

# AGENDA SHEET FOR PARK BOARD MEETING OF: May 11, 2006

Submitting Division  
Administration

Contact Person  
Mike Stone

Phone No.  
625-6453



## COMMITTEE

- X Riverfront
- o Golf
- o Recreation
- o Land
- o Urban Forestry
- o North Bank Ad-Hoc
- o Finance

CLERK'S FILE  
RENEWS  
CROSS REF  
ENG  
BID  
REQUISITION

OPR 2003 - 385

## AGENDA WORDING:

Amendment to May 2003 Ground Lease Agreement between Mobius Spokane and the Spokane Parks and Recreation Department.

## BACKGROUND:

(Attach additional  
sheet if necessary)

The Amendment approves the revised Business Plan as submitted and includes deadlines and recommendations guiding the relationship between the parties as approved by the Park Board on May 11, 2006.

**RECOMMENDATION:** Approve Amendment

**Fiscal Impact:**  
None

**Budget Account:**

**ATTACHMENTS:** Include in Packets:  
On file for Review in Office of City Clerk:

## SIGNATURES:

Requestor

*Judy M. Moss*  
Parks Accounting

*Pat Dalton*  
Legal Department

*Michael J. Stone*  
Director of Parks and Recreation

## DISTRIBUTION:

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Mobius, Mary Tyrie/  
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Taxes and Licenses, Wilma  
Beddow /  
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Parks, Mike Stone/  
[mstone@spokanecity.org](mailto:mstone@spokanecity.org)

## PARK BOARD ACTION:

APPROVED BY  
SPOKANE PARK BOARD:

*May 11, 2006*  
*Thomas H. Smith*  
PARK BOARD

AMENDMENT to  
GROUND LEASE AGREEMENT

between

The City of Spokane, acting by and through the Spokane Parks and Recreation  
Department

and

Mobius

AMENDMENT to the  
GROUND LEASE AGREEMENT

between

The City of Spokane, acting by and through the Spokane Parks and Recreation  
Department

and

Mobius Spokane

This AMENDMENT to the Ground Lease Agreement ("Amendment") is made and entered into this 11th day of May, 2006, by and between THE CITY OF SPOKANE, a municipal corporation of the State of Washington, acting through its Parks and Recreation Department, and MOBIUS SPOKANE, a Washington non-profit corporation previously known as the Inland Northwest Science and Technology Center.

RECITALS

WHEREAS, the Spokane Parks and Recreation Department ("Department") and Mobius Spokane ("Mobius") wish to amend the Ground Lease Agreement ("Lease") entered into between the parties on or about June 17, 2003; and

WHEREAS, the Department adopted a resolution at its regularly scheduled meeting of the Parks Board Members on May 11, 2006, which resolution approves the Revised Business Plan as submitted to the Parks Board and includes deadlines and recommendations guiding the relationship between the Parties.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained in the Lease and the Amendment, the Parties agree as follows:

AGREEMENT

This Amendment shall amend the Lease as stated herein. Terms and conditions not amended herein shall remain in full force and effect.

1. DEFINITIONS.

1.9 Effective Date. Section 1.9 in the Lease is stricken and replaced with the following: "Effective Date" means the date that Mobius takes possession of the Premises by operation of the Lease and Amendment.

4. CONDITIONS PRECEDENT TO LEASE.

A. Land Use and Building Permits. Section 4.A in the Lease is hereby stricken and replaced with the following: Mobius shall procure all of the land use and building permits required to proceed with construction of the Center and Center Improvements no later than the earlier of May 11, 2008, or the date Mobius takes possession of the Premises under Section 7. Mobius agrees to give the Department at least 90-days notice prior to its intent to take possession of all or each part of the Premises. Mobius further agrees to give the Department at least 90-days notice prior to the starting date of Mobius' operation of a large-format theatre. The Department agrees to terminate the operation of its current large-format theatre situated in Riverfront Park no later than the day which is 1-day prior to the starting date of Mobius' operation of a large-format theatre. The Park Board and Mobius will review with each other the type, scope, and quality level of all commercial, office and retail and other development north of the basalt wall (i.e. not designated as North Bank Park in Exhibit AA, and generally not the lower level land bordering Riverfront Park) to ensure general compatibility, comparable esthetic quality, and complementary function consistent with the primary Center development; this obligation will accrue to any assignee or acquirer of development rights for any of the commercial, office and retail parcels.

