



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**March 30, 2010**

**Ordinance 16786**

**Proposed No. 2010-0184.1**

**Sponsors Phillips and Drago**

1           AN ORDINANCE authorizing the King County executive  
2           to execute a thirty-year use agreement with the Seattle  
3           Preparatory School for the use, maintenance and  
4           improvements related to Mel Olson Stadium at Steve Cox  
5           Memorial park.

6           BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7           SECTION 1. Findings:

8           A. The Parks Business Plan provides direction for the parks and recreation  
9           division of the department of natural resources and parks to work in partnership with  
10          organizations to provide new recreational facilities.

11          B. The Seattle Preparatory School has been an anchor user of Mel Olson Stadium  
12          and has held baseball programs there for nearly twenty years.

13          C. The Seattle Preparatory School desires to continue using the Mel Olson  
14          Stadium as the primary location or "home field" for its high school baseball program.

15          D. King County and the Seattle Preparatory School desire to formalize Seattle  
16          Preparatory School's status as first-priority user of the Mel Olson Stadium.

17          E. The Seattle Preparatory School played a pivotal role in the 2008 renovation of  
18          the Mel Olson Stadium by providing volunteer project management and labor, raising  
19          substantial funds and making significant in-kind donations.

20 F. The renovated Mel Olson Stadium at Steve Cox Memorial park has significant  
21 public recreation value.

22 G. The Seattle Preparatory School will ensure that these improvements are  
23 available and accessible to the public as required by Forward Thrust.

24 H. The Seattle Preparatory School will perform certain, mutually agreed upon  
25 supplemental maintenance at Mel Olson Stadium at no additional cost to King County  
26 taxpayers.

27 I. King County Ordinance 14509 authorizes the department of natural resources  
28 and parks to create new public recreational opportunities by empowering user groups,  
29 sports associations and community organizations to operate, maintain and program  
30 mutually agreed-upon capital improvements for public recreation facilities on King  
31 County land, and thereby address recreation needs without encumbering new tax-funded  
32 operations and maintenance costs.

33 J. In accordance with K.C.C. 4.56.150.E., the King County council may adopt an  
34 ordinance permitting the county to enter into agreements for the use of county property  
35 with bona fide nonprofit organizations to make improvements to county property or to  
36 provide services that will benefit the public. The agreements are exempt from the  
37 requirements of fair market value, appraisal and notice.

38 SECTION 2. The King County executive is hereby authorized to sign a use  
39 agreement, substantially the same as that attached to this ordinance, with the Seattle

- 40 Preparatory School for the use, maintenance and improvements related to Mel Olson  
41 Stadium at Steve Cox Memorial park.  
42

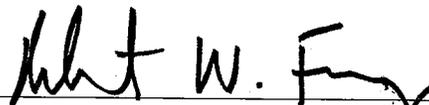
Ordinance 16786 was introduced on 3/22/2010 and passed by the Metropolitan King County Council on 3/29/2010, by the following vote:

Yes: 6 - Mr. Phillips, Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. Ferguson and Mr. Dunn

No: 0

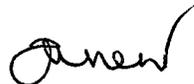
Excused: 3 - Ms. Drago, Mr. von Reichbauer and Ms. Hague

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



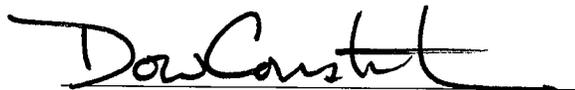
Robert W. Ferguson, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 31<sup>st</sup> day of March, 2010.



Dow Constantine, County Executive

**Attachments:** A. Use Agreement between King County Parks and Recreation Division and Seattle Preparatory School

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KING COUNTY COUNCIL



**King County**

**USE AGREEMENT**

Between

KING COUNTY PARKS AND RECREATION DIVISION

and

SEATTLE PREPARATORY SCHOOL

regarding the long-term use, maintenance, and improvement of

MEL OLSON STADIUM

at

STEVE COX MEMORIAL PARK

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THIS AGREEMENT is made and entered into by and between King County Department of Natural Resources and Parks, Parks and Recreation Division ("DIVISION") and SEATTLE PREPARATORY SCHOOL ("SEATTLE PREP"), regarding SEATTLE PREP's use, maintenance, and improvement of the DIVISION's MEL OLSON STADIUM ("Facility") at STEVE COX MEMORIAL PARK ("Site"). Together, the DIVISION and SEATTLE PREP are referred to as "the Parties."

**BACKGROUND**

- A. King County, a home rule charter county and political subdivision of the State of Washington, is the owner of the Facility and the Site. The DIVISION is the custodial agency of the Facility and the Site.
- B. SEATTLE PREP is a not-for-profit corporation chartered under the laws of the State of Washington, in good standing.
- C. SEATTLE PREP has been an anchor user of Mel Olson Stadium and has held baseball programs there for nearly twenty (20) years. SEATTLE PREP desires to continue using the Facility and the Site as the primary location or "home field" for its high school baseball program.
- D. SEATTLE PREP played a pivotal role in the 2008 renovation of the Facility and the Site, for which it provided volunteer project management and labor, raised substantial funds, and made significant in-kind donations.
- E. The renovated Facility and Site have a significant public recreational value.

- F. Allowing SEATTLE PREP to perform certain mutually agreed upon supplemental maintenance at the Facility and the Site will address regional recreation needs without additional tax-funded operations and maintenance costs to the DIVISION.
- G. The DIVISION has the authority under KCC 4.56.150(E) to enter into agreements for the use of DIVISION property by non-profit organizations to provide a service to the public or to make improvements to the property.
- H. The DIVISION and SEATTLE PREP desire to formalize SEATTLE PREP's status as first-priority user of the FACILITY, in exchange for which SEATTLE PREP will perform specific supplemental maintenance tasks at the Facility and the Site, and may make additional improvements to them, all pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and commitments made herein, the DIVISION and SEATTLE PREP agree as follows:

