

DEVELOPMENT AGREEMENT REGARDING MEMORIAL STADIUM

EXHIBIT I

INSURANCE

1. Insurance Requirements

(a) **General:** MSR must provide the minimum coverages and limits of liability and comply with all other requirements in this Exhibit I. Providing evidence of coverage for these minimum limits of liability does not relieve MSR, the Prime Contractor, the Architect, any Subcontractor of any tier, or their respective insurers from liability for claims in excess of such stated minimum limits of liability. If Work is subcontracted, applicable minimum coverages and limits of liability may be evidenced by any Subcontractor, provided that such insurance fully meets the applicable minimum requirements set forth herein and includes the City and SPS as Additional Insured as specified in this Exhibit I.

(b) **Required Types of Insurance:** Prior to commencing demolition or construction of the Project pursuant to this Development Agreement and until Final Acceptance, MSR shall obtain and maintain or cause the Prime Contractor or Architect to obtain and maintain, at its/their own expense, the following policies of insurance:

(i) **Builders risk insurance** that covers the Project for the full amount of all materials, equipment, including HVAC, and structures during the course of construction. Such builder's risk policy shall:

(A) utilize an "All-Risks" (Special Perils) coverage form;

(B) unless otherwise directed in writing by the City, or stipulated elsewhere herein, be in force and be maintained from the commencement date of the work until the day of issue of the certificate of Substantial Completion;

(C) be sufficient to cover the total value of the entire Project on a replacement cost basis including the value of any subsequent modifications and labor performed and materials or equipment supplied by others. Coverage to extend to all building materials whether at the site, in transit or in temporary storage, including the installation, testing and any subsequent use of machinery and equipment, including boilers, pressure vessels or vessels under vacuum;

(D) include damage to the Project caused by an accident to or the explosion of any boiler or other pressure vessel or equipment forming part of the Project;

(E) include "Off-site Coverage" for storage, transit and installation risks;

(F) include flood and earthquake insurance, subject to a sublimit based upon a Probable Maximum Loss (PML) study using a 250-year return period to establish the sublimit required;

(G) include coverage for loss of income, extra expense and/or expediting expense if such exposures exist;

(H) be subject to a waiver of co-insurance, except with respect to coverage for existing structures (if any);

(I) be endorsed to cover the interest of the City and SPS and include on policy as Loss Payee;

(J) shall contain a waiver of any subrogation rights that MSR's insurers may have against the City or SPS and against those for whom they are in law responsible, whether any such damage is caused by the act, omission or negligence of the City or SPS or those for whom they are in law responsible;

(K) unless otherwise approved by the City, provide for a deductible of not more than \$100,000 for all other perils except Earthquake, Flood and Water Damage, which can be subject to a percentage deductible; and

(L) MSR shall act on behalf of the City and SPS for the purpose of adjusting the amount of such loss or damage payment with the insurer. When the extent of the loss or damage is determined, claim payment will be to MSR, who shall proceed to restore the damaged elements of the Project. Loss or damage shall not affect the rights and obligations of either Party.

(ii) **Commercial General Liability (CGL) Insurance**, written on ISO Form CG 00 01 or its equivalent, including but not limited to bodily and personal injury liability; property damage; product/completed operations; independent contractors; stop gap, unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy; products liability; contractual liability; blasting, if explosives are used in the performance of the Project; per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per project) or equivalent; and premises liability, having an inclusive limit of not less than \$1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) except \$1 Million each Offense Personal/Advertising Injury and \$1 Million each Accident/Disease – Policy Limit/Disease – each Employee Stop Gap or Employers Liability; and \$1 Million for products/completed operations aggregate and \$2 Million general aggregate per project.

