reserve curbspace in the locations described, along with signs as appropriate for each type of reserved curbspace. The main signage text and colors will be mutually agreed upon by SDOT and Seattle Center. Seattle Center or their designee may add auxiliary signage on the main sign, as described above, at their discretion.

Seattle Center or their designee must locate signs along the curbspace to accurately delineate the reserved space. Signs with appropriate directional arrows must be placed at each end and at least every other parking space along the length of curbspace being reserved.

### **Fees**

Due to the nature of Seattle Center as a unique event destination, their need to use adjacent streets in support of their event management, and the past practice of not being charged for those activities, the SDOT Director of Transportation Operations and Director of Transit and Mobility waive reservation that would otherwise accrue for use

of paid curb space.

For street use outside of the parameters of this agreement, the event or activity producer requesting a permit is responsible for any SDOT Street Use permit fees or Special Event permit fees, and any related charges that may result from their transactions with SDOT Street Use or Seattle Parks and Recreation.


### Enforcement

SDOT and Seattle Center will rely on Seattle Parking Enforcement to enforce temporary short-term loading zones. SDOT Commercial Vehicle Enforcement will enforce all truck permits for longer reservations except when a Special Events Permit is in effect. SDOT Street Use will enforce street use permits.

### Term of Agreement

This Agreement will become valid when signed by representatives of Seattle Center and SDOT, and will remain in effect indefinitely, unless amended or replaced by mutual agreement of the departments' representatives.

SEATTLE DEPARTMENT  
OF TRANSPORTATION

  
[Adiam Emery \(Sep 13, 2021 16:47 PDT\)](#)

Adiam Emery, Director of  
Transportation Operations

09/13/2021

Date

  
[Candida Lorenzana \(Sep 14, 2021 09:57 PDT\)](#)

Candida Lorenzana, Director of  
Transit and Mobility

09/14/2021

Date

SEATTLE CENTER

  
[Robert Nellams \(Sep 15, 2021 14:45 PDT\)](#)

Robert Nellams  
Director

09/15/2021

Date



# Seattle Center Campus Map

\* When you park at these Garages, your fees support Seattle Center free programs and campus grounds.

Last Revised: 01/21/2021

For additional information, please contact  
 Seattle Center Customer Service:  
 (206) 684-7200



**Seattle**  
Department of  
Transportation



**Seattle Department of Transportation / Seattle Center**

**MEMORANDUM OF AGREEMENT  
for  
Event Curbside Management**

**APPENDIX**

**Website links for reserving permits**

1. Seattle Services Portal, used for applications for Temporary No Parking in paid and nonpaid areas: <https://cosaccela.seattle.gov/Portal/Welcome.aspx>
2. Link to find space numbers for Temporary No Parking in paid areas:  
<https://seattlecitygis.maps.arcgis.com/apps/MapSeries/index.html?appid=ec2bf6796118412982072feb28d35277>

Att 2 Ex I - Insurance Requirements  
V1

## DEVELOPMENT AGREEMENT REGARDING MEMORIAL STADIUM

### EXHIBIT I

### INSURANCE

#### 1. Insurance Requirements

(a) **General:** MSR must provide the minimum coverages and limits of liability and comply with all other requirements in this Exhibit I. Providing evidence of coverage for these minimum limits of liability does not relieve MSR, the Prime Contractor, the Architect, any Subcontractor of any tier, or their respective insurers from liability for claims in excess of such stated minimum limits of liability. If Work is subcontracted, applicable minimum coverages and limits of liability may be evidenced by any Subcontractor, provided that such insurance fully meets the applicable minimum requirements set forth herein and includes the City and SPS as Additional Insured as specified in this Exhibit I.

(b) **Required Types of Insurance:** Prior to commencing demolition or construction of the Project pursuant to this Development Agreement and until Final Acceptance, MSR shall obtain and maintain or cause the Prime Contractor or Architect to obtain and maintain, at its/their own expense, the following policies of insurance:

(i) **Builders risk insurance** that covers the Project for the full amount of all materials, equipment, including HVAC, and structures during the course of construction. Such builder's risk policy shall:

(A) utilize an "All-Risks" (Special Perils) coverage form;

(B) unless otherwise directed in writing by the City, or stipulated elsewhere herein, be in force and be maintained from the commencement date of the work until the day of issue of the certificate of Substantial Completion;