### **TERMS AND CONDITIONS**

- 1.0 **PREMISES.** This Agreement pertains to the Facility and the Site, namely, MEL OLSON STADIUM at STEVE COX MEMORIAL PARK, located at 1321 SW 102nd St Seattle, WA 98146. See Attachment A for an illustration of the Facility and the Site.
- 1.1 SEATTLE PREP has inspected and knows the condition of the Facility and the Site, and agrees that SEATTLE PREP's rights, duties, and obligations under this Agreement relate to the Facility and the Site in AS-IS condition, subject to ongoing use and wear and tear. THE DIVISION MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, WHETHER THE SITE OR THE FACILITY ARE FIT FOR USE FOR ANY PARTICULAR PURPOSE. The DIVISION makes no warranty, express or implied, that it will maintain the Facility or the Site in any particular condition or state of repair over time.
- 1.2 Both SEATTLE PREP and the DIVISION understand and acknowledge that between the years 1970 and 1979, King County renovated the Facility with proceeds from the sale of King County's Forward Thrust bonds, such that use and development of the Facility is subject to certain restrictions and requirements imposed by King County Resolution 34571. Both Parties further acknowledge and recognize that the use of the Facility contemplated in this Agreement is intended to be fully compliant with these restrictions. Neither SEATTLE PREP nor the DIVISION shall use or deny any use of the Facility, nor take any action or fail to take any action, that would cause any violation of the restrictions and requirements imposed by King County Resolution 34571.

- 2.0 COMMUNICATIONS; NOTICE. All communication, notices, coordination, and other tenets of this agreement shall be managed by:

On behalf of the DIVISION:

T.J. Davis, Community Partnership Program Project Manager  
Parks and Recreation Division  
King County Department of Natural Resources and Parks  
201 South Jackson St, Suite 700  
Seattle, WA 98104-3855  
Email: [tj.davis@kingcounty.gov](mailto:tj.davis@kingcounty.gov)  
Phone: 206-734-7248

On behalf of SEATTLE PREPARATORY SCHOOL:

Kent Hickey, President  
Seattle Preparatory School  
2400 11<sup>th</sup> Avenue East  
Seattle, WA 98102  
Email: [khickey@seaprep.org](mailto:khickey@seaprep.org)  
Phone: 206-577-2141

- 3.0 TERM. The term of this Agreement shall be thirty (30) years, more or less, commencing upon the date that this Agreement is executed by the DIVISION, and ending on December 31, 2039. This Agreement shall remain in effect during the Term unless and until it is modified, amended in writing, or terminated, all as provided herein.
- 4.0 PRIORITY USE OF FACILITY; NON-EXCLUSIVE LICENSE. In recognition that SEATTLE PREP has invested substantial volunteer hours, in-kind donations, and funds to design, develop, and construct improvements to the Facility and the Site, and also to provide supplemental maintenance for the Facility and the Site, and in anticipation that SEATTLE PREP will continue to do so during the Term, the DIVISION hereby grants to SEATTLE PREP, for the duration of the Term, a non-exclusive license to use the FACILITY on a first-priority basis, pursuant to the terms and conditions set forth in this Agreement.
- 5.0 SCHEDULING PROCESS. Not later than January 15<sup>th</sup> of each calendar year during the Term, SEATTLE PREP and the DIVISION, by and through their designated representatives, shall meet (the "Annual Meeting") to discuss scheduling and operations, as well as "Supplemental Maintenance," "Major Maintenance," and "Capital Improvement Projects" as defined in *Sections 8.1* and *8.2* of this Agreement.

- 5.1 At the Annual Meeting, SEATTLE PREP shall provide the DIVISION with a master schedule (the "Master Schedule") of its anticipated Facility use for that year (e.g., hours and days of use) in order that the DIVISION may proceed to schedule activities during periods of non-SEATTLE PREP use. The Master Schedule shall reflect SEATTLE PREP's historical weekday use from 2:30pm to 6:00pm, between late-February and mid-May, and shall not exceed 220 annual hours. All use of the Facility by other groups or individuals, and all use of the remainder of the Site, shall also be scheduled by and through the DIVISION.
- 5.2 The Parties recognize that SEATTLE PREP's Master Schedule may require periodic supplementation to accommodate SEATTLE PREP's changing practice needs and game schedules. At the beginning of each month (or earlier, if the need for schedule changes is known), SEATTLE PREP shall timely provide the DIVISION with a revised monthly schedule if SEATTLE PREP's anticipated field use will deviate from the Master Schedule. Any requested modifications to the Master Schedule shall be approved by the DIVISION unless (i) the request is unreasonable or (ii) the time requested by SEATTLE PREP is already scheduled by the DIVISION for use by others, and such other use cannot be reasonably re-scheduled. The Parties agree to coordinate in good faith with respect to all scheduling of the Facility and the Site.
- 5.3 At the Annual Meeting, the Parties shall also review past maintenance of the Facility and the Site, negotiate any needed changes to the Maintenance Guide (as defined in **Section 8.1** of this Agreement), and schedule any "Major Maintenance" or "Capital Improvement Projects" (as defined in **Section 8.2** of this Agreement) contemplated for the Facility or the Site during the year in question.
- 5.4 At the Annual Meeting, SEATTLE PREP shall provide proof of insurance pursuant to and consistent with the requirements set forth in **Section 16** and Attachment D.
- 6.0 TERMS AND CONDITIONS OF FACILITY USE.
- 6.1 As first-priority user, SEATTLE PREP shall be a good steward of the Facility and Site. All SEATTLE PREP activities and use shall be considerate of the capital, programmatic, and environmental value of the Facility and the Site to the greatest extent possible. SEATTLE PREP commits to make thorough, ongoing, good-faith efforts to manage traffic, noise, parking, or other neighborhood impacts that may result from SEATTLE PREP's scheduled use of the Facility and the Site during the Term of this Agreement.
- 6.2 During SEATTLE PREP's use of the Facility, SEATTLE PREP shall enforce the DIVISION's Facility Use Rules, which are posted at the Facility and may be updated from time to time during the Term by the DIVISION in its sole discretion.

- 6.3 In addition to the Facility Use Rules, the DIVISION and SEATTLE PREP shall jointly develop and implement a Good Neighbor / Facility Use Policy to ensure positive relations with the surrounding community, as well as, other current or future site users. The Good Neighbor / Facility Use Policy shall be posted in clear view at the Facility and/or integrated into posted or otherwise distributed existing Facility rules.
- 6.4 SEATTLE PREP's use of the Facility and the Site shall be limited to the following activities, as scheduled during the hours of operation:
- A. Baseball practices and games;
  - B. Baseball tournaments;
  - C. Tax-exempt fundraisers and special events to support the Site, the Facility, or SEATTLE PREP's own beneficial or charitable mission as a not-for-profit corporation;
  - D. SEATTLE PREP-sponsored community events; and
  - E. "Major Maintenance" or "Capital Improvement Projects," as defined in Section 8.2 of this Agreement.