(iii) **Standard form owned automobile liability insurance** that complies with all requirements of the current legislation of the State of Washington, having an inclusive limit of not less than \$1,000,000 combined single limit for third party liability, in respect of the use or operation of vehicles owned, operated or leased for the performance of the Project. The insurance coverage shall remain in effect throughout the time of the duration of the Project;

(iv) **Non-owned automobile liability insurance** in standard form having an inclusive limit of not less than \$1,000,000 Combined Single Limit, in respect of vehicles not owned, that are used or operated on its behalf for the duration of the Project. The insurance coverage shall remain in effect until such time as Final Acceptance;

(v) **Professional Liability Insurance as follows:**

(A) Contractor's Professional Liability insurance with a minimum limit of liability for \$5,000,000 each claim and may be evidence as an extension of a CGL policy or by a separate Professional Liability policy. The insurance must cover design-related professional errors and omissions for construction management, value engineering, or any

other professional services during the Term of this Agreement. If insurance is on a claims-made form:

- (I) The retroactive date, and that of all subsequent renewals, must be no later than the Execution Date of this Agreement.
- (II) Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after the Completion Date of this Agreement.
- (III) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Execution Date of this Contract, the Contractor must purchase "extended reporting" coverage for a minimum of 6 years after the Completion Date of this Agreement.

(B) Architects and Engineers Professional Liability insurance for the Architect, with a minimum limit of liability of \$2,000,000 each claim and \$4,000,000 in the aggregate evidenced by a Professional Liability policy. The insurance must cover design-related professional errors and omissions or any other non-construction professional services during the term of this Agreement. If the insurance is on a claims-made form:

- (I) The retroactive date, and that of all subsequent renewals, must be no later than the Execution Date of this Agreement.
- (II) Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after the Completion Date of this Agreement.
- (III) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Execution Date of this Agreement, the Prime Contractor and/or any Subcontractor of any tier, and/or its design consultant must purchase "extended reporting" coverage for a minimum of three (3) years after the Completion Date of this Agreement.

(vi) **Contractor's Pollution Liability:** If the Work involves the transport, dissemination, use, or release of pollutants, including any asbestos related work, the Contractor shall procure Pollution Liability insurance. Such insurance shall be in the amount of not less than \$1,000,000 per claim or occurrence and \$1,000,000 annual aggregate. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Contractor engagement and shall continue on a practice basis for not less than 6 years after completion. The retro date of any such coverage shall be prior to the commencement of Contractors work. Workers' compensation and employer's liability insurance (aka stop gap) – workers' compensation insurance in accordance with the laws of the State of Washington and applicable governmental requirements. Employer's liability (aka stop gap) insurance in an amount not less than one million dollars (\$1,000,000) for each accident or disease;

(vii) Aircraft Liability Insurance if an Unmanned Aerial Vehicle (UAV) or Drone is used during the project. With no less than \$1,000,000 per occurrence, and \$2,000,000 in aggregate.

(viii) Unless otherwise approved by the City, MSR's or the Prime Contractor's deductible on the commercial general liability policy and, if applicable, Contractors Pollution Liability Insurance shall be not more than \$500,000;

(ix) Umbrella or Excess Liability Insurance with limits of \$19,000,000 each occurrence in excess of the primary CGL insurance limits specified in Subsection 1(b)(ii), and with limits of \$4,000,000 each occurrence in excess of the primary Automobile Liability insurance limits specified in Subsections 1(b)(iii) and 1(b)(iv). The minimum total limits requirement of \$20,000,000 for CGL and \$5,000,000 for Automobile Liability may also be satisfied with primary insurance limits or any combination of primary and excess/umbrella limits.

(x) The CGL Insurance must not exclude perils generally known as XCU (Explosion, Collapse, and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respect earthquake peril only) or any equivalent peril.

(xi) The CGL Insurance must include the City and SPS as additional insureds for Products and Completed Operations by provided additional insured status on the ISO CG 20 10 12 19 and CG 20 37 12 19 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for The City of Seattle and Seattle Public Schools must remain in effect for not less than three (3) years following Final Acceptance.

2. **Subcontractor Insurance:** The Prime Contractor must require all subcontractors to maintain appropriate limits as required by the Prime Contractor and include the City and SPS as Additional Insureds for primary and non-contributory limits of liability.

3. **Additional Insurance Terms and Conditions**

(a) **Additional Insureds.** All CGL Insurance, Automobile Liability Insurance (owned and non-owned), and Umbrella or Excess Liability Insurance, required to be taken out by MSR shall name the City and SPS as additional insureds.

