

ORDINANCE No. 118291

*Law Department*

COUNCIL BILL No. 111425

The City of Seattle--L

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent of Parks and Recreation to execute an Agreement to Develop and a Use and Maintenance Agreement with Seattle Pacific University for a soccer facility and related sportsfield improvements at Interbay Plaza field.

INDEXED

REPORT OF

**RUSH**

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_ report that we have considered the same and respectfully

*9/25/96 Parks, Public Grounds a*

*Full Council Vote*

COMPTROLLER FILE No. \_\_\_\_\_

Introduced: SEP 23 1996	By: DONALDSON
Referred: SEP 23 1996	To: PARKS, PUBLIC GROUNDS AND RECREATION COMMITTEE
Referred:	To:
Referred:	To:
Reported: SEP 30 1996	Second Reading: SEP 30 1996
Third Reading: SEP 30 1996	Signed: SEP 30 1996
Presented to Mayor: OCT 1 - 1996	Approved: OCT - 7 1996
Returned to City Clerk: OCT 7 1996	Published: <i>Site 208</i> (with circular stamp)
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

*Nothing on Disk* (with circular stamp)

USS047

Committee

*Law Department*

# The City of Seattle--Legislative Department

INDEXED

Date Reported  
and Adopted

## REPORT OF COMMITTEE

**RUSH**

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_

report that we have considered the same and respectfully recommend that the same:

*9/25/96 Parks, Public Grounds and Recreation 3-0 Do Pass*

*Full Council vote 9-0*

\_\_\_\_\_  
Committee Chair

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ORDINANCE 118291

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute an Agreement to Develop a Use and Maintenance Agreement with Seattle Pacific University for a soccer facility and related sportsfield improvements at Interbay Playfield.

WHEREAS, pursuant to Resolution 28763, the Seattle City Council approved a 1993 Functional plan for Parks and Recreation including a proposal to upgrade the Interbay Playfield; and

WHEREAS, subsequent to 1993, a Sportsfield Review Committee from the Department of Parks and Recreation updated the sportsfield proposals that are part of the Functional Plan; and

WHEREAS, subsequent to 1993, Seattle Pacific University (SPU) determined a need for a soccer stadium and examined several sites in the vicinity of their campus; and

WHEREAS, the SPU determined Interbay Playfield to be their optimal site and submitted a redevelopment proposal via the Department's Sports Advisory Committee; and

WHEREAS, the SPU proposal is consistent with both the Department's Functional Plan and the updated recommendations of their Sportsfield Review Committee; and

WHEREAS, the Department and SPU worked closely to develop a joint proposal that would clearly benefit both parties, address any community concerns, and limit costs to the City; and

WHEREAS, the proposal includes provisions for reimbursement of Department of Parks and Recreation project management, monitoring and inspection costs; and

WHEREAS, the resulting development plan and traffic management plan have been endorsed by the Seattle Board of Park Commissioners.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Superintendent of Parks and Recreation and

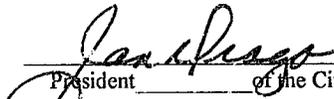
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1 recommended by the Mayor, the Superintendent is authorized to execute on behalf of the  
2 City of Seattle, Agreements with Seattle Pacific University (SPU), consistent with the  
3 agreements attached hereto and identified as Exhibits A and B.

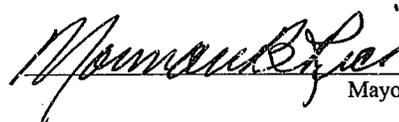
4 Section 2. Any act consistent with the authority and prior to the effective date of this  
5 ordinance is hereby ratified and confirmed.

6 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after  
7 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)  
8 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

9 PASSED by the City Council of the City of Seattle this 30 day of  
10 September, 1996, and signed by me in open session in authentication of its passage  
11 this 30 day of September, 1996.

12   
13 \_\_\_\_\_  
14 President of the City Council

15 Approved by me this 7 day of October, 1996.

16   
17 \_\_\_\_\_  
18 Mayor

19 Filed by me this 7 day of October, 1996.

20   
21 \_\_\_\_\_  
22 City Clerk

23 (Seal)

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LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>SECTION</u>
A	Legal Description of City-Owned Portion of the Interbay Property	Recital ¶ B
B	Legal Description of District-Owned Portion of the Interbay Property	Recital ¶ B
C	Project Program	1.1
D	Site Plan	1.1
E	Representative Schedule of SPU's Use of Facilities	3.3
F	Examples of Ordinary Maintenance and Capital Maintenance	5.2
G	Interbay Soccer Field Maintenance Standards	5.4(a)
H	Interbay Soccer Field Performance Standards	5.4(a)

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EXHIBIT A  
TO USE AND MAINTENANCE AGREEMENT FOR  
INTERBAY SOCCER FACILITY  
AND SOFTBALL FIELD

Legal Description of City-Owned Portion  
of the Interbay Property

LOTS 1 THROUGH 48, INCLUSIVE, BLOCK 122, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, IN KING COUNTY, WASHINGTON;

TOGETHER WITH LOTS 1 THROUGH 24, INCLUSIVE, BLOCK 121, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, IN KING COUNTY, WASHINGTON;

EXCEPT THEREFROM THAT PORTION OF SAID BLOCK 121 DEEDED TO NORTHERN PACIFIC RAILWAY COMPANY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION OF THE EASTERLY BOUNDARY OF THE NORTHERN PACIFIC RAILWAY COMPANY'S RIGHT-OF-WAY WITH THE NORTH LINE OF SAID LOT 1; THENCE SOUTH ALONG SAID BOUNDARY LINE A DISTANCE OF 180 FEET; THENCE NORTHEASTERLY IN A STRAIGHT LINE TO A POINT IN SAID NORTH LINE DISTANT 35 FEET EAST MEASURED ALONG SAID NORTH LINE FROM THE POINT OF BEGINNING; THENCE WESTERLY ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;

TOGETHER WITH THOSE PORTIONS OF VACATED STREETS ADJACENT TO SAID BLOCKS 121 AND 122 WHICH ATTACHED BY OPERATION OF LAW.

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EXHIBIT B  
TO USE AND MAINTENANCE AGREEMENT FOR  
INTERBAY SOCCER FACILITY  
AND SOFTBALL FIELD

Legal Description of District-Owned  
Portion of the Interbay Property

LOTS 7 THROUGH 18, INCLUDING BLOCK 20, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 50, IN KING COUNTY, WASHINGTON;

EXCEPT THEREFROM THE NORTH 30 FEET OF LOTS 7 AND 18, IN SAID BLOCK;

TOGETHER WITH THE VACATED ALLEY IN SAID BLOCK LYING SOUTHERLY OF THE EASTERLY PRODUCTION OF THE SOUTH LINE OF THE NORTH 30 FEET OF SAID LOT 7;

ALSO TOGETHER WITH THOSE PORTIONS OF VACATED STREETS ADJACENT WHICH ATTACHED BY OPERATION OF LAW.

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EXHIBIT C  
TO USE AND MAINTENANCE AGREEMENT FOR  
INTERBAY SOCCER FACILITY  
AND SOFTBALL FIELD

Project Program

**Demolition:**

1. Removal of the existing concrete building and fences as necessary.

**Sitework on Site:**

1. Strip the new soccer field site, excavate and redistribute the earth to provide for a balance cut and fill.
2. Grading for building foundations and gravel under building slabs.
3. Grading, sidewalks and asphalt for pedestrian site circulation.
4. Provide 3" of Class B asphalt over 6" of crushed rock in parking lot. Utilize buttons instead of striping. Demolish, regrade and provide crushed rock and asphalt for additional parking on W. Barrett St.
5. Concrete retaining wall to accommodate grade difference between soccer field and ballfield.
6. Hook-up of domestic and fire water, plumbing, drainage and electrical to existing City utilities. Camera existing side sewer to verify condition.
7. Upgrade existing landscaping around the perimeter of the site at north and east property lines and around new on-site parking.

**Field Upgrades:**

1. Revise existing ballfields utilizing lighting as currently configured to provide \$100,000 worth of improvements. The scope of work to be determined by the City Parks Department.
2. Excavate for new soccer field providing a sand sub-base with an underground sprinkler and drainage system, installation of "sportgrass" artificial fiber and planted with natural grass.
3. 8' tall security fence around the soccer stadium.
4. Scoreboard allowance of \$6,000.

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9/4/96 2:21pm

**EXHIBIT C**

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5. Upgrade and supplement the existing lighting at new soccer field only.
6. Aluminum bleacher seating for 900 on footings and slab. Scale for 300 temporary seats.

**Field House Approximately 2,800 s.f.:**

1. Sizes for two team locker rooms with showers and toilets to support teams of 20 each. There are also public restrooms, concessions area, an office, maintenance room, maintenance shed and a small second level press box.
2. Shell construction includes conventional footings with slab on grade, CMU walls, and metal roof structure. Interior bearing walls and upper floors are wood frame.
3. Finishes include metal stud partitions and gypsum walls, acoustical ceiling, epoxy paint over the CMU block at locker rooms with anti-slip sealed concrete floors.
4. Mechanical includes plumbing, fire sprinkler system, heating and venting system excluding air conditioning.
5. Electrical includes necessary receptacles in accordance with code, interior and exterior lighting.
6. Specialty items include 20 lockers with benches and toilet partitions with accessories.

