

**Memorial Stadium
Memorandum of Agreement**

November 18, 2009 **DRAFT**

This Memorandum of Agreement (“Memorandum”) is entered into this _____ day of _____, 2009, by and between the City of Seattle, a municipal corporation of the State of Washington, acting by and through the Seattle Center (hereinafter “Seattle Center”), and Seattle School District No. 1, a municipal corporation of the State of Washington (“Seattle Schools”) with respect to redevelopment of the Memorial Stadium and surrounding properties.

PREAMBLE

Whereas, Seattle Schools owns and operates Memorial Stadium as an athletic stadium for high school sports and other events for the benefit of the students of Seattle; and

Whereas, Seattle Center grounds are a 74 acre campus, housing public and commercial programs, world-class arts and cultural organizations and active and quiet open spaces; and

Whereas, Seattle Center’s mission is to be the home for the finest cultural and educational organizations, sports teams, festivals, community programs and entertainment facilities for the people of Seattle and the Northwest and to delight and inspire the human spirit in each person and bring us together as a rich and varied community; and

Whereas, construction or redevelopment in the past 20 years of EMP, McCaw Hall, the Space Needle, Fisher Pavilion, Pacific Science Center, SRT, Intiman Theater, Phelps Center and Seattle Children’s Theater provided dramatic changes to the periphery of the Seattle Center campus; the adopted Century 21 Master Plan focuses on reclaiming and unifying open space at the heart of the campus, with enhanced connections drawing people to the Center; and

Whereas, Seattle Center seeks to improve and enhance the Center grounds, by adding open space, renovating the Seattle Center House and increasing recreational opportunities, to create a mix of opportunities and amenities that attract people to visit the Seattle Center grounds; and

Whereas, Memorial Stadium, is located on the eastern edge of Seattle Center grounds and many visitors to one facility also visit the other; and

Whereas Seattle Center’s adopted Century 21 Center Master Plan calls for redevelopment of the Memorial Stadium grounds and adjacent Seattle Schools-owned parking lot into a multipurpose athletic facility and concert venue, transportation hub, parking facility and open space; and

Whereas Seattle Schools seeks to retain an athletic facility at Seattle Center; and

Whereas, both Seattle Center and the Seattle Schools acknowledge and are committed to the need to preserve the historic character of the War Memorial wall to continue to serve as a site to honor the sacrifices of Seattle Schools graduates for our country; and

Whereas Seattle Schools and Seattle Center recognize that they each serve many of the same children, adults and organizations of our community; and

Whereas, Seattle Schools and Seattle Center seek to establish a common plan for an athletic stadium and concert venue for the mutual benefit of their respective programs and the people they serve; and

Whereas Seattle Schools and Seattle Center acknowledge that each agency has fiscal responsibilities with respect to revenues, expenses and capital assets, to assure sufficient resources are maintained to sustain programs consistent with prudent business practice and legal requirements; and

Whereas, Seattle Center and Seattle Schools now desire to enter into this Memorandum to establish terms of an agreement for the future of Memorial Stadium, subject to approval of Seattle City Council and the Seattle School Board.

Now, therefore, Seattle Center and Seattle Schools agree as follows:

AGREEMENT

1. Brief Description of Physical Concept: Parking lot and Stadium lots converted to a 5,000/12,000 seat stadium/concert venue, plus large grassy area (“Public Gathering Space”) and possible underground parking. Seattle Center’s current plan for this development is attached as Exhibit A.
2. Stadium Design and Construction:
 - a. A new stadium will be constructed in a north-south configuration with adequate space for football and soccer.
 - b. The field is artificial turf, not grass, and is lined for both football and soccer.
 - c. Lighting is included for evening activities.
 - d. Seating is adjustable from an athletic facility for 5,000, to a concert venue for 12,000.
 - e. The seats can be either fixed or moveable.
 - f. The stadium will be designed and built by Seattle Center.
 - g. The stands on the east side of the field will be covered and there will be consideration given during the design process to (if feasible) cover the west side stands.

will be fully secured and useable as an athletic stadium satisfactory to Seattle Schools.

- viii. An Operating Agreement will be prepared to cover all non-real estate transaction terms and conditions between the parties, to be completed by March 31, 2010.
- ix. Documents to be executed at Closing include the deeds for the Stadium Lots and the Mercer Garage Property, the Ground Lease for the Parking Lot, and the Operating Agreement. These documents will be prepared by the parties by March 31, 2010.

b. The Stadium Lots

- i. Upon Closing, the Stadium Lots will be conveyed free and clear of any liens and encumbrances that would materially impact value or Seattle's Center's use.
- ii. Acceptance of the conveyance of the lots will be subject to reasonable due diligence, including environmental, geotech, title and structural review. Seattle Schools' agreed upon responsibility for any costs associated with these issues will be paid as a one time reduction in the first year's ground lease payment, and subsequent ground lease payments if necessary.

c. The Parking Lot Ground Lease

- i. As partial payment, the parties will enter into a sixty (60) year lease term with annual lease payments in the amount computed as set forth below and with an option to extend the lease for an additional 39 years for \$1/year.
- ii. The parties have agreed on a combined value of \$45 million for the Stadium Lots and the Parking Lot. The parties have also agreed on a 7.5% annual ground lease rate of return. This combined value and lease rate establish a "Base Annual Ground Lease Payment" of \$3,375,000.
- iii. The Base Annual Ground Lease Payment will be decreased by an amount equal to 7.5 percent of half of the appraised value of the Mercer Garage Property.
- iv. The Value of the Mercer Garage Property will be established as of the earlier of March 31, 2010 or the date this Agreement is executed by both parties, determined by an independent appraisal of the land.
- v. Seattle Center will convey half of the Mercer Garage Property (including half of the vacated street between the two blocks that comprise the Mercer Garage Property) to Seattle Schools at Closing.
- vi. Once established as provided above, the Annual Ground Lease Payment will be adjusted by 2.5% per annum, compounded and cumulative, from the earlier of March 31, 2010 or the date this Agreement is executed by both parties to the date of Closing.
- vii. In addition, the Annual Ground Lease Payment will be escalated after closing every 5 years at a cumulative and compounded 2.5% per annum
- viii. For the full term of the lease, Seattle Center will be obligated to maintain a quality high school athletic stadium and provide the stadium use to Seattle Schools as set forth in this Agreement.