(C) be sufficient to cover the total value of the entire Project on a replacement cost basis including the value of any subsequent modifications and labor performed and materials or equipment supplied by others. Coverage to extend to all building materials whether at the site, in transit or in temporary storage, including the installation, testing and any subsequent use of machinery and equipment, including boilers, pressure vessels or vessels under vacuum;

(D) include damage to the Project caused by an accident to or the explosion of any boiler or other pressure vessel or equipment forming part of the Project;

(E) include "Off-site Coverage" for storage, transit and installation risks;

(F) include flood and earthquake insurance, subject to a sublimit based upon a Probable Maximum Loss (PML) study using a 250-year return period to establish the sublimit required;

(G) include coverage for loss of income, extra expense and/or expediting expense if such exposures exist;

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(H) be subject to a waiver of co-insurance, except with respect to coverage for existing structures (if any);

(I) be endorsed to cover the interest of the City and SPS and include on policy as Loss Payee;

(J) shall contain a waiver of any subrogation rights that MSR's insurers may have against the City or SPS and against those for whom they are in law responsible, whether any such damage is caused by the act, omission or negligence of the City or SPS or those for whom they are in law responsible;

(K) unless otherwise approved by the City, provide for a deductible of not more than \$100,000 for all other perils except Earthquake, Flood and Water Damage, which can be subject to a percentage deductible; and

(L) MSR shall act on behalf of the City and SPS for the purpose of adjusting the amount of such loss or damage payment with the insurer. When the extent of the loss or damage is determined, claim payment will be to MSR, who shall proceed to restore the damaged elements of the Project. Loss or damage shall not affect the rights and obligations of either Party.

(ii) **Commercial General Liability (CGL) Insurance**, written on ISO Form CG 00 01 or its equivalent, including but not limited to bodily and personal injury liability; property damage; product/completed operations; independent contractors; stop gap, unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy; products liability; contractual liability; blasting, if explosives are used in the performance of the Project; per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per project) or equivalent; and premises liability, having an inclusive limit of not less than \$1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) except \$1 Million each Offense Personal/Advertising Injury and \$1 Million each Accident/Disease – Policy Limit/Disease – each Employee Stop Gap or Employers Liability; and \$1 Million for products/completed operations aggregate and \$2 Million general aggregate per project.

(iii) **Standard form owned automobile liability insurance** that complies with all requirements of the current legislation of the State of Washington, having an inclusive limit of not less than \$1,000,000 combined single limit for third party liability, in respect of the use or operation of vehicles owned, operated or leased for the performance of the Project. The insurance coverage shall remain in effect throughout the time of the duration of the Project;

(iv) **Non-owned automobile liability insurance** in standard form having an inclusive limit of not less than \$1,000,000 Combined Single Limit, in respect of vehicles not owned, that are used or operated on its behalf for the duration of the Project. The insurance coverage shall remain in effect until such time as Final Acceptance;

(v) **Professional Liability Insurance as follows:**

(A) Contractor's Professional Liability insurance with a minimum limit of liability for \$5,000,000 each claim and may be evidence as an extension of a CGL policy or by a separate Professional Liability policy. The insurance must cover design-related professional errors and omissions for construction management, value engineering, or any

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other professional services during the Term of this Agreement. If insurance is on a claims-made form:

- (I)The retroactive date, and that of all subsequent renewals, must be no later than the Execution Date of this Agreement.
- (II)Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after the Completion Date of this Agreement.
- (III)If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Execution Date of this Contract, the Contractor must purchase “extended reporting” coverage for a minimum of 6 years after the Completion Date of this Agreement.

(B) Architects and Engineers Professional Liability insurance for the Architect, with a minimum limit of liability of \$2,000,000 each claim and \$4,000,000 in the aggregate evidenced by a Professional Liability policy. The insurance must cover design-related professional errors and omissions or any other non-construction professional services during the term of this Agreement. If the insurance is on a claims-made form:

- (I)The retroactive date, and that of all subsequent renewals, must be no later than the Execution Date of this Agreement.
- (II)Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after the Completion Date of this Agreement.
- (III)If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Execution Date of this Agreement, the Prime Contractor and/or any Subcontractor of any tier, and/or its design consultant must purchase “extended reporting” coverage for a minimum of three (3) years after the Completion Date of this Agreement.