In addition, and without further charge for the duration of the Term, SEATTLE PREP may display one (1) sign or banner featuring SEATTLE PREP's logo, in a Facility location to be jointly determined by SEATTLE PREP and the DIVISION; PROVIDED that the location, size, and type of SEATTLE PREP's sign or banner may be changed from time to time during the Term by mutual agreement of the Parties.

- 6.5 Within the framework of the guidelines set forth in **Section 6.1** of this Agreement, SEATTLE PREP's use of the Facility and the Site is subject to the following specific limitations:
- A. SEATTLE PREP shall use the Facility and the Site for no business or purpose other than those expressly authorized under this Agreement, without the prior written consent of the DIVISION.
  - B. SEATTLE PREP understands, acknowledges, and agrees that hours of operation for the Facility and the Site are limited to 7:00 a.m. to 10:00 p.m.; PROVIDED THAT the DIVISION may extend or reduce the hours of operation during the Term, in the DIVISION's reasonable exercise of its sole discretion.
  - C. SEATTLE PREP may use amplification or public address systems in the Facility or on the Site, but only in accordance with the DIVISION's rules for amplification in King County parks.

- D. SEATTLE PREP understands, acknowledges, and agrees that shoes or other footwear with metal cleats or spikes protruding from the soles should not be worn on the artificial turf installed in the Facility, and may void the DIVISION's warranty on that turf. As such SEATTLE PREP understands, acknowledges, and agrees that the use of such shoes or footwear in the Facility is strongly discouraged. Therefore, SEATTLE PREP agrees to recommend the use of non-metal cleat footwear for all persons who may use the artificial turf during SEATTLE PREP activities at the Facility.
  - E. SEATTLE PREP understands, acknowledges, and agrees that normal and ordinary use ("Normal Use") is considered as regular play and utilization for the sporting activities set out in the warranty. Normal Use includes a reasonable number of users or participants and does not include repetitive training and high-intensity drills on the same part of the field.
  - F SEATTLE PREP understands, acknowledges, and agrees that parking at the Site is limited, and is used on a first-come, first-served basis. SEATTLE PREP may use the parking lot on the Site but shall have no priority of use over other users. As between the Parties, SEATTLE PREP bears sole responsibility to acquire and manage any off-site or overflow parking that may be needed in connection with SEATTLE PREP's scheduled use of the Facility or the Site; PROVIDED, that the DIVISION shall make reasonable efforts to give SEATTLE PREP notice in advance of other scheduled Site uses or activities that may create parking congestion during SEATTLE PREP's use of the Facility.
  - G. All of SEATTLE PREP's personal property of any kind or description whatsoever on the Site or in the Facility shall be at SEATTLE PREP's sole risk. The DIVISION will not be liable for any damage done to, or loss of, such personal property.
  - H. SEATTLE PREP will use the Site and the Facility for no unlawful purposes and will not use or occupy any part of the Facility or the Site in any manner which would constitute a public nuisance or otherwise violate federal, state or local laws.
- 6.6 The Parties agree for reasons of protection and safety to promptly secure and lock any doors or gates unlocked for activities, use or access. SEATTLE PREP and the DIVISION may develop a strategy and practice to secure the Facility (e.g., double-locking or use of shared keys), and may update or modify that strategy and practice from year-to-year or time-to-time as needed during the Term. In furtherance of that strategy, SEATTLE PREP will take reasonable precautions to secure the Facility during and after use by SEATTLE PREP. SEATTLE PREP will also provide the DIVISION with a key to any locked structures, gates or storage containers left on the Site or in the Facility by SEATTLE PREP. The DIVISION shall not use such keys without prior notice to SEATTLE PREP; provided that the DIVISION need not provide such notice for inspection or emergency access purposes; and provided further, that King County has the right to use any and all means that King County deems proper to open doors and gates in an emergency in order to obtain entry to the Site.

- 7.0 FACILITY USE FEES AND CHARGES. For all of SEATTLE PREP's scheduled use of the Facility or the Site, except for "Major Maintenance" or "Capital Improvement Projects" as defined in *Section 8.2* of this Agreement, and except for the banner/sign display rights granted under *Section 6.4* of this Agreement, SEATTLE PREP shall pay the DIVISION an hourly rate of twenty dollars (\$20) for field use in 2009 and 2010. Beginning in 2011, the hourly rate shall be increased for inflation bi-annually (for example, the next rate increase will take place in 2013) until such time that the DIVISION establishes a fee schedule for youth related stadium/artificial turf field rentals. Starting from February 2009, the hourly rate shall be increased by a percentage equal to the year-over-year change in the federal Bureau of Labor Statistics' published consumer price index for all urban consumers (CPI-U), Seattle-Tacoma-Bremerton, all items, index base period 1982-1984 = 100, without reference to seasonal adjustments. If the Bureau adopts a different base period for this index, then the parties shall use that base period. Ballfield lighting, scoreboard and such other fees and charges may apply or pertain to SEATTLE PREP's use of the Facility or the Site. SEATTLE PREP shall pay no facility use fee or other charges during times when the Facility or the Site is closed to recreational use in order for SEATTLE PREP to perform, participate in, or contribute to "Major Maintenance" or "Capital Improvement Projects" scheduled by SEATTLE PREP with the DIVISION's approval.
- 8.0 MAINTENANCE. For purposes of this Agreement, "maintenance" of the Facility and the Site is divided into two categories: "Supplemental Maintenance," defined in *Section 8.1*; and "Major Maintenance," defined in *Section 8.2*. "Major Maintenance" is synonymous with "Capital Improvement Project," which is also defined in *Section 8.2*.
- 8.1 In consideration of the scheduling priority and other rights and interests granted to it by the DIVISION under this Agreement, SEATTLE PREP agrees to perform "Supplemental Maintenance" of the Facility in connection with SEATTLE PREP's use of it. For purposes of this Agreement, the term "Supplemental Maintenance" is defined to include all of those tasks needed to restore the Facility to its pre-event condition, which tasks are set forth in the Maintenance Guide for the Facility, the first iteration of which is attached hereto as Attachment B. The Parties may jointly review and revise the Maintenance Guide and Attachment B from time to time, subject to review by the King County Labor Management Committee (LMC). SEATTLE PREP shall be responsible to pay all costs of "Supplemental Maintenance" operations designated to SEATTLE PREP in the Maintenance Guide.