- d. The Mercer Garage Property
 - i. The Seattle Center will convey one-half of the property, or approximately 65,000 square feet, to the Seattle Schools. Conveyance shall be at Closing
 - ii. The property will be subject to the existing restriction against operating a public garage as soon as Seattle Center builds and opens for use in excess of 650 new public parking stalls on the grounds of Seattle Center.
 - iii. To allow time to construct parking on the Seattle Center grounds as described in 4.d.ii, Seattle Center may retain access, use and control of the Mercer Garage for a period of not longer than the earlier of three years after Closing or six months after the Seattle Center opens the new parking stalls for use, provided that there shall be no reduction in the Base Annual Ground Lease Payment as provided above, until such time as this right to access, use and control ends on the earlier of the two prescribed dates.
 - iv. Seattle Center shall demolish and remove the garage structure currently on the property at its own cost and expense, not later than the earlier of three years after Closing or six months after the Seattle Center opens new parking stalls for use.
 - v. The property will be conveyed free and clear of any other liens or encumbrances that would materially impact value or Seattle Schools' use.
 - vi. Acceptance of conveyance of half of the Mercer Garage Property would be subject to reasonable due diligence, including environmental, geotech, title and structural review. Costs associated with these issues will be reconciled.

5. The Operating Agreement.

The Operating Agreement will be prepared by March 31, 2010, and executed at Closing. It will include, but not be limited to, the following allocations of responsibilities:

- a. Field Conversions: Each calendar year, Seattle Center pays for one conversion each way as part of normal operations, just prior to Memorial Day and just after Labor Day. Additional changeovers are paid by the party requesting it.
- b. Routine maintenance and operating costs will be allocated between the Seattle Center and Seattle Schools using a formula apportioning fair share of use in an operating agreement.
- c. Labor bargaining issues: Seattle Center staff will be used for all operations and maintenance of public spaces, except Seattle Schools will use their own security staff for Seattle Schools' use of the facility.
- d. Both Parties will agree to construction quality and maintenance standards.
- e. Seattle Center is responsible for all long term major maintenance of the Stadium/Amphitheater.

- f. Liability insurance: Seattle Center and Seattle Schools (or self-insured). Additional Language to be inserted.
 - g. Seattle Schools will have priority use of the stadium for football and soccer games and practices and other Seattle Schools events starting the Friday after Labor Day, until 7 days before Memorial Day in May. In addition, Seattle Schools will have priority use for June graduations, provided that upon 120 days' notice Seattle Center may move a graduation to another appropriate Seattle Center facility, if the graduation conflicts with a Seattle Center event. Seattle Center will have priority use of the stadium starting six days before Memorial Day, until the Thursday after Labor Day.
 - h. The facility will normally be configured as an athletic facility from the Friday after Labor Day to seven days before Memorial Day, and a concert venue during the balance of the year. However, either party can schedule events which do not conflict with the primary user's use, so long as it does not change the configuration, or pays the cost to change the configuration and change it back. Each party will be responsible for the cost of event production and cleaning costs for events they schedule.
 - i. All City Band (in the summer) will move elsewhere, unless the Seattle Center wants to accommodate them consistent with Seattle Center activities.
 - j. Seattle Center will be responsible for scheduling all non-Seattle Schools facility use year round. On or before July 1, of each year, Seattle Schools will provide Seattle Center a schedule of the dates and times of expected stadium use for the upcoming school year. Seattle Center acknowledges that planning usage up to a year in advance is difficult, and that it may be necessary for Seattle Schools to reserve substantial blocks of time to assure availability for events such as playoffs. Seattle Schools further retains the right to schedule additional events from time to time as necessary, subject to any prior events that have already been scheduled by Seattle Center. Seattle Center has the option of keeping the field open for public use or closing it off during times not scheduled by Seattle Schools. Gates will be readily moveable so that public access can be restricted when needed.
6. Historic Preservation: The War Memorial wall will be relocated to an appropriate nearby location and given prominent treatment consistent with the original design of the stadium. Seattle Center will retain a historic consultant to work with stakeholder groups and to develop an appropriate design. Seattle Schools and Seattle Center will work together to assure appropriate treatment of the War Memorial wall. The costs of the relocation shall be shared equally by the parties.
7. Revenue: Seattle Center will receive all revenue from stadium/amphitheater use and activities except for tickets and concessions for Seattle Schools' scheduled sporting events and graduations.

8. Contingencies:

- a. Legislative Approvals: All agreements require City Council and School Board approval.
- b. Funding Contingency: Implementing the deal is contingent Seattle Center's determination, in their sole discretion, that Seattle Center has adequate funding. Seattle Center option extends through December 31, 2015.

9. Construction Issues:

- a. Revenues and field use during construction: Subject to commitments made prior to execution of this Agreement, Seattle Parks and Recreation Department facilities will be made available for Seattle Schools' to have a full schedule of games and practices.
- b. During the 18 months of construction, the stadium will not be available for Seattle Schools' use.