(vi) **Contractor’s Pollution Liability:** If the Work involves the transport, dissemination, use, or release of pollutants, including any asbestos related work, the Contractor shall procure Pollution Liability insurance. Such insurance shall be in the amount of not less than \$1,000,000 per claim or occurrence and \$1,000,000 annual aggregate. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Contractor engagement and shall continue on a practice basis for not less than 6 years after completion. The retro date of any such coverage shall be prior to the commencement of Contractors work. Workers’ compensation and employer’s liability insurance (aka stop gap) – workers’ compensation insurance in accordance with the laws of the State of Washington and applicable governmental requirements. Employer’s liability (aka stop gap) insurance in an amount not less than one million dollars (\$1,000,000) for each accident or disease;

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(vii) Aircraft Liability Insurance if an Unmanned Aerial Vehicle (UAV) or Drone is used during the project. With no less than \$1,000,000 per occurrence, and \$2,000,000 in aggregate.

(viii) Unless otherwise approved by the City, MSR's or the Prime Contractor's deductible on the commercial general liability policy and, if applicable, Contractors Pollution Liability Insurance shall be not more than \$500,000;

(ix) Umbrella or Excess Liability Insurance with limits of \$19,000,000 each occurrence in excess of the primary CGL insurance limits specified in Subsection 1(b)(ii), and with limits of \$4,000,000 each occurrence in excess of the primary Automobile Liability insurance limits specified in Subsections 1(b)(iii) and 1(b)(iv). The minimum total limits requirement of \$20,000,000 for CGL and \$5,000,000 for Automobile Liability may also be satisfied with primary insurance limits or any combination of primary and excess/umbrella limits.

(x) The CGL Insurance must not exclude perils generally known as XCU (Explosion, Collapse, and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respect earthquake peril only) or any equivalent peril.

(xi) The CGL Insurance must include the City and SPS as additional insureds for Products and Completed Operations by provided additional insured status on the ISO CG 20 10 12 19 and CG 20 37 12 19 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for The City of Seattle and Seattle Public Schools must remain in effect for not less than three (3) years following Final Acceptance.

2. **Subcontractor Insurance:** The Prime Contractor must require all subcontractors to maintain appropriate limits as required by the Prime Contractor and include the City and SPS as Additional Insureds for primary and non-contributory limits of liability.

3. **Additional Insurance Terms and Conditions**

(a) **Additional Insureds.** All CGL Insurance, Automobile Liability Insurance (owned and non-owned), and Umbrella or Excess Liability Insurance, required to be taken out by MSR shall name the City and SPS as additional insureds.

(b) **Waiver of Subrogation.** All commercial general liability, auto liability and umbrella or excess liability, required to be taken out by MSR shall contain a waiver of any subrogation rights that MSR insurers may have against the City or SPS and against those for whom they are in law responsible, whether any such damage is caused by the act, omission or negligence of the City or SPS or those for whom they are in law responsible.

(c) **Approval of Insurers.** All insurance policies required to be carried by MSR pursuant to the terms of this Development Agreement shall be issued by insurers authorized to do business in the State of Washington and which have an A. M. Best Company, Inc. rating of "A" or better and a financial size category of not less than "VII" (unless otherwise approved by the City. If A. M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if A. M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Development Agreement, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time. MSR may utilize insurers with lower ratings with the prior written approval of the City.



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(d) **Primary Coverage.** The insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance maintained by the City or SPS.

(e) MSR shall advise the City within ten (10) business days of any cancellation or lapse of any policies of insurance required under this Exhibit J. If MSR fails to obtain and keep in force the aforesaid policies of insurance, the City may obtain such policies and shall give MSR a Notice setting out the amount and dates of payment of all costs and expenses incurred by the City in connection therewith to the date of such Notice. Any sum so expended by the City shall be due and payable promptly without prejudice to any other rights or recourse of the City hereunder.

(f) No such insurance taken out by the City or SPS shall relieve MSR of its obligation to insure the Development Site as required by this Development Agreement and neither the City nor SPS shall be liable for any loss or damage suffered by MSR in connection therewith.

(g) If MSR fails to obtain and keep in force the insurance required by this Development Agreement and, if any similar insurance maintained by the City or SPS shall be called into contribution at either or both of their option, and as a consequence thereof the City's or SPS's cost of effecting such insurance increases, any such additional cost shall be payable by MSR to the City or SPS forthwith upon production of reasonable proof of such additional cost, without prejudice to any other rights of the City and SPS as a result of MSR's failure to keep such insurance in place.