(b) **Waiver of Subrogation.** All commercial general liability, auto liability and umbrella or excess liability, required to be taken out by MSR shall contain a waiver of any subrogation rights that MSR insurers may have against the City or SPS and against those for whom they are in law responsible, whether any such damage is caused by the act, omission or negligence of the City or SPS or those for whom they are in law responsible.

(c) **Approval of Insurers.** All insurance policies required to be carried by MSR pursuant to the terms of this Development Agreement shall be issued by insurers authorized to do business in the State of Washington and which have an A. M. Best Company, Inc. rating of "A" or better and a financial size category of not less than "VII" (unless otherwise approved by the City. If A. M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if A. M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Development Agreement, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time. MSR may utilize insurers with lower ratings with the prior written approval of the City.

(d) **Primary Coverage.** The insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance maintained by the City or SPS.

(e) MSR shall advise the City within ten (10) business days of any cancellation or lapse of any policies of insurance required under this Exhibit J. If MSR fails to obtain and keep in force the aforesaid policies of insurance, the City may obtain such policies and shall give MSR a Notice setting out the amount and dates of payment of all costs and expenses incurred by the City in connection therewith to the date of such Notice. Any sum so expended by the City shall be due and payable promptly without prejudice to any other rights or recourse of the City hereunder.

(f) No such insurance taken out by the City or SPS shall relieve MSR of its obligation to insure the Development Site as required by this Development Agreement and neither the City nor SPS shall be liable for any loss or damage suffered by MSR in connection therewith.

(g) If MSR fails to obtain and keep in force the insurance required by this Development Agreement and, if any similar insurance maintained by the City or SPS shall be called into contribution at either or both of their option, and as a consequence thereof the City's or SPS's cost of effecting such insurance increases, any such additional cost shall be payable by MSR to the City or SPS forthwith upon production of reasonable proof of such additional cost, without prejudice to any other rights of the City and SPS as a result of MSR's failure to keep such insurance in place.

4. Increase in Fire Risk and Cancellation of Insurance

MSR agrees that it, its employees, agents, occupants and invitees will not keep in or upon the Development Site any article or substance that may be prohibited by the insurance policies mentioned above, or do or omit, or permit to be done or omitted anything that will cause any cancellation of any insurance policy. If any insurance policy should be cancelled or the coverage reduced by reason of anything arising out of the use or occupation of the Development Site by MSR, whether or not the first sentence of this Section 4 has been complied with, and if MSR fails to remedy the condition giving rise to such cancellation or reduction, upon ten (10) days' Notice thereof by the City, the City may enter the Development Site and remedy the condition at the sole cost and expense of MSR, which cost and/or expense shall be payable to the City promptly.

5. Payment of Premiums

MSR shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable.

6. Evidence of Insurance

As and when MSR shall be required to carry any insurance under this Development Agreement, MSR shall deliver to the City and SPS evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the City and SPS, acting reasonably, signed by an authorized representative of the insurer. To the extent in MSR's possession or control, MSR will make available the complete copies of all applicable redacted policies for examination if requested by the City or SPS. Evidence of renewal or replacement of expiring policies shall be delivered to the City and SPS within 10 days of the expiration of then-current policies, without demand having to be made therefor by the City or SPS.

7. No Limitation of Liability; Additional Insured.

The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements are not construed to limit the liability of the MSR, the Prime Contractor, or that of any Subcontractor of any tier or of any of their respective insurers. Any provision in any Prime Contractor or Subcontractor insurance policy that limits available limits of liability to those specified in a written agreement or contract does not apply and all insurance policies, with the exception of Professional Liability and Workers Compensation, must include the City of Seattle and Seattle Public Schools as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Prime Contractor or Subcontractor, whether such limits are primary, excess, contingent, or otherwise. This provision applies regardless of whether limits of liability maintained by the Prime Contractor are greater than those required by this Agreement, and regardless of whether the certification of insurance provided by a Subcontractor of any tier specifies lower minimum limits than those specified for or maintained by the Prime Contractor.