**Ticket Booth Approximately 200 s.f.:**

1. Independent ticket booth located in front of the field house is provided with glazing for three ticket windows.

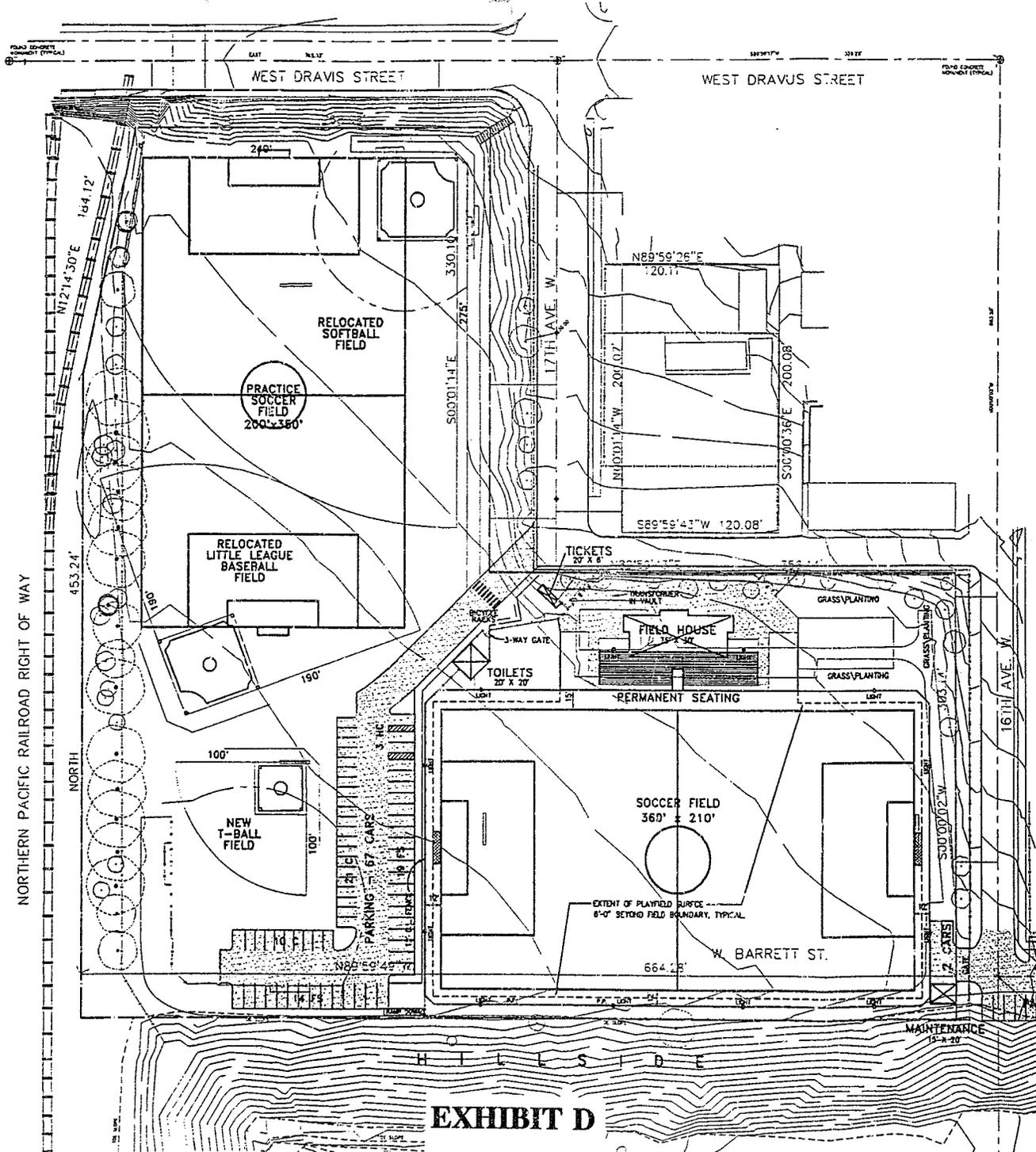
**Public Toilets for Softball Field Approximately 1,200 s.f.:**

1. There is a satellite building to house public restrooms to support the ballfields when the soccer stadium is not in use.

**Off-site Parking and Street Improvement:**

1. On 16th Street: Provide driveway apron, restripe and patch the asphalt as required.
2. On 17th Street: Provide sidewalk, patch asphalt and restripe for angle parking.

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**EXHIBIT D**



EXHIBIT E  
TO USE AND MAINTENANCE AGREEMENT FOR  
INTERBAY SOCCER FACILITY  
AND SOFTBALL FIELD

Representative Schedule of SPU's Use of Facilities

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9/9/96 11:57am

**EXHIBIT E**

EXHIBIT F  
TO USE AND MAINTENANCE AGREEMENT FOR  
INTERBAY SOCCER FACILITY  
AND SOFTBALL FIELD

Examples of Ordinary Maintenance and  
Capital Maintenance Items

EXAMPLES OF ORDINARY MAINTENANCE

Playing field:

All activities listed in the Interbay Soccer Field Maintenance Standards (Exhibit G to the Use and Maintenance Agreement for Interbay Soccer Facility and Softball Field)

Picking up litter

Regular and ordinary maintenance of the irrigation system, including repair of leaking and clogged equipment

Other facilities (e.g., bleachers, locker rooms, restrooms, concession stands, press box, lighting, and parking areas):

Picking up litter

Maintaining garbage receptacles and removing garbage

Cleaning

Changing light bulbs

Removal or covering graffiti

Painting

Repair of leaking and clogged plumbing

Roof patching and repair

Replacement of window glass

Patching potholes

Restriping parking lot

EXAMPLES OF CAPITAL MAINTENANCE

Playing field

Replacement of most or all of the SportGrass playing field

Replacement of most or all of the irrigation system

Other facilities (e.g., bleachers, locker rooms, restrooms, concession stands, press box, lighting, and parking areas):

Replacement of most or all of the electrical systems

Replacement of most or all of the plumbing

Replacement of most or all of the lighting

Installation of new roof

Resurfacing parking or driveway areas

Replacement of most or all of stadium seating

Replacement of any scoreboards

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**INTERBAY SOCCER FIELD  
MAINTENANCE STANDARDS**

The following are maintenance standards for the Interbay Soccer Field.

1. The turf on the field is to be composed of Bluegrass and Perennial Ryegrass.
2. Watering
  - A. Well maintained irrigation is essential to perpetuation of healthy aggressive turf.
  - B. It is recommended for the sand base field that water be applied every other night at varying amounts depending on climatic conditions. A minimum of 2 cycles per application should be scheduled. The amount to be applied will vary from approximately 1.0 inches of water per week in April and May to 1.8 inches of water in July and August. Actual application rates of water will be dependent on weather, and applications and cycles will vary accordingly.
  - C. The watering schedule should be changed to daily watering of a minimum of 3 to 4 cycles during the daytime when establishing overseeding during restoration. Actual application schedules and rates will be determined by weather conditions.
  - D. A table of operating settings is to be referred to when programming the irrigation system.
3. Mowing
  - A. It is mandatory that the field be mowed at least two times per week during the growing season. The clippings must be removed to prevent build-up of thatch and mat, which restricts movement of air and water. Thatch and mat build-up is the most detrimental condition to maintaining satisfactory turf.
  - B. The height of cut is to be between 1-1/4" and 1-1/2". The grass should not reach more than 1-3/4" in height between mowings. A sharp, reel-type mower is required to achieve a uniform even cut. Mow in opposite directions or opposite diagonal pattern for each mowing. Utilize basket catching method attached to mower.
4. Fertilizer

The SportGrass shall be tested at least every three months for fertility in the tissue and sub-surface rootzone. Samples shall be taken in six areas of the field and samples of both the grass tissue and sand rootzone shall be sent to an agronomic

**EXHIBIT G**

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testing laboratory capable of determining the nutrient levels in the submitted materials. Based upon the results provided by the testing laboratory, the field fertility program shall be adjusted by the turf manager to provide the desired nutrient levels necessary to promote the desired health, growth and color of the SportGrass. As a general practice, the following guidelines are to be adhered to unless test results dictate modification of the guidelines.

- A. The field areas should have applied a range of six (6) to eight (8) pounds of available nitrogen per 1,000 square feet per season. It is suggested that a fertilizer supplying three (3) parts nitrogen, one (1) part phosphorus and two (2) parts potassium be used to make a complete fertilization. Formulas bearing this ratio of plant nutrients N, P and K are 15-5-10, 12-4-8, 10-2-4, 9-3-6, etc. It is best to apply about one (1) to 1-1/2 pounds of available nitrogen per 1,000 square feet per application repeating to achieve total amounts. Recommended months are March, May, June, July, August, September and October with November and February optional.

B. Calculations (Example)

Lbs. Material For Season

Formula	15-5-10	12-4-8	10-2-4	9-3-6	
Per 1,000 sq. ft.	53	67	80	90	

Lbs. Material Per Application Based on Six (6) Applications

Formula	15-5-10	12-4-8	10-2-4	9-3-6	21-0-0
Per 1,000 sq. ft.	6.7 to 8.9	8.3 to 11.0	10 to 13.0	11 to 15.0	4.3 to 6.4

- C. It is recommended to apply five (5) pounds of elemental sulfur per 1,000 sq. ft. per year. This can be incorporated in a combination of sulfur and sulfate fertilizer.

5. p.h. control

Approximately 50 pounds per 1,000 sq. ft. of Dolomite limestone should be applied per year, one-half of the quantity in two (2) applications; one in the fall and the other in the spring of the year. This will require 2,000 pounds per application.

6. Aerification and Top Dressing

Core aerification and top dressing should not be performed on a SportGrass Installation. Core aerification would perforate and damage the synthetic backing. Top dressing is not required as this would raise the stock of the natural turf plant material above the protective layer of the synthetic fibers.

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7. Thatch Removal

The most detrimental condition of the field relative to resistance to use is the build up of thatch. Removal of this material is mandatory or the surface will become soft and slippery under conditions of precipitation and also during irrigation. Future root development will be drastically impaired and the growing point of the natural turf plant material will be raised above the protective layer of synthetic fibers. The field should be sliced a minimum of four (4) times per year. This should be performed with a vertical slicer, after which the field is double mowed with the clippings removed after each mowing. Prior to slicing, the field should be mowed to a height between 1" and 1-1/4" with the clippings removed. This can best be accomplished during the dry times of the year. A light slicing between times of heavy use will help restore the texture of the field.

8. Spiking

- A. The field should be spiked with non core equipment to a minimum depth of 3 inches, 3/16" to 1/4 tines at a maximum of 3 inch spacing on the drum. Perform in 2 directions each occurrence.
- B. Spiking should occur four (4) times per year during optimum growing months, April through October.

9. Pest Control

- A. Such problems as weeds, insects and diseases require attention when they occur. You may not experience noticeable problems in this regard; however, there is a strong probability that you will eventually have weed infestation. A broad spectrum herbicide (that is one containing such ingredients as MCPP, Banvel-D and 2-4 DAMINE) is generally the best herbicide weed control. Use "TRIMEC", or an equivalent. Many different companies have formulations of materials with these ingredients.
- B. Should weeds, diseases and insects occur, consult lawn bulletins or other publications from Washington State University, or contact your local County Extension Agent through the King County Cooperative Extension Service.

10. Restoration

- A. The field should be taken out of service in early summer, preferably the month of June and the worn areas restored. Slice and fertilize the field. Apply fertilizer and seed with Bluegrass and Perennial Ryegrass (30% Blue, 70% Rye mix by weight) at a rate of three (3) pounds per 1,000 square feet on unworn areas and eight (8) pounds per 1,000 square feet on the worn areas. Set the sprinkler system for daytime only: 8AM, 12 Noon, and 4PM. Operate

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each full circle station (2 through 6) 30 minutes and part circle stations (1 and 7) 15 minutes for each cycle. Keep all traffic off the field except maintenance. Maintain in this configuration until the grass seed is germinated and well established. Then return to regular irrigation schedule.

B. The Sequence Should Be:

1. Mow field to height of 1"
2. Verti-cut minimum of two (2) directions.
3. Re-mow and remove organic material with vacuum and/or sweeper.
4. Apply fertilizer.
5. Overseed.
6. Set irrigation for a minimum of 1.5" per week with daytime sprinkling until seed germinates. Then irrigate with night time watering.

1i. Records

An accurate record of maintenance should be kept of activities including all chemical applications as to date and application rates.

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**INTERBAY SOCCER FIELD  
PERFORMANCE STANDARDS**

**MOWING:**

- The height of the natural turf plant material should not exceed 1-3/4" inches and should not be mowed to below 1-1/4" inches.
- There should be no loose clippings on the surface of the field.

**WEAR:**

- There should be complete coverage of plant material. There should not be any area larger than 8" square that is void of turf plant blades.

**THATCH:**

- The uncompressed thatch layer of the field should not exceed 1/2 of an inch.

**DRAINAGE:**

- There should be no standing water on the surface of the field except following a severe storm event, in which case, the standing water should dissipate not longer than 20 minutes after the storm event.

**COLOR:**

- There should be no pronounced change in color (yellowing) across the field area. The color shall be uniform across the field surface.
- The field should not show evidence of a blue tinge or wilting of the plant material.