#### 4. **Increase in Fire Risk and Cancellation of Insurance**

MSR agrees that it, its employees, agents, occupants and invitees will not keep in or upon the Development Site any article or substance that may be prohibited by the insurance policies mentioned above, or do or omit, or permit to be done or omitted anything that will cause any cancellation of any insurance policy. If any insurance policy should be cancelled or the coverage reduced by reason of anything arising out of the use or occupation of the Development Site by MSR, whether or not the first sentence of this Section 4 has been complied with, and if MSR fails to remedy the condition giving rise to such cancellation or reduction, upon ten (10) days' Notice thereof by the City, the City may enter the Development Site and remedy the condition at the sole cost and expense of MSR, which cost and/or expense shall be payable to the City promptly.

#### 5. **Payment of Premiums**

MSR shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable.

#### 6. **Evidence of Insurance**

As and when MSR shall be required to carry any insurance under this Development Agreement, MSR shall deliver to the City and SPS evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the City and SPS, acting reasonably, signed by an authorized representative of the insurer. To the extent in MSR's possession or control, MSR will make available the complete copies of all applicable redacted policies for examination if requested by the City or SPS. Evidence of renewal or replacement of expiring policies shall be delivered to the City and SPS within 10 days of the expiration of then-current policies, without demand having to be made therefor by the City or SPS.

#### 7. **No Limitation of Liability; Additional Insured.**

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The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements are not construed to limit the liability of the MSR, the Prime Contractor, or that of any Subcontractor of any tier or of any of their respective insurers. Any provision in any Prime Contractor or Subcontractor insurance policy that limits available limits of liability to those specified in a written agreement or contract does not apply and all insurance policies, with the exception of Professional Liability and Workers Compensation, must include the City of Seattle and Seattle Public Schools as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Prime Contractor or Subcontractor, whether such limits are primary, excess, contingent, or otherwise. This provision applies regardless of whether limits of liability maintained by the Prime Contractor are greater than those required by this Agreement, and regardless of whether the certification of insurance provided by a Subcontractor of any tier specifies lower minimum limits than those specified for or maintained by the Prime Contractor.

## EXHIBIT J

### Operating and Maintenance Agreement Term Sheet

This term sheet is a high-level outline of key business terms upon which Seattle Public Schools (“SPS”), City of Seattle (“City”), and Memorial Stadium Redevelopment LLC (“MSR”) will enter into an Operations and Maintenance Agreement (“OMA”) for the operation and maintenance of Memorial Stadium at Seattle Center (the “Stadium”) and certain open space areas surrounding the Stadium (the “Perimeter Area”).

Any capitalized term that is not otherwise defined in this Exhibit shall have the meaning provided in the Development Agreement.

#### 1. **Vision for the Operation and Maintenance of Memorial Stadium**

- A. **Vision/Scope** – MSR to operate and maintain the new Memorial Stadium facility for the purpose of benefiting SPS students and the community and enhancing the Seattle Center campus and providing routine maintenance of the stadium to sustain the quality of the asset. MSR will operate the stadium/facilities for student-centered use by SPS, for use by Seattle Center, for community events and concerts, and potentially professional sports teams.
- B. **Community Commitments** – MSR contributions will include featuring SPS athletes and promoting the SPS and City racial and social justice framework with MSR initiatives such as internships.
- C. **Safety and Security** – The Stadium will be operated to provide a safe and secure environment for students and the public per SPS and City standards.

- 2. **Term:** The initial term of the OMA shall be for five (5) years. Prior to the completion of the initial term, the parties agree to explore the establishment of a City-chartered public corporation, public facilities district, interlocal agreement, or non-profit model as part of strategies for the stadium’s long-term operations, maintenance, capital replacement needs and financial sustainability. The OMA will include the conditions on which it may be extended for one or more additional terms, however future extensions of the term beyond 5 years will be subject to Seattle City Council authorization.

