

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.

- 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.

- 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.

“**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 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 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.

“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.

“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.

“**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

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 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 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 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 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 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.

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 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.

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 25th 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 25th 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 1st 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 15th 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 1st 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 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 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 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.

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 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 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.

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 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 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 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.

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 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 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 (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 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 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;
- (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.

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 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, 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 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 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.

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.

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, 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.

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.

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) 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 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.

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:

<u>If to City:</u>	Marshall Foster Director of the Seattle Center 305 Harrison Street Seattle, WA 98109 Marshall.Foster@seattle.gov
<u>With Copy to:</u>	Thomas Kuffel Civil Chief Seattle City Attorney’s Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104-7095 Thomas.Kuffel@seattle.gov
<u>If to MSR:</u>	Lance Lopes Memorial Stadium Redevelopment LLC 10601 4 th Ave NE Seattle, WA 98125 llopes@seattlekraken.com

With Copy to: Hewan Teshome
Memorial Stadium Redevelopment LLC
334 1st 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.

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.

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: _____