**WEEDS:**

- There should be no visible leafy weeds on the field surface.
- There should be no visual evidence of disease relative to the natural turf plant material.

**SURFACE:**

- The field should have no surface depressions or grade irregularities.

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**EXHIBIT H**

USE AND MAINTENANCE AGREEMENT FOR  
INTERBAY SOCCER FACILITY AND  
SOFTBALL FIELD

DATED

\_\_\_\_\_, 1996

BY AND BETWEEN

THE CITY OF SEATTLE,  
ACTING BY AND THROUGH THE  
SEATTLE DEPARTMENT OF PARKS AND RECREATION

AND

SEATTLE PACIFIC UNIVERSITY,  
A WASHINGTON NONPROFIT CORPORATION

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USE AND MAINTENANCE AGREEMENT FOR  
INTERBAY SOCCER FACILITY  
AND SOFTBALL FIELD

THIS USE AND MAINTENANCE AGREEMENT FOR INTERBAY SOCCER FACILITY AND SOFTBALL FIELD (the "Agreement") is made and entered into as of \_\_\_\_\_, 1996, by and between THE CITY OF SEATTLE (the "City"), acting by and through THE SEATTLE DEPARTMENT OF PARKS AND RECREATION (the "Parks Department"), and SEATTLE PACIFIC UNIVERSITY, a Washington nonprofit corporation, and its successors and assigns ("SPU").

RECITALS

A. The Parks Department operates a park commonly known as Interbay Park consisting of approximately 7.63 acres located at the southwest corner of the intersection of W. Dravus Street and 16th Avenue in Seattle, Washington (the "Interbay Property").

B. The City owns that portion of the Interbay Property more particularly described on Exhibit A attached hereto and leases the remaining portion of the Interbay Property from the Seattle School District (the "School District") under that certain Lease between the School District as landlord and the City as tenant dated August 12, 1940 (the "Ground Lease"). The portion of the Interbay Property leased from the District is more particularly described on Exhibit B attached hereto.

C. Pursuant to the terms of that certain Agreement To Develop Interbay Soccer Facility and Ballfield Improvements between the City and SPU of even date herewith (the "Development Agreement"), SPU has agreed, at SPU's sole cost and expense, to develop a soccer facility including a soccer playing field meeting NCAA standards, stadium seating, field house with two locker rooms, and parking for use by its soccer teams and spectators and to fund up to \$100,000 worth of improvements for ancillary ballfields on the Interbay Property.

F. Pursuant to the terms of the Development Agreement, SPU has further agreed to convey this soccer facility and related improvements to the City upon completion of construction in exchange for the Parks Department's agreement to maintain the soccer facility and make the soccer facility available on a part-time basis for SPU's scheduled use.

G. This Agreement sets forth the terms and conditions under which (i) the City and SPU will share the use of the soccer facility and related improvements, (ii) the City through the Parks Department will maintain the Interbay Property, and (iii) the costs

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of maintenance and repair of the soccer facility will be allocated between the City and SPU.

NOW, THEREFORE, in consideration of SPU's performance of its obligations under the Development Agreement, each party's performance of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and SPU agree as follows:

#### ARTICLE I

##### SCOPE OF THE AGREEMENT

**1.1 Definition of Soccer Facility.** "Soccer Facility" shall mean the following improvements located on the Interbay Property:

- (a) Soccer field meeting current NCAA standards;
- (b) Field house containing:
  - (i) two team locker rooms with showers for twenty members each;
  - (ii) concessions area;
  - (iii) restrooms that meet applicable requirements regarding access for the disabled; and
  - (iv) press box.
- (c) Permanent stadium seating for 900-1200 spectators;
- (d) Parking for 90-120 cars and related driveways. (The amount of parking is presently dictated by the zoning requirements associated with the stadium seating capacity. At SPU's request, the Parks Department shall use good faith efforts to assist SPU in satisfying the parking requirements, including, but not limited to, obtaining a variance from the parking requirements.); and
- (e) Bus lane and drop-off zone.

A more detailed description of the Soccer Facility is set forth in the Project Program dated \_\_\_\_\_, 1996 attached hereto as Exhibit C (the "Project Program"), and a site plan describing the approximate location of the Facility is attached hereto as Exhibit D (the "Site Plan"). To the extent the description of the Soccer Facility set forth in this Section 1.1 conflicts with the description contained in the Project Program, the description contained in the Project Program shall govern.

**1.2 Definition of Softball Field.** "Softball Field" shall mean the ballfield on the Interbay Property designated for major softball use as identified on the Site Plan.

**1.3 Definition of Facilities.** "Facilities" shall mean collectively the Soccer Facility and the Softball Field.

**1.4 Term of the Agreement.**

(a) **Base Term.** This Agreement shall become effective as of the date that title to the Soccer Facility is conveyed by SPU to the City in accordance with the terms of the Development Agreement (the "Effective Date"). This Agreement shall remain in full force and effect for a term (the "Term of this Agreement") commencing on the Effective Date and terminating on the earlier of the twenty-fifth anniversary of the Effective Date (the "Outside Termination Date") or the date on which an early termination pursuant to Article XII below occurs. The Term of this Agreement may be adjusted as provided in Subsections 1.4(b) and 1.4(c) below.

(b) **Option To Extend.** SPU shall have an one-time option at its sole discretion to extend the Term of this Agreement for an additional period of five (5) years past the twenty-fifth (25th) anniversary of the Effective Date (the "Extension Option"). SPU may exercise the Extension Option by sending written notice to the City of its election to exercise the Extension Option on or before six (6) months prior to the twenty-fifth (25th) anniversary of the Effective Date. In the event SPU exercises the Extension Option, the original Term of this Agreement and the original Outside Termination Date, as set forth in Section 1.4(c) above, shall both be deemed extended by five (5) years.

(c) **Extension for Capital Maintenance of Playing Field.** In the event (i) the City performs pursuant to this Agreement any capital maintenance (as defined in Section 5.2 below) with respect to the Soccer Facility playing field or any capital maintenance costing in excess of \$100,000 with respect to any other portion of the Soccer Facility, (ii) the predicted useful life of such item of capital maintenance extends past the then applicable Outside Termination Date, and (iii) the City elects to require SPU to contribute towards the cost of such item of capital maintenance pursuant to Subsection 5.4(d) below, then the Term of this Agreement and the Outside Termination Date shall be deemed extended to the date which coincides with the last day of the predicted useful life of such item of capital maintenance. Alternatively, the City may elect not to require SPU to contribute towards the cost of such item of capital maintenance pursuant to Subsection 5.4(d) below, in which case SPU shall have no obligation to contribute any amount toward such item of capital maintenance and there shall be no adjustment to the Term of this Agreement or the Outside Termination Date as a result of the predicted useful life of the item of capital maintenance extending past the then applicable Outside Termination Date. The \$100,000 threshold with respect to any portion of the Soccer Facility other than the Soccer

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Facility playing field shall be adjusted for inflation using the Producer Price Indices -- Maintenance and Repair Construction, Non-residential (June 1986 = 100) most recently published before the Effective Date and before the date of adjustment by the United States Department of Labor, Bureau of Labor Statistics. The predicted useful life of an item of capital maintenance shall be determined by mutual agreement of the City and SPU. If the City and SPU are unable to agree upon the predicted useful life of an item of capital maintenance, then the predicted useful life shall be determined in accordance with the dispute resolution procedure set forth in Article X below.

(d) **Maximum Term.** Notwithstanding anything to the contrary herein, the Term of this Agreement and the Outside Termination Date shall not be extended by operation of Subsections 1.4(b) and 1.4(c) past August 11, 2039, or, if the City obtains an extension on the original term of the Ground Lease, past such later date on which the Ground Lease shall terminate (the "Maximum Term"), provided, however, the foregoing maximum limit on the Term of the Agreement shall not apply if the City acquires fee simple title to the entire Interbay Property during the Term of this Agreement. In the event the Term of this Agreement and the Outside Termination Date, except for this Subsection 1.4(d), would have been extended past the Maximum Term by operation of Subsection 1.4(c), then SPU's contribution towards the item of capital maintenance governed by Subsection 1.4(c), shall be pro-rated on a straight-line basis over the predicted useful life of such item of capital maintenance, and SPU shall only be responsible for one-half (1/2) of that amount allocated to the predicted useful life falling within the Maximum Term.

## ARTICLE II

### OPERATION OF FACILITIES

**2.1 Continued Operation During Term of Agreement.** During the Term of this Agreement, unless otherwise provided in this Agreement or subsequently agreed to by SPU, the City shall continuously operate and maintain the Soccer Facility for soccer uses and the Softball Field for softball uses in accordance with the terms of this Agreement. Other uses of the Soccer Facility and the Softball Field may be permitted during the Term of this Agreement provided such other uses do not interfere with or impair the use of the Soccer Facility for soccer and the Softball Field for softball or increase the cost or frequency of Capital Maintenance (as defined below).

**2.2 Changes to Soccer Facility.** Any alterations or additions to the Soccer Facility, which might interfere with or impair the use of the Soccer Facility for intercollegiate soccer use and in accordance with the standards established herein, shall be subject to the prior written consent of SPU, which shall not be unreasonably withheld.

**2.3 Faithful Performance under Ground Lease.** The City shall perform all of its obligations as tenant under the Ground Lease in a timely and faithful manner and shall not permit any tenant default to arise under the Ground Lease.

### ARTICLE III

#### USE OF SOCCER FACILITY

**3.1 SPU's Right to Use Soccer Facility.** As set forth in more detail below in this Article III, SPU shall have the right throughout the Term of this Agreement to use the Soccer Facility for certain scheduled hours during the Fall Soccer Season and the Spring Soccer Season. The Fall Soccer Season shall mean the period from August 15 through December 15 of each year, and SPU's permitted hours of use of the Soccer Facility during the Fall Soccer Season shall hereafter be sometimes referred to as the "SPU Fall Soccer Hours." The Spring Soccer Season shall mean the period from April 1 through May 31 of each year, and SPU's permitted hours of use of the Soccer Facility during the Spring Soccer Season shall hereinafter sometimes be referred to as the "SPU Spring Soccer Hours." During those hours that SPU is scheduled to use the Soccer Facility under this Agreement, the City shall not schedule any other party to use the Soccer Facility. Notwithstanding the total possible number of hours of use of the Soccer Facility allocated to SPU under this Agreement, SPU shall only use the Soccer Facility for the following events:

- (a) SPU men's and women's intercollegiate soccer team games and practices;
- (b) Non-SPU soccer games and soccer-related demonstrations and exhibitions that are scheduled immediately prior to, after or during SPU intercollegiate soccer games; and
- (c) Soccer tournaments, exhibition games or all-star games in which either SPU intercollegiate soccer players are participants or for which SPU is the designated host or sponsor.

In addition, SPU shall use good faith efforts to reserve use of the Soccer Facility only for such times as SPU believes that it will actually need the Soccer Facility for any of the foregoing events. SPU shall also use good faith efforts to provide at least one (1) week's advance notice to the City whenever SPU determines that it does not intend to use the Soccer Facility during one of its scheduled periods of use.