B. Approval of Business Plan. Section 4.B in the Lease is hereby stricken and replaced with the following: The Department has approved the Business Plan. The Parties agree to the following:

(A) The Business Plan includes provision for a 45,000 SF Center, estimated to cost \$300/SF, plus an 8,000 SF large-format theater, estimated to cost \$537/SF, and a parking garage for 348 vehicles, estimated to cost \$16,667 per car stall. The size and estimated cost of these Center elements shall not materially deviate from these estimates without the approval of the Department, which approval shall not be unreasonably withheld; however, Mobius shall not be required to receive approval to increase the budget for these elements;

(B) the fundraising goal for the Center and Center improvements is \$33 million and the fundraising shall meet the following schedule and amounts: no less than \$4.0 million shall be raised no later than the date of the May 2007 meeting of the Park Board; no less than \$14 million shall be raised no later than the date of the May 2008 meeting of the Park Board; no less than \$26.4 million shall be raised no later than the date of the May 2009 meeting of the Park Board; and no less than \$33 million shall be raised no later than the date of the May 2010 meeting of the Park Board, provided, however, that following conditions shall apply to funds to be included in the fundraising total: (i) government funding shall be included as long as it is valid and has not lapsed; (ii) pledges shall be written and the total pledged amount shall be discounted 2% to reflect the potential for non-collection of pledged amounts; (iii) gifts-in-kind shall be included only to the extent the gift offsets previously budgeted expenditures; (iv) no land value of the Premises shall

be included; (v) no value of future development discounted to present value shall be included; (vi) non-monetary assets shall be included at a value determined by a third-party appraiser; and (vii) if increased construction costs necessitate additional fundraising to sustain the quality of the Center or Center Improvements, the Park Board may, at its sole discretion, by resolution, extend the fundraising deadlines stated herein;

(C) Annually, Mobius shall make a report to the Park Board at the Park Board's regularly scheduled April meeting prior to the May deadlines cited herein including the amount of funds raised at that time and shall update that report at the May meeting;

(D) Mobius may not take possession of all or any portion of the Premises, including for any proposed commercial use, until \$26.4 million is raised for the Center and Center Improvements;

(E) The Center shall be open to the public no later than the regularly scheduled November 2010 meeting of the Parks Board;

(F) design and planning for the Center shall meet the following schedule and conditions: (i) Mobius shall cause to be prepared, with the participation and input of the Parks Board, a conceptual site plan showing the elements of the Center to be presented no later than the August 2006 meeting of the Parks Board; (ii) the conceptual site plan may not include a parking garage fronted on the south river-facing land, nor on Howard Street, nor shall it be a visually dominant façade from the south river-facing land or Howard Street; (iii) Mobius shall undertake a selection process to identify a developer of the commercial elements of the design plan starting no later than the June 2007 and shall present to the Park Department Director a design and development plan for the commercial elements no later than June 2008; and (iv) any divisible portion of the Premises identified for commercial development which has not been so developed by May 2016 shall be removed from the Premises, and control of the removed Premises shall return to the Park Department (land not used for buildings or parking, or in designated open space required by regulation or approved by the Park Department Director shall be considered "not developed" for these purposes); and

(G) resizing and development of the Premises shall meet the following conditions: (i) the Premises shall be reduced by approximately the area reflected in Addendum A-A shown as "Park Dept"; the legal description of the Premises attached hereto shall be revised after completion of the conceptual site plan described in Section 4.B(F)(ii) and no later than the December 2006 meeting of the Park Board to reflect the reduction in the Premises; (ii) Mobius may sublease land north of the Center not used for the Center for commercial purposes and may sublease land on the southern and eastern portion of the Premises, provided, however, that land on the southern and eastern portion of the Premises may only be used for public-use purposes consistent with the use of the Premises for the Center and complementary to it in terms of broad public access, serving a recognized public purpose and comparable in architectural esthetic quality as mutually agreed to by the Parties, provided further, however, that no sublease shall be entered into with a third party wherein the Park Department has a financial interest in the third party's real

property such that the sublease might thereafter precipitate events in which the Park Department would purchase the real property of said third party while, in effect, giving the third party the financial benefit of north bank land described herein with no direct compensation in value to the Park Department; and (iii) the Parties and any sub-lessees will cooperate in development and planning for the northern portion of the Premises and those portions removed from the Premises so that the type, scope and quality level of development north of the Center shall be generally compatible, of comparable esthetic quality and complementary function consistent with the Center development.