#### 3. **Operational and Maintenance Roles:**

- A. SPS to pay annually to MSR (as in-kind contributions and/or reimbursements) an amount equal to SPS’s current annual baseline expenses, adjusted for inflation, for regular operations and maintenance (“O&M”) of the existing Stadium (“SPS Baseline Funding”).
- B. City to pay the cost of its utility services for its warehouse and shop space facilities on the Stadium site. If it is not possible to separately meter a particular utility service, the parties shall agree upon a methodology to allocate a proportionate share of the cost of the unmetered service to the City. MSR to pay the cost of waste management services which will be combined with Seattle Center operations. If MSR utilizes Seattle Center irrigation main line, MSR shall pay the cost of its metered amount for its use of the irrigation main line.
- C. The parties will reach agreement regarding the use of Perimeter Area, along with SPS funding contribution toward the cost of City-provided O&M services to the Perimeter Area including programming, landscaping, and security services. OMA to require reimbursement of City’s cost of providing O&M services to the Perimeter Area.
- D. MSR to provide operation of facilities (including adjacent parking lot), excluding certain Perimeter Areas to be operated by the City, without management fee. MSR to obtain and manage potential revenues through engagement of sponsors; programming concerts, community events and professional

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sports events (e.g., Seawolves); naming rights, advertising, and sponsorships; and concessions at non-SPS and non-City events. MSR to be responsible for routine maintenance and ordinary repairs of all Stadium structures.

- E. The Stadium will be designed with sewn-in perimeters and the remainder of field markings will be painted as needed, based on the event schedule. MSR will be responsible for painting of markings for various events, including, at MSR's expense, all SPS regular season and playoff football and soccer events. OMA to address scheduling and budgets for the same.
  - F. A board ("Joint Oversight Board" or "Board") will be established comprising one representative of all three Parties. The Board will provide high-level review, guidance, and (as specifically enumerated in the OMA) approvals on matters such as coordination with Seattle Center operations, review of annual operating budget for Stadium (including SPS event parking rates) and application of revenue to Stadium needs, the standard maintenance services to be paid from revenues generated by Stadium, CapEx plan, and shared funding requirements. At least once per year, the Board will hold a three-way meeting with City, SPS and MSR. Certain decisions that are expressly identified in the OMA will require Board approval, including major capital improvements, programming and scheduling performance review. The Board will serve in an advisory capacity regarding decisions that require approval by the City Council or the SPS Board of Directors.
4. **O&M Standard**: The OMA shall include O&M standards for the Stadium and the Perimeter Areas (including which Perimeter Areas shall be operated and maintained by the City and/or MSR). The Stadium will be maintained and operated according to the O&M standards with a goal of sustainable operations and maintenance both during the term of the OMA and any extensions using a non-profit/sustainable/equitable operating model.
  5. **Facility Use and Scheduling Exhibit**: MSR will be responsible to manage Stadium schedule, including SPS, City, and other events. SPS events to be scheduled and prioritized, subject to mutually agreed modification process. Other events to be scheduled by MSR and marketed by applicable promoter or event host.
  6. **Event Operations** – The OMA will set forth the following: (a) which Party is responsible for operating which facilities and use components during SPS events and City events and that MSR is responsible for operating the Stadium for non-SPS events, and (b) coordination necessary with Seattle Center events and resident organizations, including management of operational issues such as transportation, parking (including bus parking), pedestrians, crowds, and noise. In the event the Seattle Center is unable to accommodate the on-street bus parking requirements of SPS during SPS events, SPS will have the right to park buses on the Stadium parking lot.
  7. **Sponsorships** – The Parties will agree on parameters and the approval process for MSR to manage sponsorship and advertising packages, including applicable SPS policies for SPS events versus non-SPS events.
  8. **Naming Rights** – The Parties will agree on parameters for MSR to manage naming rights packages. The word "Memorial" shall be retained in the name of the Stadium itself.
  9. **Integration with Seattle Center** – The Stadium will be operated in order to fully integrate specified operations into the Seattle Center campus, including considerations such as event operations, digital signage and wayfinding, safety and security, and a transportation and access plan.