**3.2 Maximum Hours of Use.** To preserve the condition of the Soccer Facility, the City shall limit the total use of the Soccer Facility by all users each year to a maximum number of total hours of use during such year (the "Maximum Hours of Soccer Use"). On or before the Effective Date, the parties shall agree upon an initial Maximum Hours of Soccer Use and thereafter the Maximum Hours of

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Soccer Use may be adjusted from time to time as set forth below in this Section. In the event either party determines that the use of the Soccer Facility must be reduced to prevent deterioration of the Soccer Facility or that the Soccer Facility can accommodate increased hours of soccer use, that party shall notify the other party in writing of its determination. The notice shall specify the amount of use that it proposes to eliminate or add to the Maximum Hours of Soccer Use and the anticipated duration of such reduced or increased use. The other party shall have thirty (30) days from receipt of such notice to object in writing to such determination and the proposed reduction or increase. If the other party agrees to the determination or fails to object to such determination within the thirty (30) day period provided above, then the Maximum Hours of Soccer Use shall be adjusted in accordance with the determination. If the other party timely objects and the parties thereafter are unable to agree as to the appropriate determination and/or the appropriate amount or duration of the reduced or increased use, the Maximum Hours of Soccer Use shall be determined through dispute resolution in accordance with Article X below.

**3.2 Hours of Use Allocated to SPU.** During each one-year period from June 1 to May 31 throughout the Term of this Agreement, the City shall grant to SPU and SPU shall be entitled to use the Soccer Facility for its soccer programs for the following maximum number of hours of use ("SPU Soccer Hours"), which number of hours shall be dictated by the Maximum Hours of Soccer Use last in effect prior to SPU's annual submittal of its schedule for the Fall Soccer Season (as hereinafter defined):

<u>Maximum Hours of Soccer Use</u>	<u>SPU Soccer Hours</u>
Greater Than 1600 Hours	770 Hours, of which 650 Hours shall be allocated to the SPU Fall Soccer Hours and 120 hours shall be allocated to the SPU Spring Soccer Hours
1101 to 1600 Hours	530 Hours plus forty-eight percent (48%) of the difference between the Maximum Hours of Use and 1100 Hours, of which total, all hours up to and including 650 hours shall be allocated to the SPU Fall Soccer Hours and any hours in excess of 650 hours shall be allocated to the SPU Spring Soccer Hours
530 to 1100 Hours	530 Hours, all of which shall be allocated to the SPU Fall Soccer Hours

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1 to 529 Hours

Maximum Hours of Use, all of which shall be allocated to the SPU Fall Soccer Hours

Until such time as SPU establishes a women's intercollegiate soccer program, the following reduced allocation of SPU Soccer Hours shall apply:

Maximum Hours of Soccer Use

SPU Soccer Hours

Greater Than  
1600 Hours

475 Hours, of which 400 Hours shall be allocated to the SPU Fall Soccer Hours and 75 hours shall be allocated to the SPU Spring Soccer Hours

1101 to 1600 Hours

325 Hours plus thirty-seven and one-half percent (37-1/2%) of the difference between the Maximum Hours of Use and 1100 Hours, of which total, all hours up to and including 400 hours shall be allocated to the SPU Fall Soccer Hours and any hours in excess of 400 hours shall be allocated to the SPU Spring Soccer Hours

325 to 1100 Hours

325 Hours, all of which shall be allocated to the SPU Fall Soccer Hours

1 to 324 Hours

Maximum Hours of Use, all of which shall be allocated to the SPU Fall Soccer Hours

A representative schedule for SPU's presently contemplated hours of use of the Soccer Facility during the Fall Soccer Season and the Spring Soccer Season is attached hereto as Exhibit E for illustrative purposes only.

**3.4 Scheduling Use During Fall Soccer Season.**

(a) **SPU's Right to Priority Use.** SPU will be entitled to priority scheduling of the SPU Fall Soccer Hours. If SPU does not require the total number of hours of use allocated to it in any year, SPU shall so advise the City and for that year only, the City shall be entitled to reallocate those hours of use relinquished by SPU to another party. Unless otherwise specified in writing by SPU, such relinquishment shall not be permanent and SPU shall be entitled to the same allocation of the SPU Fall Soccer Hours and the SPU Spring Soccer Hours specified above in any subsequent year. Only after SPU has reserved the SPU Fall Soccer Hours, as provided herein, may the City assign to third parties any remaining hours of

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use available during the Fall Soccer Season. Any such assignments to third parties shall be made with the express understanding that such third parties will possess no continuing claim or right to use those same hours in any subsequent year.

(b) **Annual Scheduling of SPU Fall Soccer Hours.** On or before June 1 of each year during the Term of this Agreement, SPU shall provide the City with a written schedule identifying and reserving the times for the SPU Fall Soccer Hours for the subsequent Fall Soccer Season. At least thirty (30) days prior to commencement of each Fall Soccer Season, the City shall provide SPU with a master schedule for such Fall Soccer Season showing the reserved SPU Fall Soccer Hours and all other scheduled uses of the Soccer Facility during such Fall Soccer Season. If the City determines reasonably and in good faith that SPU's requested schedule for SPU Fall Soccer Hours concentrates too many hours of use in a short period and as a result would cause damage to the Soccer Facility, the City shall provide SPU with written notice of its determination at least forty-five (45) days prior to commencement of the Fall Soccer Season and SPU and the City shall agree upon a revised schedule that (i) minimizes the risk of damage to the Soccer Facility resulting from such concentrated use; (ii) to the greatest extent possible adheres to SPU's requested schedule; and (iii) still provides SPU with all of the SPU Fall Soccer Hours. In such case, the master schedule, which incorporates the revised schedule for SPU Fall Soccer Hours, shall be provided to SPU no later than fifteen (15) days prior to commencement of such Fall Soccer Season.

(c) **SPU's Failure to Provide Schedule.** If SPU in any year during the Term of this Agreement fails to provide a schedule, for the SPU Fall Soccer Hours on or before June 1, the City will notify SPU of such failure in writing, and SPU shall have fourteen (14) days from such notice to provide the City with the written schedule. If after such fourteen (14) day period, SPU still has not provided a written schedule, such failure shall not be deemed a default under this Agreement or result in any reductions of the SPU Fall Soccer Hours, but shall mean that the City shall schedule the SPU Fall Soccer Hours for the upcoming Fall Soccer Season at such times as the City deems appropriate in its sole discretion.

### 3.5 Scheduling Use During Spring Soccer Season.

(a) **SPU's Right to Limited Priority Use.** SPU shall not be entitled to unilaterally reserve the times for the SPU Spring Soccer Hours during the Spring Soccer Season. However, the City shall use reasonable efforts to accommodate SPU's requested scheduling and, at a minimum, the City shall schedule the SPU Spring Soccer Hours in increments of at least two (2) hours at regular times allocated evenly over the entire Spring Soccer Season. Furthermore, all SPU Spring Hours shall be scheduled to fall between the hours of 3:00 pm and 10:00 pm on weekdays. No SPU Spring Soccer Hours shall be scheduled for Saturdays or Sundays.

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(b) **Annual Scheduling of SPU Spring Soccer Hours.** On or before November 1 of each year during the Term of this Agreement, SPU shall provide the City with a written request for scheduling of the SPU Spring Soccer Hours for the subsequent Spring Soccer Season. No later than January 15, the City shall provide SPU with a master schedule for such Spring Soccer Season showing the SPU Spring Soccer Hours, as scheduled by the City, and all other scheduled uses of the Soccer Facility during such Spring Soccer Season.

(c) **SPU's Failure to Provide Schedule.** If SPU in any year during the Term of this Agreement fails to submit a written request for scheduling of the SPU Spring Soccer Hours on or before November 30, the City will notify SPU of such failure in writing, and SPU shall have fourteen (14) days from such notice to provide the City with the written request for scheduling. If after such fourteen (14) day period, SPU still has not provided a written request for scheduling, such failure shall not be deemed a default under this Agreement, but shall mean that the City shall schedule the SPU Spring Soccer Hours for the upcoming SPU Spring Soccer Season at such times as the City deems appropriate in its sole discretion.

**3.6 Possible Adjustment of First Schedule and Request Deadlines.** In the event that the Effective Date of this Agreement occurs after the applicable deadline for submitting a schedule or request for scheduling specified above, the deadline for SPU's submittal of the schedules and requests for scheduling for that first season shall be fourteen (14) days after the Effective Date and the deadline for the City's submittal of the master schedule shall be twenty-eight (28) days after the Effective Date.

**3.7 City's Maintenance of Use Records.** The City shall maintain a complete and accurate record of scheduled use of the Soccer Facility for each year during the Term of this Agreement, and, at SPU's request, shall provide SPU with a copy of such annual use records.

**3.8 Right to Revenue from Use.** SPU shall have exclusive rights to any income or revenue derived from its use of the Soccer Facility (i.e., admission fees and concessions revenues), but shall have no right or claim to any other income or revenue generated by other use of the Soccer Facility, except as provided in Subsection 5.4(h) below.

#### ARTICLE IV

##### USE OF SOFTBALL FIELD

**4.1 Hours of Use Allocated to SPU.** During each calendar year throughout the Term of this Agreement, if SPU elects to implement a women's intercollegiate softball program (the "SPU Softball Program"), and notifies the City of such implementation on or

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before November 1, then for the following calendar year and each subsequent calendar year during the Term of this Agreement, the City shall grant SPU use of the Softball Field for the SPU Softball Program only during the period from February 1 through May 31 of each year (the "Softball Season") for a maximum of two hundred (200) hours, subject to adjustment as provided in Section 4.5 below (the "SPU Softball Hours"), at such times and on such days as scheduled by SPU pursuant to Section 4.2 below. During those hours that SPU is scheduled to use the Softball Field under this Agreement, the City shall not schedule any other party to use the Softball Field. SPU shall use good faith efforts to reserve use of the Softball Field only for such times as SPU believes that it will actually need the Softball Field. If SPU does not require the total number of hours of use allocated to it in any year, SPU shall so advise the City and for that year only, the City shall be entitled to reallocate those hours of use relinquished by SPU to another party. Unless otherwise specified in writing by SPU, such relinquishment shall not be permanent and SPU shall be entitled to the same allocation of the SPU Softball Hours specified above in any subsequent year. SPU shall also use good faith efforts to provide at least one (1) week advance notice to the City whenever SPU determines that it does not intend to use the Softball Field during one of its scheduled periods of use.

#### **4.2 Scheduling Use During Softball Season.**

(a) **SPU's Right to Limited Priority Use.** SPU shall not be entitled to unilaterally reserve the times for the SPU Softball Hours during the Softball Season. However, the City shall use reasonable efforts to accommodate SPU's requested scheduling and, at a minimum, the City shall schedule the SPU Softball Hours in increments of at least two (2) hours at regular times allocated evenly over the entire Softball Season. Furthermore, the City shall use reasonable efforts to schedule all SPU Spring Hours for practices between the hours of 3:00 pm and 5:00 pm daily and for games at such times as appropriate.

(b) **Annual Scheduling of SPU Spring Softball Hours.** On or before November 1 of each year during the Term of this Agreement, SPU shall provide the City with a written request for scheduling of the SPU Softball Hours for the subsequent Softball Season. No later than January 15, the City shall provide SPU with a schedule for such Softball Season showing the SPU Softball Hours, as scheduled by the City.