- 8.2 In further consideration of the scheduling priority and other rights and interests granted to it by the DIVISION under this Agreement, SEATTLE PREP agrees to make a reasonable good-faith effort to assist the DIVISION with "Major Maintenance" and "Capital Improvement Projects" for the Facility and the Site during the Term. SEATTLE PREP shall primarily assist the DIVISION with "Major Maintenance" and "Capital Improvement Projects" by providing volunteer labor and project management, but SEATTLE PREP shall also assist the DIVISION by endeavoring to provide funds and fundraising assistance, within reasonable and practicable limitations. For purposes of this Agreement, the terms "Major Maintenance" and "Capital Improvement Projects" are synonymous, and are defined to include the full range of work that could be performed by SEATTLE PREP at the Facility or the Site pursuant to RCW 35.21.278, excluding only "Supplemental Maintenance" as defined in *Section 8.1* of this Agreement.
- 8.3 At a minimum, each calendar year during the Term, SEATTLE PREP will assist in organizing and provide a substantial volunteer workforce to assist the DIVISION with at least four (4) Division-funded "Major Maintenance" or "Capital Improvement Projects." At the Annual Meeting, the Parties shall set dates for those four annual "Major Maintenance" or "Capital Improvement Projects," to give SEATTLE PREP time to advertise the events within its community of volunteers.
- 8.4 If, during the Term, SEATTLE PREP desires to independently fund or to execute one or more "Major Maintenance" or "Capital Improvement Projects" at the Facility or on the Site, then the Parties may negotiate a separate contract for such work, pursuant to RCW 35.21.278; and such work shall be governed by that separate contract, and not by this Agreement. PROVIDED, that the Parties agree that laws and regulations regarding "public work," as defined in RCW 39.04.010, may apply to "Major Maintenance" and "Capital Improvement Projects" as defined in *Section 8.2*; and PROVIDED FURTHER that the Parties agree that any separate contract entered into by them pursuant to RCW 35.21.278 shall comply with all laws and regulations regarding public work, to the extent applicable.
- 8.5 SEATTLE PREP shall, from time-to-time or on such periodic basis as SEATTLE PREP may decide, designate one person to serve as SEATTLE PREP's Maintenance Coordinator for purposes of this Agreement; and the person so designated shall be responsible to manage SEATTLE PREP's maintenance obligations under this Agreement, and to coordinate with and serve as the sole point of contact for DIVISION staff and leadership regarding "Supplemental Maintenance," "Major Maintenance," and "Capital Improvement Projects" at the Facility and the Site. SEATTLE PREP will notify the DIVISION of such designation or change in designation as provided under *Section 2.0*. The name and contact information of SEATTLE PREP's initial Maintenance Coordinator shall be attached hereto as Attachment C, and Attachment C may be substituted from time to time if and when SEATTLE PREP changes such designation.

9.0 RESERVED RIGHTS OF KING COUNTY AND THE DIVISION.

- 9.1 Notwithstanding anything else in this Agreement, SEATTLE PREP understands, acknowledges, and agrees that King County and the DIVISION reserves to themselves all of the following rights and interests in or pertaining to the Facility and the Site. This **Section 9** is intended to articulate specific rights or interests remaining in King County and the DIVISION, and in no way limits King County's full title to, or rights or interests in, the Facility or the Site.
- 9.2 The DIVISION owns the Site and the Facility, including all permanent fixtures and equipment affixed or attached thereto, or installed therein.
- 9.3 The DIVISION retains the right to receive and keep all revenue from Facility use fees and other charges paid by SEATTLE PREP or other users, as well as all existing or future concessions revenue or other revenue streams that may be derived from the Facility or the Site. PROVIDED, that nothing in this **Section 9.2** shall affect SEATTLE PREP's authority, under **Section 6.4(C)**, to conduct charitable fundraising events.
- 9.4 With the sole exception of the sign/banner display privileges granted to SEATTLE PREP under **Section 6.4** of this Agreement, the DIVISION reserves to itself all rights to naming and advertising at the Site and Facility, and further reserves to itself the right to keep and retain all revenue from naming or advertising. The DIVISION agrees to consult with SEATTLE PREP in seeking and obtaining naming rights and advertising agreements.
- 9.5 Without limiting the rights retained by it under **Section 9.3**, the DIVISION acknowledges that it is working with SEATTLE PREP and other community groups to develop a program to sell outfield signage and engraved bricks or pavers at the Facility, to generate revenue to establish a fund for the Site (the "Signage/brick Proposal"). The DIVISION and SEATTLE PREP envision that the fund will support community-driven projects to improve the Site, which projects will be selected by a group or board comprised of representatives of the DIVISION, SEATTLE PREP, and other community groups. The fund may also be used to establish scholarship grants for Southwest Little League. The Signage/brick Proposal is a separate undertaking by and between the DIVISION, SEATTLE PREP, and other community groups not party to this Agreement. The Signage/brick Proposal is not part of this Agreement, and is not governed by it.