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10. **Revenue.**

- A. **Operating Revenue** – MSR shall be provided the right to pursue the revenue opportunities described in Sections 3.D, 7, 8, and this Section 10 in a manner and at a level that is reasonably calculated to provide for sustainable operations of the Stadium. The OMA shall set forth the dollar amount of the SPS Baseline Funding (including annual escalation rate) and all parameters, guidelines, and terms applicable to MSR’s rights to engage in revenue generating activities, including sponsorship, advertising, naming rights, parking revenues, programming of revenue-generating events, and concessions.
- B. **SPS and City Event Revenue** – As between SPS and MSR, during SPS-managed events, SPS to keep revenues from ticketing, interior food and beverage, retail and other sources within Stadium. Youth education and career development opportunities led by SPS through Stadium operations and community partnerships, with MSR support, also qualify as SPS events. During City-managed events at the Stadium, City to keep revenue from ticketing and other sources within the Stadium.
- C. **Non-SPS Event Revenue** – As between SPS and MSR, during non-SPS events, MSR to keep revenues from ticketing, interior food and beverage, retail and other sources within Stadium and allocate their use as described below. Professional sports team or tenant O&M expenses to be covered by revenues managed by MSR, including event use fees, share of earned revenue, and sponsorship share.
- D. **Perimeter Programming Revenue** - Revenue from Perimeter Area programming sponsored and managed by City, including from ticketing and other sources from programming in such areas, to be retained by City to partially offset the Perimeter Area operating costs.
- E. **Parking Lot Revenue Share** – SPS to receive annual net revenues generated from use of the parking lot up to an amount (the “Threshold Amount”) initially equal to net revenue generated by the parking operations during the SPS 2024-2025 fiscal year, adjusted for any days during which the parking lot is unavailable for parking due to the Project. Adjustment of revenue calculations to account for such days during the SPS 2024-2025 fiscal year shall be made by using a forecast of daily net parking lot revenues applying the average daily net parking revenues produced during the balance of the SPS 2024-2025 fiscal year. The Threshold Amount will be established prior to execution of the OMA in reference to audited SPS financials. The Threshold Amount shall be adjusted for inflation as of September 1, 2026, and the first of each September thereafter applying the index to be determined in OMA. Any annual net revenues above the applicable Threshold Amount are to be shared equally between SPS and MSR.

- 11. **Capital Reserve** - The Parties to agree on joint development of a capital replacement plan, including reserve fund strategy.

- 12. **Operator Profits** - Operator profits (if any) to be allocated in the following order:

- A. Ordinary operations and maintenance fund plan.
- B. Capital replacement reserve and funding plan (i.e., expected major maintenance, upgrades).
- C. As requested by MSR and if approved by the SPS Board, charitable contributions for the benefit of students and other community youth.

- 13. **Additional Terms and Conditions** – The OMA shall include additional terms and conditions customary for operations and management agreements, including standards for liability allocation, insurance requirements, default and termination standards, and dispute resolution. The OMA shall provide that it is not assignable or transferable without prior written approval of the parties.

## **EXHIBIT K**

### **BUILDING ENVELOPE MONITOR RESPONSIBILITIES**

#### **DESIGN PHASE:**

- 1) BUILDING ENVELOPE CONSULTANT will perform one (1) technical review of the Architect's building envelope-related detail drawings and technical specifications when the Project Documents are 65% complete. The review can be accomplished via digital red-line edits and/or design comment matrices for ease of reference for the Project team. In addition, BUILDING ENVELOPE CONSULTANT will include recommendations for additional building envelope detailing, as may be necessary for the successful execution of the Project.
- 2) BUILDING ENVELOPE CONSULTANT will perform a second technical review of the Architect's building envelope-related detail drawings and technical specifications when the Project Documents are 95% complete with the purpose of confirming comments were entered, checking for proper detailing on additional drawings and details, and for cross checking the building envelope-related specifications and drawings for consistency and accuracy. This review can be accomplished via digital red-line edits and/or design comment matrices for ease of reference for the Project. In addition, BUILDING ENVELOPE CONSULTANT will include recommendations for additional building envelope detailing, as may be necessary for the successful execution of the Project.
- 3) Following each of these technical reviews, BUILDING ENVELOPE CONSULTANT will participate in a meeting with the Architect and MSR, SPS and City to discuss BUILDING ENVELOPE CONSULTANT's technical recommendations and red-line edits to Drawings & Specifications. Up to four (4) total drawing reviews may be performed across the design phase.

#### **BIDDING PHASE:**

- 1) BUILDING ENVELOPE CONSULTANT will address bidding sub-contractors' building envelope questions, and review and provide recommendations on substitution requests. BUILDING ENVELOPE CONSULTANT will review building-envelope related addenda to the Project Manual to integrate answers to contractors' potential questions into the Project Documents, as appropriate. Up to six (6) hours of bidding phase support to be provided.