(c) **SPU's Failure to Provide Schedule.** If SPU in any year during the Term of this Agreement fails to submit a written request for scheduling of the SPU Softball Hours on or before November 1, the City will notify SPU of such failure in writing, and SPU shall have fourteen (14) days from such notice to provide the City with the written request for scheduling. If after such fourteen (14) day period, SPU still has not provided a written request for scheduling, such failure shall not be deemed a default under this Agreement, but shall mean that the City shall schedule

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the SPU Softball Hours for the next upcoming Softball Season at such times as the City deems appropriate in its sole discretion.

**4.3 Possible Adjustment of First Schedule and Request Deadlines.** In the event that the Effective Date of this Agreement occurs after the applicable deadline for submitting a schedule or request for scheduling specified above, the deadline for SPU's submittal of the request for scheduling for that first Softball Season shall be fourteen (14) days after the Effective Date and the deadline for the City's submittal of the master schedule shall be twenty-eight (28) days after the Effective Date.

**4.4 Right to Revenue from Use.** SPU shall have exclusive rights to any income or revenue derived from its use of the Softball Field (i.e., admission fees and concessions revenues), but shall have no right or claim to any other income or revenue generated by other use of the Softball Field.

## ARTICLE V

### MAINTENANCE OF FACILITIES

**5.1 Definition of Maintenance.** As used herein, "maintenance" shall mean any and all maintenance, repair and replacement that are necessitated by the ordinary use and operation of the Facilities and are necessary to meet the maintenance standards set forth in Subsection 5.4(a) for the Soccer Facility and Subsection 5.5(a) for the Softball Field. Maintenance shall not include repairs or replacement of the Facilities that are necessitated by damage or destruction, and such repairs and replacement shall be governed by Article VI below.

**5.2 Definition of Capital Maintenance.** As used herein, "capital maintenance" shall mean any item of maintenance that appreciably increases the value of the element of the Facilities being maintained or appreciably prolongs the useful life of the element of the Facilities being maintained. A non-exhaustive list of capital maintenance items is set forth in Exhibit F attached hereto.

**5.3 Definition of Ordinary Maintenance.** As used herein, "ordinary maintenance" shall mean those items of maintenance that are routine, ordinary or incidental and that neither materially increase the value of the element of the Facilities being maintained nor appreciably prolong the useful life of the element of the Facilities being maintained, but merely keep such element of the Facilities in an ordinarily efficient operating condition. A non-exhaustive list of ordinary maintenance items is set forth in Exhibit F attached hereto. All items of maintenance that do not qualify as items of capital maintenance shall be deemed to be items of ordinary maintenance.

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#### 5.4 Maintenance of Soccer Facility.

(a) **Performance of Maintenance.** The City shall perform all maintenance of the Soccer Facility, whether ordinary maintenance or capital maintenance, necessary to maintain and preserve (i) the Soccer Facility playing field as a first class soccer playing field facility for intercollegiate soccer use, and (ii) the other elements of the Soccer Facility in excellent condition and repair, consistent with other collegiate athletic facilities located within the City of Seattle, provided, however, in no event shall the City be required to improve the Soccer Facility beyond its original condition as of the Effective Date. As part of its maintenance obligation hereunder, the City shall strictly comply with the specifications and recommendations set forth in the Interbay Soccer Field Maintenance Standards, which are set forth in Exhibit G attached hereto, all of which shall be deemed items of ordinary maintenance, and shall ensure that the Soccer Facility complies with the performance standards set forth in the Interbay Soccer Field Performance Standards set forth in Exhibit H attached hereto, compliance with which may require performance of either ordinary maintenance or capital maintenance.

(b) **Purchase of Maintenance Equipment.** SPU shall contribute \$36,000 towards the purchase of new maintenance equipment for the Soccer Facilities. SPU, at its sole discretion, may elect to pay the entire \$36,000 to the City on the Effective Date, or alternatively, to make three installment payments to the City of \$12,000 each, the first installment payment being due and payable on the Effective Date and the second and third installment payments being due and payable on the first and second anniversaries of the Effective Date respectively.

(c) **Responsibility for Ordinary Maintenance Costs.** Within thirty (30) days after the Effective Date and thereafter, on or before January 31 of each calendar year during the Term of this Agreement, SPU shall contribute \$15,000 toward the costs and expenses for ordinary maintenance of the Soccer Facility for such calendar year (the "SPU Annual Maintenance Contribution"). The amount of the SPU Annual Maintenance Contribution shall be prorated for any partial calendar year occurring at the beginning or end of the Term of this Agreement. Starting with January 1, 2002, and every two (2) years thereafter, the SPU Annual Maintenance Contribution shall also be adjusted for inflation using the Consumer Price Indices (United States City Average for all Urban Consumers) - All Items (Reference Book 1982 - 1984 = 100) most recently published before the Effective Date and before the date of adjustment by the United States Department of Labor, Bureau of Labor Statistics. The City shall be responsible for the balance of all costs and expenses arising or incurred in connection with ordinary maintenance of the Soccer Facility.

(d) **Responsibility for Capital Maintenance Costs.** Subject to the provisions set forth in Subsection 1.4(c) relating to contributions towards the cost of capital maintenance of the

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Soccer Facility playing field and the cost of capital maintenance costing in excess of \$100,000 for the other portions of the Soccer Facility, the City and SPU shall each pay one-half (1/2) of all costs and expenses arising or incurred in connection with capital maintenance of the Soccer Facility. Notwithstanding the foregoing, for those items of capital maintenance relating to the Soccer Facilities (other than the playing field itself and those items costing in excess of \$100,000) that are completed near the end of the Term of this Agreement, SPU's contribution obligation shall be reduced by the following percentages:

<u>Number of Years Remaining</u>	<u>Percentage Reduction</u>	<u>SPU's Percentage Contribution of Total Cost</u>
5 or more years	0%	50%
4	20%	40%
3	40%	30%
2	60%	20%
1	80%	10%

In the event, by operation of Subsection 1.4(b) or 1.4(c), the Term of this Agreement is extended and prior to such extension SPU paid a reduced amount for items of capital maintenance in accordance with this section, then SPU and the City shall within thirty (30) days after such extension occurs recalculate the amount due from SPU for any such previously-reduced items of capital maintenance using the new Term of the Agreement, and SPU shall pay to the City the amount of any resulting shortfall within sixty (60) days after such extension occurs. The \$100,000 threshold with respect to any portion of the Soccer Facility other than the Soccer Facility playing field shall be adjusted for inflation using the Producer Price Indices -- Maintenance and Repair Construction, Non-residential (June 1986 = 100) most recently published before the Effective Date and before the date of adjustment by the United States Department of Labor, Bureau of Labor Statistics.

(e) **Billing Procedure for Capital Maintenance.** The City shall invoice SPU within ninety (90) days of completion of any items of capital maintenance of the Soccer Facility. The invoice shall itemize all work hours, equipment and materials with cost rates as applied to the repair work. In addition, if the item of capital maintenance relates to the Soccer Facility playing field, the invoice shall state the City's estimate of the predicted useful life of such item of capital maintenance. If the capital maintenance is performed by contract with a third party, a copy of the contractor's itemized statement must be attached. Only actual costs and expenses incurred by the City shall be invoiced. Reimbursement by SPU shall be made within thirty (30) days from receipt of such invoice.

(f) **Decisions Regarding Capital Maintenance.** In the event either party determines that capital maintenance of the Soccer Facilities is required, that party shall notify the other party in writing of its determination. The notice shall identify

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the items of capital maintenance that the party believes are required, the reason why such items of capital maintenance are required and, to the extent readily ascertainable, the estimated cost of such items of capital maintenance. The other party shall have thirty (30) days from receipt of such notice to object in writing to such determination and proposed capital maintenance. If the other party timely objects and the parties thereafter are unable to agree as to the appropriate determination and/or the appropriate capital maintenance, the disagreement shall be resolved in accordance with Article X below. If the other party fails to timely object or, following a timely objection, the disagreement is resolved in favor of proceeding with the capital maintenance, the City shall proceed with the capital maintenance and each party shall be responsible its share of the cost of the capital maintenance in accordance with Subsection 5.4(d) above.

**(g) Emergency Capital Maintenance.** In the event the Soccer Facility requires emergency capital maintenance to avoid immediate harm, damage or injury to persons or property, provided the City, to the extent reasonably feasible, has provided SPU with prior written notice of the need for such emergency capital maintenance, the City may proceed with such emergency capital maintenance without complying with the procedures set forth in Subsection 5.4(e) above and each party shall be responsible for its share of the cost of such emergency capital maintenance in accordance with Subsection 5.4(d) above.

**(h) SPU's Option to Assume Maintenance Obligations.** During the Term of this Agreement, SPU shall have the option, exercisable at any time upon sixty (60) days' advance written notice to the City and subject to the consent of the City, to assume the City's maintenance obligations under this Section 5.4, in which case the City shall be relieved of its maintenance obligations under this Section 5.4 and shall have no obligation to pay for any ordinary maintenance of the Soccer Facility during the period of SPU's assumption of such maintenance obligations, but shall continue to be responsible for payment of one-half (1/2) of all costs and expenses for capital maintenance of the Soccer Facility. During the period of SPU's assumption of the City's maintenance obligations, the City shall continue to be responsible for all scheduling as provided herein and shall continue to be entitled to collect fees and revenues from the users of the Soccer Facility. However, to the extent the City prior to such assumption typically applied such fees and revenues (or portions thereof) toward payment of ordinary maintenance of the Soccer Facility, the City shall remit such fees and revenues (or portions thereof) to SPU. SPU may at any time after such assumption, upon two (2) years' advance notice, transfer back to the City the obligation to perform all maintenance obligations under this Section 5.4, in which case the obligation for maintenance and maintenance costs related to the Soccer Facility and the right to revenues shall be as provided herein.

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(i) **Scheduling Maintenance.** The City shall use reasonable efforts to schedule all maintenance of the Soccer Facility during times that will not interfere with SPU's use of the Soccer Facility.

(j) **Annual Maintenance Inspection.** Each year during the term of this Agreement, the City and SPU shall jointly select and retain a qualified inspector to conduct an annual inspection of the Soccer Facility. If the City and SPU are unable to agree upon an inspector, the inspector will be appointed by the Advisory Board, as hereinafter defined. The cost of the inspector's services shall be borne equally by the City and SPU. The inspector shall during the first two weeks of June inspect the Soccer Facility for the purposes of determining (a) whether the City (or SPU if SPU has assumed the maintenance obligations for the Soccer Facility) has complied with its maintenance obligations under this Agreement with respect to the Soccer Facility for the previous twelve (12) months, (b) what items of capital maintenance will be required in the following twelve (12) months to ensure the continuing compliance of the City (or SPU if SPU has assumed the maintenance obligations for the Soccer Facility) with its maintenance obligations under this Agreement with respect to the Soccer Facility, and (c) whether the Soccer Facility can sustain its then current levels of use. By June 30, the inspector shall provide the City and SPU with a written inspection report setting forth his or her findings.

**5.5 Maintenance of Softball Field and Other Portions of Interbay Property.**

(a) **Performance of Maintenance.** The City shall perform all maintenance of the Softball Field, whether ordinary maintenance or capital maintenance, necessary to maintain and preserve the Softball Field in the same condition and state of repair that the Softball Field shall be in after SPU shall have completed its improvements, if any, to the Softball Field pursuant to the Development Agreement.