- 9.6 The DIVISION retains the right to inspect and maintain the Facility and the Site at any time, with or without notice. SEATTLE PREP representatives may be present at that time. The DIVISION will take reasonable steps to exercise its rights of inspection and maintenance so as to avoid or minimize disturbance of any activities taking place in the Facility or on the Site; PROVIDED that in the event of an emergency which, in the sole discretion of the DIVISION, requires that repairs or alterations be made immediately, the DIVISION may interfere with activities taking place in the Facility or on the Site.
10. TAX COVENANTS. At all times during the Term, SEATTLE PREP will:
- A. Maintain its purposes and engage only in activities which are in furtherance of its purposes and which are permitted by the Washington State Nonprofit Act, RCW 24.03, or as hereafter amended ("the Act");
  - B. Maintain its status as a nonprofit corporation under the Act and as an organization described in Section 501(c)(3) of the U.S. Internal Revenue Code ("the Code") whose income does not inure to the benefit of any private person;
  - C. Not encumber, pledge, hypothecate or grant a security interest in all or any part of the Facility, the Site, or both of them;
  - D. Not engage in any activities related to the Facility or the Site which would constitute an unrelated trade or business under section 513(a) of the Code;
  - E. Not take any action or omit to take any action, which, if taken or omitted, would adversely affect SEATTLE PREP's nonprofit status or otherwise cause a tax lien to attach to the Facility, the Site, or both of them; and
  - F. Pay any and all taxes levied on it as a result of this Agreement by the State or by any taxing authority with jurisdiction over the Facility or the Site; PROVIDED, however, that nothing in this Agreement shall modify SEATTLE PREP's right to contest any taxes, and SEATTLE PREP shall not be deemed to be in default as to its duties under this **Section 10** so long as SEATTLE PREP shall, in good faith, be contesting the validity or amount of any such taxes.
11. NONDISCRIMINATION. King County Code chapters 12.16 through 12.18 apply to this Agreement and are incorporated by this reference as if fully set forth herein. SEATTLE PREP shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority over this Agreement or any of the activities contemplated by it.
- 11.1 In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off, or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 11.2 No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap.
- 11.3 Any violation of this *Section 11* shall be considered a violation of a material provision of this Agreement, and shall be grounds for the DIVISION to cancel, terminate, or suspend this Agreement, in whole or in part, and may result in ineligibility for further DIVISION agreements.
12. ASSIGNMENT OR THIRD PARTY USE. SEATTLE PREP may not assign this Agreement or any interest therein or thereunder, without the DIVISION's prior consent. The DIVISION may sell or otherwise transfer or dispose of the Facility or the Site, or assign this Agreement or any interest of the DIVISION hereunder; PROVIDED that in the event of sale, transfer, or annexation of the Site or the Facility, the DIVISION will make a reasonable good-faith effort to arrange for the purchaser, transferee, or annexing jurisdiction to assume the Agreement and the DIVISION's obligations hereunder.
13. LIENS. SEATTLE PREP shall not permit or suffer to remain undischarged any lien for labor or materials against the Facility or the Site which arises as a result of contracts for services or materials entered into by SEATTLE PREP. The existence of any such lien is a material breach of this Agreement, for which the DIVISION may promptly terminate this Agreement unless the lien is timely cured under *Section 20.3*.
14. COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Facility, the Site, or both of them, SEATTLE PREP will comply with all applicable laws, ordinances and regulations from any and all authorities having jurisdiction. SEATTLE PREP specifically agrees to comply and pay all costs associated with achieving such compliance without any notice or requirements from the DIVISION, and SEATTLE PREP further agrees that the DIVISION does not waive this *Section 14* by giving notice of demand for compliance in any instance. SEATTLE PREP shall indemnify and defend the DIVISION if the DIVISION is sued or otherwise made the subject of an administrative investigation or hearing for a violation of such laws arising out of, or relating to, SEATTLE PREP's exercise of its rights, privileges, duties, or obligations under this Agreement.
15. HAZARDOUS SUBSTANCES. "Hazardous Substances" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 15.1 SEATTLE PREP shall not, without first obtaining the DIVISION's written approval, apply, store, deposit, transport, release or dispose of any hazardous substances on or at the

Facility or the Site, or both of them. All approved application, storage, deposit, transportation, release and disposal shall be done safely and in compliance with applicable laws.

- 15.2 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that SEATTLE PREP might have against the DIVISION under federal or state environmental statutes that arises from hazardous materials deposited or released on the Site by the DIVISION. SEATTLE PREP may not, however, assert such a claim to the extent that SEATTLE PREP creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of SEATTLE PREP performing construction activities at the Facility or on the Site, changing the configuration of the Facility or the Site, or changing the use of the Facility or the Site.
- 15.3 If SEATTLE PREP discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the DIVISION it shall immediately notify the DIVISION in writing. Such notice shall in no event be provided more than ten (10) days after discovery. The Parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- 15.4 In no event shall the DIVISION be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.
16. INSURANCE.
- 16.1 No later than the date that SEATTLE PREP executes this Contract, and for each subsequent calendar year during the Term, SEATTLE PREP shall provide documentation that it has procured and will maintain insurance, meeting the Insurance Coverage Requirements set forth in Attachment D hereto, against claims for injuries to persons or damages to property which may arise from, or in connection with, SEATTLE PREP's use of the Facility and the Site, and the performance or non-performance of activities contemplated hereunder by SEATTLE PREP, its agents, representatives, employees, contractors, and/or subcontractors. The costs of such insurance shall be paid by SEATTLE PREP, its contractors or subcontractors. SEATTLE PREP may furnish separate certificates of insurance and policy endorsements for each contractor or subcontractor as evidence of compliance with the insurance requirements of this Agreement.
- 16.2 SEATTLE PREP is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by SEATTLE PREP, its agents, employees, officers, contractors, and/or subcontractors to comply with the insurance requirements stated

herein shall constitute a material breach of this Agreement, for which the DIVISION may promptly terminate this Agreement in whole or in part.

- 16.3 SEATTLE PREP and its insurance carriers will release and waive all rights of subrogation against the DIVISION and King County to the extent a loss is covered by property insurance in force. SEATTLE PREP hereby releases from liability and waives all right of recovery against the DIVISION and King County for any loss from perils insured against or under their respective fire insurance policies, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of SEATTLE PREP or King County.
- 16.4 SEATTLE PREP understands, acknowledges, and agrees that King County is self-insured for all of its liability exposure, as well as all of its workers' compensation liability exposure. The DIVISION and King County agree, at their own expense, to maintain, through King County's self-insurance program, coverage for their liability exposures during the Term of this Agreement; or, in King County's sole discretion, to purchase equivalent insurance coverage through an insurance policy or policies, or through a risk sharing pool. King County agrees to provide SEATTLE PREP with at least thirty (30) days prior written notice of any change in King County's self-insured status and will, upon request, provide SEATTLE PREP with a letter of self-insurance as adequate proof of insurance.
17. INDEMNIFICATION AND HOLD HARMLESS.
- 17.1 SEATTLE PREP shall protect, indemnify, and save harmless King County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) SEATTLE PREP's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) work, services, materials, or supplies performed or provided by SEATTLE PREP employees or other suppliers in connection with or support of the performance of this Agreement.
- 17.2 SEATTLE PREP further agrees that it is financially responsible for and will repay the DIVISION all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Agreement by SEATTLE PREP, its officers, employees, agents, representatives, or subcontractors. This duty to repay the DIVISION shall not be diminished or extinguished by the expiration or prior termination of the Agreement.
- 17.3 SEATTLE PREP expressly agrees to protect, defend, indemnify and hold harmless King County, the DIVISION, its elected and appointed officials, officers, employees, and agents from and against liability for any claims (including all demands, suits, and