#### **CONSTRUCTION PHASE:**

- 1) BUILDING ENVELOPE CONSULTANT will perform technical review of building envelope-related product Submittal Packages. Up to 30 hours review of Submittal Packages to be provided. Review will include two (2) initial reviews of shop drawings (i.e., roofing, curtain wall, or similar) and two (2) reviews of re-submittals of shop drawings.

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- 2) BUILDING ENVELOPE CONSULTANT will attend and assist Architect with conducting four (4) pre-installation meetings with the General Contractor and Sub-Contractors, to be conducted virtually or combined with a construction site visit. The focus of these meetings will be to review and discuss building envelope requirements, specifications, and detail drawings, submittal status, and manufacturer's specific installation requirements: one (1) Below- and Above-grade Waterproofing and Underslab Vapor Retarder; one (1) Exterior Cladding; one (1) Roofing and Sheet Metal Flashings; and, one (1) Windows, Storefront and Curtain Wall. Pre-installation meetings shall occur after approval of shop drawing submittals. Product manufacturer's representatives shall attend all pre-installation meetings. Field reports will be issued after each site visit with distribution to include MSR, SPS and the City.
- 3) BUILDING ENVELOPE CONSULTANT will review and respond to RFI's regarding the building-envelope system and component installation. This will allow for envelope-related questions to be addressed by the BUILDING ENVELOPE CONSULTANT, in a timely manner. Response shall be consistent with the intent of the Project Documents and good industry practice. Up to 25 hours of RFI responses to be provided.
- 4) BUILDING ENVELOPE CONSULTANT will make three (3) initial assemblies in-situ site visit reviews: Underslab Vapor Retarder; Curtain Wall; Exterior Cladding; and Metal Cladding. Additional initial assemblies site visit reviews will be conducted based on mock-ups for the following: the Below-grade Waterproofing Mock-up assembly; the Rough Opening Flexible Flashing and Window Mock-up assembly; and the Roofing and Sheet Metal Mock-up assembly. Field reports will be issued after each site visit with distribution to include MSR, SPS and the City.
- 5) During the construction of the building envelope (estimated to occur over a 12-month period), the BUILDING ENVELOPE CONSULTANT will conduct part-time technical monitoring site visits once every two weeks to verify that the building envelope work is or is not being performed per the Project Documents, and that the quality of the Contractor's work is in keeping with industry standards, as well as, to assist with any hidden conditions and/or technical issues that may arise during the Project. After each site visit, BUILDING ENVELOPE CONSULTANT shall prepare a formalized Field Report that includes photographs, recommendations, and, as needed, action items that require follow-up corrective action or tracking, with distribution to include MSR, SPS and the City.
- 6) Prime Contractor will coordinate with product manufacturer's representatives and arrange for BUILDING ENVELOPE CONSULTANT to be present on site to attend site visits during the course of implementation of the Work to confirm installation of certain building systems is being implemented in accordance with manufacturer's requirements and at the conclusion of the work, Contractor can provide required warranties. Site visits with product manufacturer's representatives and the BUILDING ENVELOPE

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CONSULTANT are to be coordinated for installation of the following building systems: Below-grade Waterproofing; Roofing; Weather Resistant Barrier; Horizontal Hot Rubber; Sealant at Pre-cast; and Storefront.

- 7) BUILDING ENVELOPE CONSULTANT will conduct a Pre-Completion Survey in the form of a building envelope punch list and verify that all action items in the consultant's reports have been closed out as the Project work nears completion. Architect will perform Completion Survey of the building exterior to verify that all action items in the consultant's reports have been addressed. MSR or SPS may ask BUILDING ENVELOPE CONSULTANT to provide ongoing consultation or other review responses.

**PROJECT CLOSEOUT PHASE:**

- 1) BUILDING ENVELOPE CONSULTANT will review Building Envelope Portions of O&M Manual, and request Contractor provide missing sections, warranties, and/or other items on behalf of MSR and SPS.
- 2) BUILDING ENVELOPE CONSULTANT will collaborate with the Contractor and its Sub-contractors to coordinate timing of consulting services regarding the Air Barrier and Window, Curtainwall, and Skylight Water Testing.