(b) **Responsibility for Maintenance Costs.** The City shall be solely responsible for all costs and expenses arising or incurred in connection with ordinary maintenance and capital maintenance of the Softball Field or any other portion of the Interbay Property (other than the Soccer Facility).

(c) **Scheduling of Maintenance.** The City shall use reasonable efforts to schedule all maintenance of the Softball Field during times that will not interfere with SPU's use of the Softball Field.

**5.6 Limitation on Maintenance Obligations.** Notwithstanding anything to the contrary herein, each party's obligations hereunder to undertake and/or contribute to the cost of maintenance of the Facilities are only intended to ensure the continued use and availability of the Facilities as designed and constructed in accordance with the Development Agreement and maintained and

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repaired (or reconstructed in the event of damage or destruction) in accordance with standards set forth in this Agreement. No provision in this Agreement shall be deemed to require either party to undertake or contribute to the cost of any alterations, betterments, or upgrades of the Facilities (e.g., constructing additional restrooms, installing a different state-of-the-art playing surface for the Soccer Facility, or reconfiguring the Softball Field).

#### ARTICLE VI

##### DAMAGE OR DESTRUCTION

**6.1 Definition of Damage or Destruction.** As used herein, "damage or destruction" means any damage or destruction to the Facilities caused by fire, earthquake, earth movement, flood, abnormally adverse weather, vandalism, acts of god or any similar casualty events. Damage or destruction, however, does not include damage to the Facilities caused by or arising out of ordinary wear and tear, the repair of which shall be governed by Article V above.

**6.2 Repair of Soccer Facility.** Unless the parties mutually agree in writing otherwise, the City shall repair any damage or destruction of the Soccer Facility promptly (and in no event later than one (1) year after the date on which the damage or destruction occurred). Except as otherwise provided in the immediately-following sentences, the City and SPU shall be each be responsible for one-half (1/2) of the reasonable cost of such repair and Article VII below shall not affect the allocation of responsibility for cost of the repair. To the extent the property insurance required to be provided by each party under Section 6.5 does not cover the reasonable cost of repairing the damage and destruction and the damage or destruction was attributable either to a party's breach of this Agreement or to the negligent acts or omissions of the City or SPU, then the City shall repair the damage or destruction and the responsibility for the reasonable cost of the repair, to the extent not covered by insurance proceeds, shall be governed by Article VII below. To the extent the property insurance required to be provided by each party under Section 6.5 does not cover the reasonable cost of repairing the damage and destruction and the damage or destruction was not attributable either to a party's breach of this Agreement or to the negligent acts or omissions of the City or SPU, then the City shall repair the damage or destruction and such repair shall be deemed to be a required item of capital maintenance for the Soccer Facility and shall be governed by the provisions set forth in this Agreement relating to capital maintenance, including without limitation Subsections 1.4(c), 1.4(d), 5.4(a), 5.4(d), and 5.4(e).

**6.3 Repair of Softball Field.** Unless the parties mutually agree in writing otherwise, the City shall repair any damage or destruction of the Softball Field promptly (and in no event later than one (1) year after the date on which the damage or destruction

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occurred). Except as otherwise provided in the immediately-following sentence, the City shall be solely responsible for the entire cost of such repair and Article VII below shall not affect the allocation of responsibility for cost of the repair. To the extent the property insurance required to be maintained by the City under Section 6.5 does not cover the reasonable cost of repairing the damage and destruction and the damage or destruction was caused by or arose out of (a) either party's breach of this Agreement, or (b) the negligent acts or omissions of either the City or SPU, the responsibility for the reasonable cost of the repair, to the extent not covered by insurance proceeds, shall be governed by Article VII below.

**6.4 Damage or Destruction Near the End of the Term of this Agreement.** Notwithstanding anything to the contrary herein, if (a) the damage or destruction occurs in the last one (1) years of the Term of this Agreement, (b) the insurance proceeds from the insurance required to be maintained pursuant to Section 6.5 below are either insufficient or unavailable to cover the cost to repair the damage or destruction, and (c) the damage or destruction is not attributable either to the City's breach of this Agreement, or to the negligent acts or omissions of the City, then the City shall have no obligation to repair the damage or destruction.

**6.5 Maintenance of Property Insurance.** Throughout the Term of this Agreement, the City and SPU each agree to maintain property insurance as follows:

(a) **Form of Policy.** SPU and the City shall each procure and maintain an all-risk insurance policy covering the perils of fire/extended coverage/vandalism, malicious mischief, collapse, casualty and such other hazards as may be mutually agreed by the parties in an amount equal to fifty percent (50%) of the full replacement cost of the Soccer Facility and naming the other party as a loss payee. Each party shall be responsible for any coinsurance penalties and deductibles associated with its policy. The policies shall operate together to provide coverage for one hundred percent (100%) of the full replacement cost of the Soccer Facility.

(b) **Proof of Insurance.** Each party shall provide to the other a copy of its insurance policy providing the above required coverage within thirty (30) days after the Effective Date and thereafter each year on the anniversary of the Effective Date during the Term of this Agreement a certificate of insurance confirming that its policy remains in full force and effect and has not been modified except as indicated on such certificate.

(c) **Right to Self-Insure.** Upon written notice to the other party, each party may elect to self-insure for the above coverage, provided such notice shall contain an affirmative commitment by the party electing to self-insure that (1) it's self-insurance program will provide identical coverage to that afforded by the form of policy specified in Subsection 6.5(a) above, and (2)

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it will maintain adequate financial reserves to be able to satisfy its insurance obligations hereunder. The determination of whether identical coverage is being afforded by a self-insurance program shall be determined as follows:

(i) If one party elects to self-insure and the other party maintains the property insurance required under Subsection 6.5(a) above, the self-insuring party's self-insurance program must provide the same coverage in every case and in the same amounts that the other party's insurance policy provides; or

(ii) If both parties elect to self-insure, the parties shall agree on the form of property insurance policy which shall meet at a minimum the requirements set forth in Subsection 6.5(a) above and which shall serve as the basis for determining the scope of coverage provided by their self-insurance programs.

In lieu of providing the insurance policies and certificates of insurance, as required by Subsection 6.5(b) above, a party who elects to self-insure shall provide to the other party letter(s) reconfirming the above commitments.

#### ARTICLE VII

##### ALLOCATION OF LIABILITY AND INDEMNITY

7.1 **Indemnities from SPU.** SPU shall indemnify, defend and hold harmless the City and the City's officials and employees (collectively, the "City Indemnified Parties") from and against the claims, liability, damages, losses, causes of actions, costs and expenses (including reasonable attorneys' fees, expert witness fees and court costs) (hereinafter, singularly and collectively referred to as "Indemnity Claims"), arising out of or resulting from SPU's use of the Facilities or arising out of or resulting from SPU's breach of this Agreement. Notwithstanding the foregoing, SPU shall have no obligation to indemnify, defend and hold harmless the City Indemnified Parties with respect to Indemnity Claims to the extent they arise out of or result from the negligence or willful misconduct of any of the City Indemnified Parties or the City's breach of this Agreement.

7.2 **Indemnities from the City.** The City shall indemnify, defend and hold harmless SPU and SPU's officers, directors, and employees (collectively, the "SPU Indemnified Parties") from and against Indemnity Claims arising out of or resulting from the use or operation of the Facilities by the City or by any third parties authorized by the City to use the Facilities or arising out of or resulting from the City's breach of this Agreement. Notwithstanding the foregoing, the City shall have no obligation to indemnify, defend and hold harmless the SPU Indemnified Parties with respect to Indemnity Claims to the extent they arise out of or

result from the negligence or willful misconduct of any of the SPU Indemnified Parties or SPU's breach of this Agreement.

**7.3 Limited Waiver of Industrial Insurance Immunity.** For the sole purpose of effecting the indemnification obligations under this Agreement and not for the benefit of the employees of the City or SPU or any other third parties, the City and SPU each specifically and expressly waive any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Further the indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of wages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.

**7.4 Limitation on Indemnities.** Notwithstanding anything to the contrary herein, each party shall be responsible for its own liability arising from the acts or omissions of its employees, students or agents occurring in the course of performing this Agreement, and neither party is agreeing under this Agreement to assume any liability of the other, or to defend, indemnify, or hold harmless the other party, against any claims against the other party, or liability of the other party, arising from the other party's performance of this Agreement. Notwithstanding anything to the contrary herein, in no event shall either party be obligated hereunder to indemnify the other party against the sole negligence of the other party or the other party's officials, officers, directors, employees, agents, consultants or contractors.

**7.5 Maintenance of Liability Insurance.** Throughout the Term of this Agreement, the City and SPU each agree to maintain liability insurance as follows:

(a) **Form of Policy.** SPU and the City shall each procure and maintain a commercial general liability policy on an occurrence form for bodily injury and property damage, including Personal Injury and Blanket Contractual, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate and naming the other party as an additional insured, which shall provide coverage with respect to their respective use of the Facilities.

(b) **Proof of Insurance.** Each party shall provide to the other a copy of its insurance policy providing the above coverage within thirty (30) days after the Effective Date and thereafter each year on the anniversary of the Effective Date during the Term of this Agreement a certificate of insurance confirming that its policy remains in full force and effect and has not been modified except as indicated on such certificate.

(c) **Right to Self-Insure.** Upon written notice to the other party, each party may elect to self-insure for the above coverage, provided such notice shall contain an affirmative commitment by the party electing to self-insure that (1) its self-insurance program will provide identical coverage to that afforded

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by the form of policy specified in Subsection 7.5(a) above, and (2) it will maintain adequate financial reserves to be able to satisfy its insurance obligations hereunder. The determination of whether identical coverage is being afforded by a self-insurance program shall be determined as follows:

(i) If one party elects to self-insure and the other party maintains the property insurance required under Subsection 7.5(a) above, the self-insuring party's self-insurance program must provide the same coverage in every case and in the same amounts that the other party's insurance policy provides; or

(ii) If both parties elect to self-insure, the parties shall agree on the form of liability insurance policy, which shall meet at a minimum the requirements set forth in Subsection 7.5(a) above and which shall serve as the basis for determining the scope of coverage provided by their self-insurance programs.

In lieu of providing a certificate of insurance as required by Subsection 7.5(b) above, a party who elects to self-insure shall provide to the other party a letter reconfirming the above commitments.

#### ARTICLE VIII

##### REPRESENTATIONS AND WARRANTIES

**8.1 Representation and Warranties of the City.** The City hereby represents and warrants to SPU as of the date hereof as follows:

(a) The City possesses the authority to enter into this Agreement, and this Agreement is valid, binding and enforceable against the City in accordance with its terms.

(b) The person executing this Agreement is authorized to execute and deliver this Agreement on behalf of the City.

(c) Contingent only upon the City's obtaining the School District's consent as provided in Section 3.1 of the Development Agreement, neither the execution and delivery by the City of this Agreement nor the consummation of the transactions contemplated hereby or thereby, is or will be in conflict with, a violation of, a breach of or a default under any laws, ordinances, or regulations, under any charter or other organizational documents, or under any agreements, documents or instruments to which the City is a party and by which it is bound.

(d) There is no litigation pending and served on the City or, to the City's best knowledge, threatened which challenges the authority of the City to execute, deliver or perform this Agreement.