judgments) for damages arising out of injury to persons or damage to property where such injury or damage is caused by, arises out of, or is incident to the scope of activities under this Agreement. SEATTLE PREP's obligations under this *Section 17.3* shall include, but not be limited to:

- A. The duty to promptly accept tender of defense and provide defense to King County at SEATTLE PREP's own expense;
- B. Indemnification of claims, including those made by SEATTLE PREP's own employees and/or agents;
- C. SEATTLE PREP, by mutual negotiation, expressly waives, as respects King County only, its statutory immunity under the industrial insurance provisions of Title 51 RCW;
- D. In the event King County incurs any judgment, award and/or cost arising from this Agreement including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from SEATTLE PREP; and
- E. SEATTLE PREP shall protect, defend, indemnify, and hold harmless King County, the DIVISION, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the performance or non-performance of the obligations under this agreement by SEATTLE PREP's subcontractor, or the officers, employees, and/or agents of such subcontractors in connection with or in support of this Agreement.

A hold harmless provision to protect King County and the DIVISION similar to this *Section 17.3* shall be included in all contracts or other agreements entered into by SEATTLE PREP in connection with this Agreement, or in connection with the Facility or the Site.

- 18. WAIVER OF BREACH. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the DIVISION, which shall be attached to the original Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent defaults.
- 19. ADDITIONAL TERMS. The DIVISION reserves the right to set additional terms as unforeseen conditions may warrant. The DIVISION must submit to SEATTLE PREP a written addendum to this contract of the additional terms for SEATTLE PREP to approve in writing.

20. TERMINATION. This Agreement may be terminated as follows:
- A. All King County and DIVISION obligations under this Agreement beyond the current appropriation year are conditioned upon the King County Council's appropriation of sufficient funds to support the obligations described in this Agreement. If the Council does not approve such appropriation, then as required under King County Charter Article 4, Section 495, and King County Code Section 4.04.040.B.6.a, this Agreement will terminate automatically at the close of the current appropriation year. The question of appropriation sufficiency will be determined by the DIVISION in its sole discretion.
- 20.1 The DIVISION may also terminate this Agreement under any of the following circumstances:
- A. SEATTLE PREP loses or changes its status: (i) as an active Washington not-for-profit corporation; or (ii) as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code as now or hereafter codified; provided that the DIVISION will not terminate the Agreement under this section if SEATTLE PREP cures any and all such loss or change of status within a reasonable time; or
  - B. SEATTLE PREP is in default of the performance of any covenants, conditions, or provisions of this Agreement, where such failure continues for a period of thirty (30) days after written notice is given by the DIVISION; provided that if the nature of SEATTLE PREP's breach is such that more than thirty (30) days are reasonably required for cure, then SEATTLE PREP will not be in default if SEATTLE PREP commences to cure within thirty (30) days of King County's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or
  - C. SEATTLE PREP is adjudged bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy is appointed for SEATTLE PREP's estate and such appointment is not vacated within sixty (60) days; or
  - D. SEATTLE PREP violates the provisions of King County Resolution 34571, where such violation continues for a period of thirty (30) days after written notice is given by the DIVISION; provided that if the nature of SEATTLE PREP's violation is such that more than thirty (30) days are reasonably required for cure, then SEATTLE PREP will not be in default if SEATTLE PREP commences to cure within thirty (30) days of the DIVISION's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or
  - E. This Agreement is assigned or the Facility or the Site is used by SEATTLE PREP for activities other than in accordance with the terms of this Agreement, and such default is not cured within thirty (30) days after written notice from the DIVISION to SEATTLE PREP.

20.2 SEATTLE PREP may terminate this Agreement for cause in the event of default by the DIVISION. The DIVISION will not be in default unless the DIVISION fails to perform an obligation within thirty (30) days after notice by SEATTLE PREP, which notice must specify the alleged breach; provided that if the nature of the DIVISION's breach is such that more than thirty (30) days are reasonably required for cure, then the DIVISION will not be in default if the DIVISION commences to cure within thirty (30) days of SEATTLE PREP's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

21. SEATTLE PREP'S DUTIES UOPN TERMINATION OR EXPIRATION.

21.1 Within thirty (30) days of this Agreement's expiration or earlier termination, SEATTLE PREP shall remove any and all of its portable improvements made at the Facility or the Site, and shall also make such repairs or restoration as may be necessary to put the Facility into good or better condition that it was at the beginning of the Term, less ordinary wear and tear. If SEATTLE PREP fails to perform these duties at termination, then the DIVISION may cause such removal and repairs to be made and SEATTLE PREP's personal property, goods and effects to be stored, all of which the cost and expense shall be promptly be paid by SEATTLE PREP upon receipt of an invoice from the DIVISION.

21.2 The Parties understand and agree that the real property constituting the Facility and the Site is the real property of the DIVISION and King County and that all improvements to that real property will continue to belong to the DIVISION and King County upon expiration or earlier termination of this Agreement. Any non-portable fixtures or improvements shall inure to the benefit of the DIVISION and King County and shall remain at the Facility or the Site upon expiration or earlier termination of this Agreement.

22. DISPUTE RESOLUTION. The Parties agree to use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the purposes of this Agreement. In the event that a dispute arises between SEATTLE PREP and the DIVISION, they shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this Agreement are not frustrated, and so that any design, planning, construction, or use of the Facility or the Site is not delayed or interrupted. If the Parties are unable to resolve the dispute between themselves within ninety (90) calendar days from the date the aggrieved party first notified the other party, then the Parties agree that they shall attempt to mediate the dispute with the first available mediator from Washington Arbitration and Mediation Service (WAMS) or Judicial Arbitration and Mediation Service (JAMS) or their successors. The Parties shall each pay one half (SEATTLE PREP-50%; DIVISION-50%) of the cost of such mediation. If such mediation shall fail then nothing in this *Section 22* shall otherwise limit the Parties' legal, equitable, or other rights or remedies.