C. Other Agreements. The following is stricken from the first sentence of Section 4.C, "Within three (3) years of the Effective Date of this Lease," and is replaced with the following: "No later than the May 2008 meeting of the Parks Board,". The following is stricken from the second sentence in Section 4.C, "within three (3) years of the Effective Date" and is replaced with the following: "by the May 2008 meeting of the Parks Board".

## 7. POSSESSION AND OCCUPANCY.

The following is stricken from the first sentence of Section 7, "Upon satisfaction or waiver of all conditions precedent set forth in Article 4 hereof by both parties, INSTC shall have possession and full control of the Premises and may construct the Center on the Premises," and is replaced with the following: "Mobius may take possession and full control of the Premises and may construct the Center on the Premises after a 90-day notice period described in Section 4.A and upon the following conditions: (i) Mobius shall have procured all of the land use and building permits required to proceed with construction of the Center and Center Improvements; and (ii) Mobius shall have submitted a report to the Parks Board stating that \$26.4 million has been raised in accordance with the conditions in Section 4.B,".

## 10. CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES

Subsections 10.1 and 10.2 are stricken in their entirety and replaced by the following:

10.1 Duty to Construct. Mobius shall construct, or cause to be constructed, the Center on the Premises subject to the provisions of Article 4. Said construction shall be at Mobius's sole cost and expense, except as otherwise provided in this Article. All of the construction shall be performed and completed in the manner and according to the terms and conditions set forth in this Lease. Mobius agrees that commencement of construction of the Center shall occur no later than May 11, 2009 and that completion of the construction of the Center shall occur no later than November 11, 2010 unless otherwise agreed, in writing, by the Parties. No construction may commence on any commercial, office or retail buildings or uses prior to commencement of construction for the Center itself.

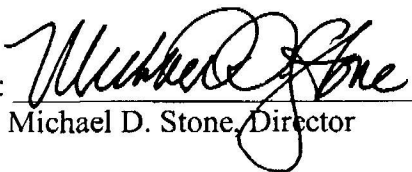
10.2 Center Design. Prior to construction of the Center and Center Improvements, Mobius shall timely provide the Director with the opportunity to review and comment upon all designs, plans, and specifications for the Center or portions of the Center. Further, Mobius shall provide the Director with a thirty (30) calendar day period of time within which to review and comment upon all designs, plans, and specifications for the Center or portions of the Center that Mobius plans to submit to the City for the purpose of seeking land use and building permits for the Center or portions of the Center. Mobius shall not be required to obtain the Department's approval of designs, plans, or specifications, but shall give good faith consideration to the Director's comments on the designs, plans, and specifications and shall provide the opportunity for at least one Park Board member and one Park Department staff member to regularly participate in the Mobius design process, including meetings or presentations of the design committee. Under no circumstances will the Director or Park Board accept a downgraded façade or "warehouse" facility containing otherwise acceptable interior space. The Park Board makes these esthetic stipulations recognizing the original lease's quality standard as a "world class" facility, but further acknowledges that something less than "world class" and far better than a "warehouse" would be acceptable.

Entered into on the date first stated above.

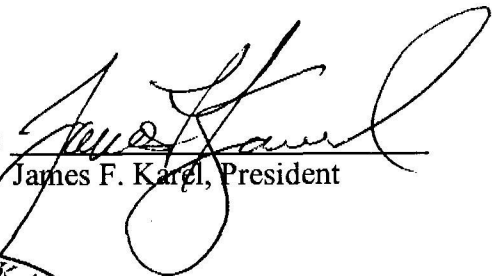
THE CITY OF SPOKANE  
By: The Spokane Parks and  
Recreation Department

MOBIUS SPOKANE

By:

  
Michael D. Stone, Director

By:

  
James F. Karel, President

Attest:

  
Spokane City Clerk



Approved as to form:

  
Assistant City Attorney