(e) Contingent only upon the City's obtaining the School District's consent as provided in Section 3.1 of the Development Agreement, the City is not aware of any default under the Ground Lease.

(f) The City and/or the School District hold fee simple title to all of the Interbay Property and use and control of the Parking Tract has been dedicated to the City; the City has disclosed to SPU all easements, covenants, restrictions, encumbrances and defects on or to the title of the Interbay Property and the Parking Tract (the "Title Encumbrances"); and the Title Encumbrances in no way will affect or impair SPU's ability to use the Facilities in accordance with the terms of this Agreement.

**8.2 Representations and Warranties of SPU.** SPU hereby represents and warrants to the City as follows:

(a) SPU is a duly organized nonprofit corporation created under the laws of the State of Washington.

(b) SPU possesses the authority to enter into this Agreement, and this Agreement is valid, binding and enforceable against SPU in accordance with its terms.

(c) The person executing this Agreement is authorized to execute and deliver this Agreement on behalf of SPU.

(d) Neither the execution and delivery by SPU of this Agreement nor the consummation of the transactions contemplated hereby or thereby, is or will be in conflict with, a violation of, a breach of or a default under any laws, ordinances, or regulations, under any charter or other organizational documents, or under any agreements, documents or instruments to which SPU is a party and by which it is bound.

(e) There is no litigation pending and served on SPU or, to SPU's best knowledge, threatened which challenges the authority of SPU to execute, deliver or perform this Agreement.

#### ARTICLE IX

##### DEFAULTS AND REMEDIES

**9.1 SPU Defaults.** Each of the following events shall constitute a SPU Default:

(a) SPU shall fail to timely observe or perform any covenant, agreement, obligation, term or condition required to be observed or performed by SPU under this Agreement; or

(b) Any representation or warranty made by SPU herein shall be inaccurate or misleading in any material respect on the date made or deemed made.

**9.2 Cure Periods.** SPU shall have a cure period of 30 days after SPU receives written notice of a SPU Default; provided that if the SPU Default is of such a nature that the cure cannot with diligence be completed within such time period and SPU has commenced meaningful steps to cure immediately after receiving the default notice, SPU shall have such additional period of time, as is reasonably necessary to diligently effect a cure.

**9.3 City Remedies.**

(a) Upon the occurrence of a SPU Default and expiration, without full cure, of any cure period available respecting such SPU Default, the City may exercise any one or more of the following remedies as the City in its sole discretion shall determine:

(i) Bring an action for monetary damages;

(ii) Without waiving any of its rights to legal relief, continue in force and effect any and all of its rights under this Agreement and require SPU to fully perform its obligations under this Agreement by bringing an action for specific performance, the parties acknowledging that an action for monetary damages may provide inadequate relief for the City; or

(iii) Exercise any other rights and remedies available to the City under this Agreement or available to the City at law or equity provided, provided, however, in no event shall the City have the right to terminate or rescind this Agreement as a result of a SPU Default.

(b) Each right and remedy of the City hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein, and the exercise or beginning of the exercise by the City of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by the City of any or all other such rights or remedies.

**9.4 City Defaults.** Each of the following events shall constitute a City Default:

(a) The City shall fail to observe or perform any covenant, agreement, term or condition required to be observed or performed by the City under this Agreement;

(b) Any representation or warranty made by the City herein shall be inaccurate or misleading in any material respect on the date made;

(c) The City shall institute condemnation proceedings against SPU to acquire any or all of SPU's rights under this Agreement; or

(d) An event of default by the City occurs under the Ground Lease.

**9.5 Cure Periods.** The City shall have a cure period of thirty (30) days after the City receives written notice of a City Default; provided that if the City Default is of such a nature that the cure cannot with diligence be completed within such time period and the City has commenced meaningful steps to cure immediately after receiving the default notice, the City shall have such additional period of time as is reasonably necessary to diligently effect cure.

**9.6 SPU Remedies.**

(a) Upon the occurrence of a City Default and expiration, without full cure, of any cure period available respecting such the City Default, SPU may exercise any one or more of the following remedies as SPU in its sole discretion shall determine:

(i) Bring an action for monetary damages;

(ii) Without waiving any of its rights to legal relief, continue in force and effect any and all of its rights under this Agreement and require the City to fully perform its obligations under this Agreement by bringing an action for specific performance, the parties acknowledging that an action for monetary damages may provide inadequate relief for SPU;

(iii) Without waiving any of its rights to legal relief or being deemed to exercise its option under Subsection 5.4(f), perform the City's maintenance obligations with respect to the Soccer Facility as follows:

(A) If at any time a City Default relating to the maintenance of the Soccer Facility occurs and the City does not cure it within the cure period, if any, available therefor, then SPU, without further notice and without waiving or releasing the City from any obligations, shall have the right, but shall not be obligated to, pay such amount and/or perform such act as may then be required.

(B) If SPU exercises any right to perform any maintenance obligations of the City relating to the Soccer Facility, in the exercise of such right it may, but is not obligated to, among other things: (1) perform or attempt to perform, or cause to be performed, such maintenance, (2) spend such sums as SPU deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors as may be required for the purpose of performing the maintenance, (3) execute all applications, certificates and another documents in the name of the City as may be required for performing the maintenance, and (4) take any and all other actions which it may in its sole discretion consider necessary to perform the maintenance.

(C) The City shall reimburse SPU on demand all sums SPU pays and all costs and expenses it incurs in connection

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with the performance of any act authorized by this Subsection 9.6(a)(iii), together with interest accruing thereon at a rate of twelve percent (12.00%) per annum.

(D) SPU shall have and is hereby granted a perpetual, non-rescindable right of entry by the City and its agents, contractors, subcontractors, vendors, employees and representatives onto the Soccer Facility, and any construction and staging areas, exercisable at any time or times without notice, for the purpose of carrying out SPU's rights of performance under this Subsection 9.6(a)(iii).

(iv) Exercise any other rights and remedies available to SPU under this Agreement or available to SPU at law or equity provided, provided, however, in no event shall SPU have the right to terminate or rescind this Agreement as a result of a City Default.

(b) Each right and remedy of SPU hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein, and the exercise or beginning of the exercise by SPU of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by SPU of any or all other such rights or remedies.

## ARTICLE X

### DISPUTE RESOLUTION

**10.1 Policy.** The parties hope there will be no disputes arising out of this Agreement. To that end, each commits to cooperate in good faith and to deal fairly in performing its duties under this Agreement in order to accomplish their mutual objectives and avoid disputes. But, if a claim, dispute or disagreement relating to the interpretation, application or enforcement of this Agreement or either party's performance under this Agreement (each, a "Contract Dispute") arises, the parties agree to resolve all such Contract Disputes by, first, attempting to reach a fair and prompt negotiated resolution, and, second, if such negotiations are unsuccessful, to resolve such Contract Disputes by binding arbitration as provided herein. The parties confirm that by agreeing to this alternate dispute resolution process for Contract Disputes, they intend to give up their right to have any Contract Dispute decided in court by a judge or jury. This Article X shall only govern resolution of Contract Disputes and shall not govern resolution of any other disputes that may arise between the parties.

**10.2 Negotiated Resolution.** In the event that either party believes that a Contract Dispute exists, the other party shall first notify the other party in writing of the existence of such Contract Dispute (a "Notice of Contract Dispute") before pursuing any other form of dispute resolution. Upon delivery of a Notice of

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Contract Dispute, the parties shall use good faith efforts to negotiate a reasonable resolution of the Contract Dispute within fourteen (14) days following delivery of the Notice of Contract Dispute.

**10.3 Binding Arbitration.** If a Contract Dispute is not resolved within fourteen (14) days following delivery of a Notice of Contract Dispute, the Contract Dispute shall be decided by arbitration in Seattle commenced by either party in accordance with RCW 7.04.060 and thereafter conducted in accordance with the procedures set forth herein; provided that the total award by a single arbitrator (as opposed to a majority of the arbitrators) shall not exceed \$1,000,000, including interest. If either party demands a total award greater than \$1,000,000 there shall be three (3) neutral arbitrators. If the parties cannot agree on the identity of the arbitrator(s) within ten (10) days of the arbitration demand, the arbitrator(s) shall be selected in accordance with the below AAA Rules. Each arbitrator shall be an attorney with at least fifteen (15) years' experience in commercial law and shall reside in the Seattle metropolitan area. Whether a claim is covered by this Agreement shall be determined by the arbitrator(s). All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder.

**10.4 Arbitration Procedures.** The arbitration shall be conducted in accordance with the American Arbitration Association (AAA) Commercial Rules with Expedited Procedures in effect on the date of the Notice of Contract Dispute, as modified by this Agreement. There shall be no discovery or dispositive motion practice except: the arbitrator(s) shall authorize such discovery as may be shown to be necessary to ensure a fair hearing, and no such discovery shall extend the time limits contained herein. The arbitrator(s) shall not be bound by the rules of evidence or of civil procedure, but may consider such information as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrator(s) may determine to be appropriate. The parties intend to limit live testimony and cross-examination to the extent necessary to ensure a fair hearing on material issues.

**10.5 Arbitration Hearing and Decision.** The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within thirty (30) days of the initial demand for arbitration and to conclude the hearing within two (2) days; and the arbitrator(s)'s written decision shall be made not later than fifteen (15) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator(s) may for good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. Except as otherwise expressly provided in this Agreement, in making the decision and award, the arbitrator(s)

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shall apply applicable substantive law, shall construe this Agreement and shall not alter or amend this Agreement. Absent fraud, collusion or willful misconduct by an arbitrator, the award shall be final and binding, and judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) shall not have the power to award punitive or exemplary damages. The decision and award of the arbitrators need not be unanimous; rather, the decision and award of two arbitrators shall be final.

**10.6 Arbitration Costs.** The City and SPU shall each pay one-half (1/2) of the fees of the arbitrator(s) appointed pursuant to the provisions hereof.

**10.7 Attorneys' Fees.** In the event of any dispute, legal proceeding or arbitration between the parties hereto arising out of or relating to this Agreement or its breach, each party shall be responsible for its own fees, costs and expenses, including but not limited to attorneys' and expert witness fees, incurred in connection with such dispute, legal proceeding or arbitration.

#### ARTICLE XI

#### TERMINATION

**11.1 Duration of Agreement.** SPU's rights under this Agreement shall terminate at the Outside Termination Date, unless this Agreement is sooner terminated as follows:

(a) The parties mutually agree in writing to terminate this Agreement; or

(b) SPU elects to terminate this Agreement, which termination shall take effect one (1) year after SPU delivers to the City written notice of its election to terminate. During the one (1) year period following SPU's delivery of such notice of termination, SPU shall have the right to rescind such election to terminate upon thirty (30) days' advance written notice to the City and in the event of such rescission, this Agreement shall not terminate and shall remain in full force and effect.

**11.2 Survival of Provisions.** Notwithstanding anything to the contrary herein, the provisions of Sections 7.1, 7.2, 7.3, and 7.4 and Article X shall survive the termination of this Agreement, but the indemnities set forth in Article VII shall apply only to claims arising with respect to events occurring or circumstances existing prior to the termination of this Agreement.

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ARTICLE XII

MISCELLANEOUS

12.1 Inflation Indices. In the event any inflation index referenced in this agreement ceases to be published, then there shall be substituted a comparable index.