23. LEGAL RELATIONS.

23.1 SEATTLE PREP is an independent Contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of the DIVISION for any purpose. SEATTLE PREP shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a King County employee under state or local law. The DIVISION and King County assume no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of SEATTLE PREP, its employees, subcontractors and/or others by reason of this Agreement.

23.2 Nothing in this Agreement shall make, or be deemed to make, either the DIVISION or SEATTLE PREP a partner of the other, and this Agreement shall not be construed as creating a partnership or joint venture.

23.3 Nothing in this Agreement shall create any legal right, obligation, or cause of action in any person or entity not a party to it.

23.4 Nothing contained in this Agreement will be considered to diminish the governmental or police powers of the DIVISION or King County.

24. FORCE MAJEURE. The performance of this Agreement by either party is subject to acts of God, war, government regulation or advisory, disasters, fire, accidents or other casualty, strikes or threat of strikes, civil disorder, acts and/or threats of terrorism, or curtailment of transportation services or facilities, cost or availability of power, or similar causes beyond the control of either party making it illegal, impossible or impracticable to hold, reschedule or relocate SEATTLE PREP's use as set forth. Either party may terminate or suspend its obligations under this Agreement if such obligations are prevented by any of the above events to the extent such events are beyond the reasonable control of the party whose reasonable performance is prevented.

25. AGREEMENT CONSTRUCTION; INTERPRETATION; INTEGRATION.

25.1 The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.

- 25.2 Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Agreement and its Attachments. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement or its Attachments.
- 25.3 This Agreement will be considered a public document and will be available for inspection and copying by the public.
- 25.4 This Agreement and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the DIVISION and SEATTLE PREP. There are no terms, obligations, allowances, covenants, or conditions other than those contained herein.
- 25.5 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable unless striking such provision materially alters the intention of the Parties. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
26. JURISDICTION AND VENUE; GOVERNING LAW; ATTORNEY FEES. The King County Superior Court shall have jurisdiction over any litigation arising under this Agreement, including matters of construction, validity, and performance, and the venue for any such litigation shall be in the Superior Court for King County in Seattle, Washington. This Agreement is made under and shall be governed by the laws of the State of Washington. In the event of litigation between the parties to enforce their rights under this Agreement, the prevailing party shall be awarded its reasonable attorney fees and costs, including any reasonable fees and costs that may be incurred on appeal.
27. NON-WAIVER. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.
28. ATTACHMENTS.
- A. Description and map of Facility and Site
  - B. Maintenance Guide
  - C. Contact Information for Seattle Prep's Designated Maintenance Coordinator
  - D. Insurance Requirements and Documentation of Coverage

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the first date written.

PARKS AND RECREATION DIVISION

SEATTLE PREPARATORY SCHOOL

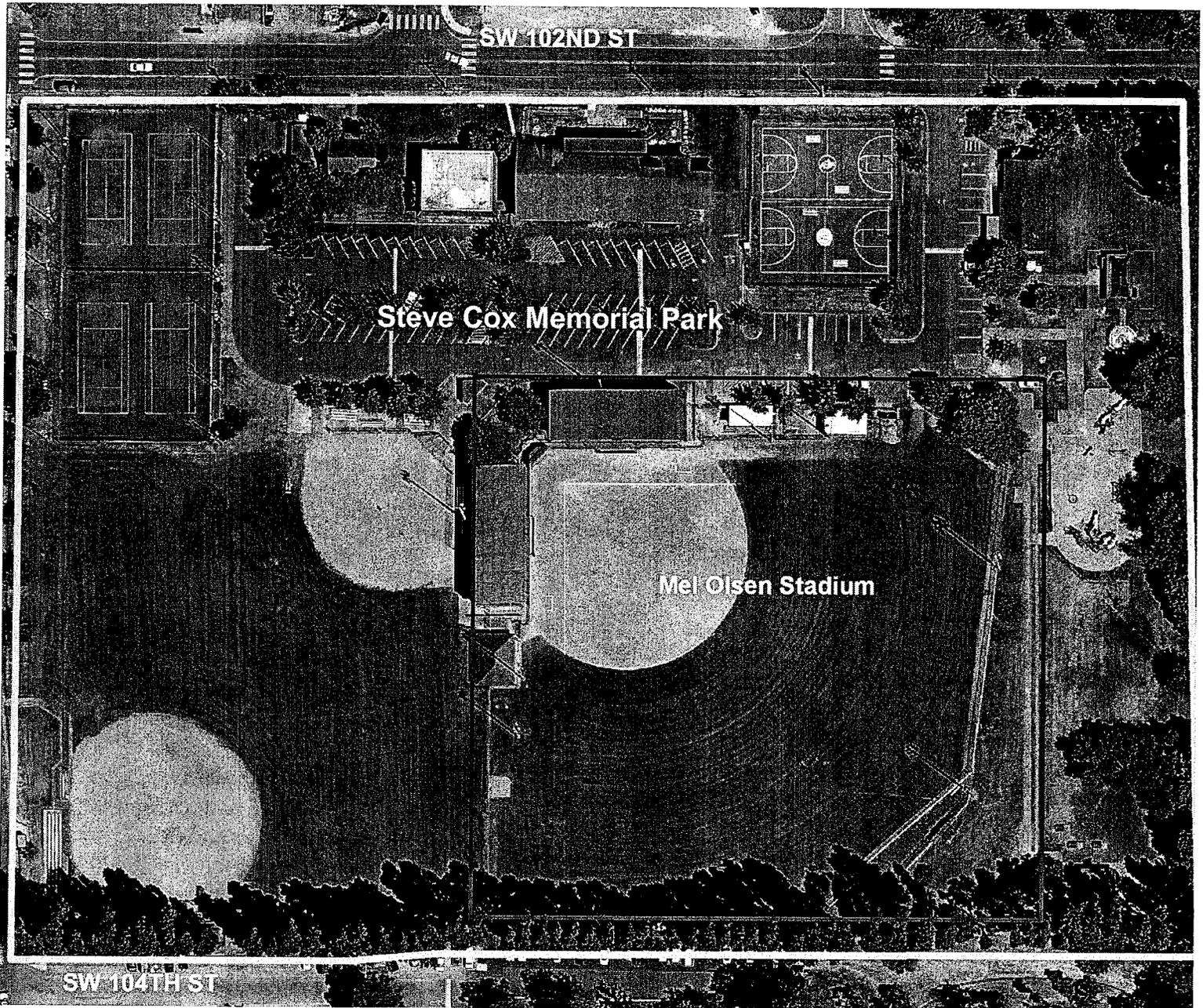
\_\_\_\_\_  
Kevin R. Brown, Director  
Parks and Recreation Division