12.2 Notices. Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission (i) where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), (ii) where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and (iii) where the facsimile transmission is immediately followed by service of the original of the subject item by personal delivery, overnight courier or first-class mail, or (d) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to SPU: Seattle Pacific University  
3307 Third Ave. W.  
Seattle, WA 98119  
Attention: Donald W. Mortenson,  
Vice President for Business & Finance  
Fax: 206-281-2388

With a copy to: Foster Pepper & Shefelman  
1111 3rd Avenue - Suite 3400  
Seattle, Washington 98101  
Attention: Thomas M. Walsh  
Fax: 206-447-9700

If to the City: Seattle Department of Parks and Recreation  
City of Seattle  
Parks and Recreation Admin. Bldg.  
100 Dexter Ave. N.  
Seattle, WA 98109  
Attention: Superintendent  
Fax: 206-233-7023

With a copy to: Seattle City Attorney  
Municipal Building, 10th Floor  
600 Fourth Ave.  
Seattle, WA 98104  
Fax: 206-684-8284

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Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address in Washington or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

**12.3 Relationship of Parties.** The relationship of SPU to the City shall be one of an independent contractor, not an agent, partner, joint venturer or employee.

**12.4 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

**12.5 Waiver.** No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No waiver by any party of any right or remedy under this Agreement or the Project Agreements shall be deemed to be a waiver of any other subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

**12.6 No Brokers.** Each party represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finders fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

**12.7 Governing Law.** This Agreement shall be governed and construed in accordance with the internal laws of the State of Washington applicable to contracts executed and to be performed within such state.

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**12.8 Construction and Interpretation of Agreement.**

(a) The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(b) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

**12.9 Counterparts.** This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

**12.10 Recordation of Agreement.** At any time after the Effective Date, at the request of SPU, this Agreement or a memorandum of this Agreement in form and substance reasonably satisfactory to SPU shall be prepared, executed and/or recorded by the parties for the purpose of providing notice to third parties of the existence of this Agreement and the obligations of the parties contained herein.

**12.11 Entire Agreement; Amendment.** Except for the Development Agreement and the Construction License as defined therein, both of which shall terminate and be superseded by this Agreement as of the Effective Date, this Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered in this Agreement. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each party hereto. No verbal agreement or implied covenant shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

CITY:

THE CITY OF SEATTLE

By: SEATTLE DEPARTMENT OF PARKS AND RECREATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form and procedure:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SPU:

**SEATTLE PACIFIC UNIVERSITY, a  
Washington nonprofit corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of SEATTLE PARKS DEPARTMENT, acting on behalf of and under the authority of THE CITY OF SEATTLE, a municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state  
of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of SEATTLE PACIFIC UNIVERSITY, a non-profit corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state  
of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

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Seattle  
Department of  
Parks and Recreation



Kenneth R. Bounds, Acting Superintendent  
Norman B. Rice, Mayor  
September 13, 1996

The City Council  
City of Seattle

Via: Mayor Norman B. Rice

Attention: Tom Tierney, Director, Office of Management and Planning

Subject: AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute an Agreement to Develop and a Use and Maintenance Agreement with Seattle Pacific University for a soccer facility and related sportsfield improvements at Interbay Playfield.

Honorable Members:

Attached for your review is legislation authorizing the Department of Parks and Recreation to execute an agreement with Seattle Pacific University (SPU) to redevelop the existing Interbay Playfield to accommodate a 900 seat stadium for soccer.

SPU has identified a need for a soccer stadium for practice and games associated with their nationally recognized soccer program. They examined a number of sites within the City and in the vicinity of their campus. They identified Interbay Playfield as their preferred location. They approached the Department through the Department's citizen Sports Advisory Council with a proposal to redevelop the playfield site. The Council reviewed the alternatives and recommended the Department pursue the opportunity to jointly develop and use the resulting stadium at Interbay.

This recommendation was timely in that it coincided with our staff's review and update of sportsfield needs as identified in the Department's 1993 COMPLAN. A Sportsfield Review Committee comprised of our staff and representatives of the Seattle School District and the Sports Advisory Council concluded that medium sized sports complexes of the type proposed by SPU were needed, disbursed throughout the City. The Interbay facility was identified for upgrading in the 1993 COMPLAN and the SPU proposal fit well with the Review Committee's updated plans for the City's sports field system.

The original proposal for Interbay involved a considerably greater seating capacity and greater development costs to the City than does the current proposal. The original proposal was presented to the community and to the Board of Park Commissioners with negative results. The Mayor authorized further negotiations with the conditions that there be clear public benefits, that the communities' concerns be addressed and that the costs to the City be reduced.

The Department and SPU worked closely to revise (downsize) the development plan and to revise the terms of the agreement. The revised proposal was again presented to the community and was the subject of a public hearing conducted by the Park Board. When it became clear that there were still community

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September 13, 1996  
Page 2

concerns, the Department and SPU again worked closely to further revise the development plan and to develop a transportation management plan. With these commitments to mitigation, the Park Board unanimously endorsed the proposal.

The following are the key elements of the proposal:

**Development Plan:** The plan features a 900 seat soccer stadium. The field will have a SportsGrass surface and be regulation size for international competition. The seating structures will include restrooms and locker rooms as well as a food concession. In addition, the west side of the complex will feature a little league field, a T-ball field, a softball field and a soccer field that will overlay the outfields for little league and softball. There will be a separate restroom to serve the softball, little league and T-ball facilities. In addition, there will be off street parking for 65 to 70 cars on the southwest portion of the playfield and 20 to 35 cars within the currently unused Barrett Street streetend. The exact numbers of off street spaces are being finalized with the Department of Construction and Land Use and the Engineering Department. At least 90 off-street spaces will be provided.

**Traffic and Parking Management Plan:** The main features of the plan are a commitment by SPU and the City to limit scheduling such that there is no increase in existing traffic and parking demand during the peak weekday hours of 3:00 pm to 6:30 pm. For events outside of those hours that are expected to draw over 300 spectators, there will be traffic management staff hired to direct traffic and parking and for SPU events there will be a student shuttle from campus.

**The Agreement:** SPU will construct the new soccer facility at SPU's expense (up to \$3.1 million) and turn the facility over to the City upon its completion. For other than the SportsGrass surface portion of the project, SPU will meet City goals for WMBE participation. This is based on the need to sole source the SportsGrass field surface. Labor shall be paid prevailing wage. Provisions exist for abandoning the project should hazardous materials be encountered, but predesign testing has indicated very little risk.

The City will be responsible for ongoing scheduling and maintenance. Very specific maintenance standards for the soccer stadium field are part of the agreement. SPU will help purchase some special equipment necessary to maintain the SportsGrass. SPU will contribute \$15,000 per year to the maintenance, adjusted in the future for inflation. SPU will also participate financially in major maintenance of the stadium. The City will retain revenues from user fees.

SPU will be assured a certain number of hours of use of the soccer facility, adjustable on a shared basis based upon the total usage that the field proves to withstand. SPU will be given priority scheduling but not exclusive use of the soccer stadium from mid-August to mid-December. SPU may also be granted scheduling for spring training in April and May. The soccer stadium and other fields will be available for public use, to be scheduled by the Department, at all other times.

**Benefits to the City:** The Department's objectives for benefits have been oriented primarily to youth sports. The high quality SportsGrass turf field surface stadium fills a void in the City's, and to some extent, the region's sports facility inventory. This field will be especially attractive to the higher skill level teams such as those from the youth soccer organization. The new little league field should be especially beneficial to kids from the Magnolia and Queen Anne communities and the combination of two soccer fields should also greatly benefit youth soccer in that area. Letters of endorsement have been received from both the little league and soccer organizations.

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September 13, 1996  
Page 3

**Financial Impacts to the City:** Financial impacts during the development phase should be minimal. SPU will be paying for the City's staff time to monitor and inspect construction and development activities. If a privately owned property providing additional off street parking could be located, then the Department might suggest pursuing such acquisition through trade or purchase. There will be some impacts related to maintenance. There is extra time involved in maintaining the SportsGrass surfaces. The Department has estimated these impacts over and above current maintenance costs at roughly \$50,000 per year less SPU's contribution and use fees generated by the new facility.

A portion of the site is owned by the Seattle School District under a 99 year lease to the Department (41 years remaining). The Department is continuing to work with the District on issues related to the lease. These issues must be resolved before the agreement can be fully executed. The stadium should benefit high school soccer scheduling, particularly Ballard High School.

The attached legislation includes an ordinance authorizing the agreement including the development plan, the traffic management plan, and acknowledging that a portion of the stadium seating is contingent upon a street use permit for the West Barrett Street streetend and the associated park thus allowing that area to be counted as off street parking.

The SEPA process associated with the Development Plan is underway. If you or your staff have any questions concerning the proposed agreement or development plan, please contact Fritz Hedges at 684 8011. We look forward to presenting this example of public-private partnership to you and working with you on the review.

Sincerely,



Ken Bounds  
Acting Superintendent

cc: Phillip Eaton, President, SPU

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**City of Seattle**

**TITLE-ONLY PUBLICATION**

The full text of the following ordinances, passed by the City Council, on September 30, 1996, and published here by title only, will be mailed, at no cost, upon request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

**ORDINANCE NO. 118201**

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute an Agreement to Develop, Use and Maintenance Agreement with Seattle Pacific University for a soccer facility and related waterfront improvements at Interbay Playfield.

**ORDINANCE NO. 118202**

AN ORDINANCE relating to City-owned property at 2203 Airport Way South, creating a Police Support Facility Subfund within the General Fund for deposit of revenues from and payment of expenses for 2203 Airport Way South; authorizing the execution of contract and leases; directing reimbursement to the Administrative Services Operating Fund; calling for presentation of planning and status reports; and making an appropriation from the subfund for purposes of managing the property, all by a three-fourths vote of the City Council.

**ORDINANCE NO. 118203**

AN ORDINANCE relating to Seattle Water; accepting a Leasehold Agreement entered into on August 1, 1996, with James H. and Kathryn L. Mitchell.

**ORDINANCE NO. 118205**

AN ORDINANCE relating to the Water Department; authorizing conveyance of certain real property in Ferry County to the United States Forest Service to correct an oversight in the Cedar River Watershed land exchange.

**ORDINANCE NO. 118206**

AN ORDINANCE relating to the Department of Housing and Human Services; authorizing an agreement with the United States Department of Housing and Urban Development for additional HOME Program funds; appropriating the additional HOME Program funds; modifying the allocation plan for the 1996 HOME Program; authorizing amendment of the 1991 Consolidated Plan; and ratifying and confirming prior acts.

Publication ordered by JUDITH PIP PIN, City Clerk

Date of official publication in Daily Journal of Commerce, Seattle, October 16, 1996. 10/16/96(73248)

**STATE OF WASHINGTON - KING COUNTY**

—SS.

\_\_\_\_\_, City Clerk

No. \_\_\_\_\_ ORD TITLE ON \_\_\_\_\_

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTUT: 118291-93, 95, 96

was published on

10/16/96

The amount of the fee charged for the foregoing publication is the sum of \$ \_\_\_\_\_, which amount has been paid in full.

Subscribed and sworn to before me on

10/16/96

Notary Public for the State of Washington, residing in Seattle

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