\_\_\_\_\_  
Kent Hickey, President  
Seattle Preparatory School

Date \_\_\_\_\_

Date \_\_\_\_\_

**Attachment A: Description and Map of Site and Facility**



## **Attachment B: Maintenance Guide**

### **Required Training**

Each year long under this Agreement partners and user groups will be required to have representatives attend a training on the upkeep and supplemental maintenance of the Facility. All user groups must attend a mandatory training session covering supplemental maintenance tasks and procedures, pursuant to **Section 8**, prior to the start of each season before final paperwork is processed and approved, and before use of the field begins.

After each game, SEATTLE PREP will:

1. Sweep dirt back onto mound. SEATTLE PREP will cover the mound and the bullpen mounds at the end of their use and when raining.
2. If another team is playing immediately after SEATTLE PREP then the new team will be responsible for covering the mound.
3. Sweep dirt out of turf, back onto mound after every use, before it rains and turns to cement.
4. Cover field and bullpen mounds after use, or when raining.
5. Help DIVISIONS' maintenance team to keep the turf free from debris, leaves, paper and windblown material.
6. Communicate to the umpires the importance of calling a game when it starts raining.

### **Synthetic Turf Rules and Recommendations**

1. Steve Cox Memorial Park, the stadium and the turf is non-smoking area.
2. Steve Cox Memorial Park's FieldTurf field should be kept free from glass, cigarettes, fireworks and any sharp objects that will risk damage to the field and injury to players.
3. Food and beverages are NOT allowed on the turf area. This restriction includes sunflower seeds, chewing gum and tobacco. All home teams will be responsible for cleaning up seeds and gum left on the field by their players or Visiting team players.
4. For safety reasons, please do your best to monitor and discourage spectators from standing along the railing next to the netting.
5. This FieldTurf field carries an 8-year warranty on materials, installation and performance under Normal Use, as defined in **Section 6.5.E**, of approved activities, and provided that routine maintenance and field protection are practiced as outlined in these maintenance guidelines. Use of metal cleats or stakes is strongly discouraged as they can puncture or rip the field surface and invalidate the warranty. The use of non-metal cleats is recommended.

6. Mud and dirt from cleated shoes can be a major source of soiling and staining of the field surface. It is recommended that each player clean his or her footwear prior to accessing the field. (Installing cleat brushes at all designated access points to the field is recommended.)

**Regular Maintenance**

The DIVISION will be responsible for implementing a regular maintenance schedule that includes, but shall not be limited to, the following:

- Maintenance of the infield and outfield, removal of weeds and moss, stains removal, etc.,
- All non-DIVISION vehicles are prohibited on the FieldTurf field without the prior approval in writing from the DIVISION Director
- Snow removal will be the sole responsibility of DIVISION staff and will only use King County vehicles & equipment

**Attachment C: Contact Information for Seattle Prep's  
Designated Maintenance Coordinator**

Ed Paulter, Athletic Director  
Seattle Preparatory School  
2400 11<sup>th</sup> Avenue East  
Seattle, WA 98102  
Email: [epaulter@seaprep.org](mailto:epaulter@seaprep.org)  
Phone: 206-577-2118

**Attachment D: Insurance Requirements And Documentation Of Coverage**

- A. FOR ALL COVERAGES. Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval. If coverage is approved and purchased on a "claims made" basis, the [Community Partner Name] warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the Date of Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under this Contract.

The [Community Partner Name] shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

B. MINIMUM SCOPE AND LIMITS OF INSURANCE

Pursuant to the terms of this Contract, for the operations and maintenance of the Facility the [Community Partner Name] shall maintain coverage and limits for no less than:

1. **General Liability:**

Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY \$1 Million combined single limit per occurrence by bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a \$2 Million aggregate limit.

2. **Automobile Liability: If operations require vehicle usage.**

Insurance Services Office form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9. \$1 Million combined single limit per accident for bodily injury and property damage.

3. **Workers' Compensation: If [Community Partner Name] or Sub-contractor has employees**

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law. Statutory requirements of the state of residency.

4. **Stop Gap/Employers Liability: If [Community Partner Name] or sub-contractor has employees**

Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy. Limit: \$1 Million

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The Deductible and/or self-insured retention of the policies shall not apply to the [Community Partner Name]'s liability to the County and shall be the sole responsibility of the [Community Partner Name].

D. OTHER INSURANCE PROVISIONS

The insurance policies required in this Contract are to contain, or be endorsed to contain, the following provisions:

1. Liability Policies Except Professional and Workers' Compensation

- a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the [Community Partner Name] in connection with this Contract. Such endorsement shall include Products-Completed Operations.
- b. The [Community Partner Name]'s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the [Community Partner Name]'s insurance or benefit the [Community Partner Name] in any way.
- c. The [Community Partner Name]'s insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the County.

- E. ACCEPTABILITY OF INSURERS. Unless otherwise approved by the County, Insurance is to be placed with insurers with Bests rating of no less than A:VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII. Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by The DIVISION. If, at any time, the foregoing policies shall fail to meet all requirements noted herein, or if a company issuing any such policy shall be or become unsatisfactory to the County, the [Community Partner Name] shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

- F. VERIFICATION OF COVERAGE. The [Community Partner Name] shall furnish the County with certificates of insurance and endorsements required by this Contract. Such certificates and endorsements, and renewals thereof, shall be attached as exhibits to the Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

- G. SUBCONTRACTORS. The [Community Partner Name] shall include all subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.