

Ordinance No. 124019

Council Bill No. 117609

AN ORDINANCE related to a new multi-purpose sports and entertainment facility; authorizing the Mayor to execute a memorandum of understanding with King County and ArenaCo; to execute an interlocal agreement with the County; and superseding the authority provided by ordinance 123979.

Related Legislation File:

Date Introduced and Referred: <u>Oct. 8, 2012</u>	To: (committee): <u>Full Council</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>10-15-12</u>	Date Presented to Mayor: <u>10-15-12</u>
Date Signed by Mayor: <u>Oct. 16, 2012</u>	Date Returned to City Clerk: <u>Oct. 18, 2012</u>
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Date Veto Published:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: *T. B. King*

Committee Action:

Date	Recommendation	Vote

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
<u>10-15-12</u>	<u>Passed as Amended</u>	<u>7-2 (no: RC, NL)</u>

CITY OF SEATTLE
ORDINANCE 124019
COUNCIL BILL 117609

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4 AN ORDINANCE related to a new multi-purpose sports and entertainment facility; authorizing
5 the Mayor to execute a memorandum of understanding with King County and ArenaCo;
6 to execute an interlocal agreement with the County; and superseding the authority
7 provided by ordinance 123979.

8 WHEREAS, WSA Properties III, a Delaware limited liability company, (“ArenaCo”)
9 approached the City and the County with a proposal for the two governments to
10 participate in the development and ownership of a multipurpose sports and entertainment
11 facility (“Arena”) located in Seattle; and

12 WHEREAS, the City and the County formed an advisory panel to review the proposal; and

13 WHEREAS, having considered the recommendations of the advisory panel, the City and the
14 County have collaborated and negotiated with ArenaCo to develop a structure for
15 eventual public ownership of a new Arena; and

16 WHEREAS, the structure includes the addition of National Basketball Association (“NBA”) and
17 National Hockey Association (“NHL”) teams to Seattle to play in the Arena; and

18 WHEREAS, the addition of professional basketball and hockey will contribute to the social and
19 economic environment of Seattle and King County by, among other things, creating jobs,
20 and by supporting a wide variety of businesses that generate annual earnings and sales,
21 property and business and occupation tax revenues; and

22 WHEREAS, the agreement described in the “Memorandum of Understanding -Seattle Sports and
23 Entertainment Facility” (“Memorandum of Understanding”) provides the City and the
24 County with satisfactory security for the public investment; and

25 WHEREAS, the City and the County will not be responsible for costs or any cost overruns for
26 construction of the Arena; and

27 WHEREAS, City and County investment will only occur once certain conditions precedent are
28 met, including completion of environmental review and permitting, financing and team
acquisition for the Arena, and City Council approval of future contractual agreements
contemplated by the Memorandum of Understanding; and

WHEREAS, the City and the County have negotiated an interlocal agreement (“Interlocal
Agreement”) that describes and defines the mutual endeavor of pursuing public
ownership of the Arena; and



1 WHEREAS, through the ILA, the City and County aim to establish investment, management,
2 ownership, communication, oversight and accountability mechanisms and principles for
3 the governments to cooperatively participate in the Arena development and ownership;
and

4 WHEREAS, the Seattle Center is celebrating its first 50 years and is planning for the next 50
5 years; and

6 WHEREAS, it is an ideal time for the City to use resources made available through the MOU to
7 develop options for the future of the Seattle Center and the Key Arena; and

8 WHEREAS, future plans should solicit feedback from stakeholders throughout the city to ensure
9 that Seattle Center remains a civic hub for both tourists and residents to enjoy cultural
and civic events; and

10 WHEREAS, the since the City Council passed ordinance 123979, the City and County have
11 come to agreement on minor modifications to the MOU and ILA; NOW, THEREFORE,

12 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

13 Section 1. The Mayor or his designee is authorized to execute, for and on behalf of the
14 City, an agreement with King County and ArenaCo, substantially in the form of the agreement
15 attached hereto and entitled "MEMORANDUM OF UNDERSTANDING SEATTLE - SPORTS
16 AND ENTERTAINMENT FACILITY" (Attachment 1).

17 Section 2. The Mayor or his designee is further authorized to execute, for and on behalf
18 of the City, an interlocal agreement with King County, substantially in the form of the agreement
19 attached hereto and entitled "INTERLOCAL AGREEMENT ARENA DEVELOPMENT,
20 FINANCING, ACQUISITION AND OPERATION-THE CITY OF SEATTLE AND KING
21 COUNTY" (Attachment 2).

22 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
23 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
24 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

25 Passed by the City Council the 15 day of October, 2012, and
26 signed by me in open session in authentication of its passage this

27 15 day of October, 2012.



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President _____ of the City Council

Approved by me this 16th day of October, 2012.



Michael McGinn, Mayor

Filed by me this 18th day of October, 2012.



Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: MEMORANDUM OF UNDERSTANDING - SEATTLE SPORTS AND ENTERTAINMENT FACILITY

Attachment 2: INTERLOCAL AGREEMENT – ARENA DEVELOPMENT, FINANCING, ACQUISITION AND OPERATION THE CITY OF SEATTLE AND KING COUNTY



October 9, 2012

**MEMORANDUM OF UNDERSTANDING
SEATTLE SPORTS AND ENTERTAINMENT FACILITY**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated this ___ day of _____, 2012 (“Effective Date”) is entered into among the following parties: The City of Seattle, a Washington municipal corporation (“City”), King County, a political subdivision of the State of Washington (“County”), and WSA Properties III, a Delaware limited liability company (“ArenaCo”). The City, the County and ArenaCo are referred to jointly as the “Parties.”

RECITALS

A. ArenaCo or its affiliate has acquired land (“Project Site”) south of downtown Seattle, Washington, adjacent to First Avenue South between South Massachusetts Street and South Holgate Street, on which it proposes to develop and operate a new multi-purpose sports and entertainment facility (“Arena”). The Arena will be designed to host a National Basketball Association (“NBA”) team (“NBA Team”) and a National Hockey League (“NHL”) team (“NHL Team”) and other events.

B. ArenaCo has approached the City and the County with a proposal for the two governments to participate in the development and ownership of the Arena on the Project Site.

C. An advisory panel (“Panel”) formed by the Mayor for the City and the King County Executive reviewed the ArenaCo proposal. The Panel conducted four public meetings and considered the comments and reports from experts and other members of the community. The Panel has recommended that the City and the County pursue development of the Arena and has identified a number of important issues that should be addressed in any agreements for the development and operation of the Arena.

D. This MOU is intended to be a binding and enforceable agreement of the Parties (a) establishing the process to be followed by the Parties in order to complete necessary reviews, including all environmental reviews, fulfill conditions precedent, and, as appropriate, approve the Transaction Documents (as defined below), and (b) setting forth the business terms and conditions that will be included in the Transaction Documents. It reflects the mutual understandings of the Parties regarding those actions, permits, approvals and/or agreements lawful and necessary to accomplish the location, financing, acquisition, design, development, construction, lease, management, operation, use and occupancy of the Arena (collectively, the “Project”). The Parties intend to actively participate and to work together collaboratively, in good faith and with due diligence, to carry out the process described herein and to negotiate the terms of the Transaction Documents consistent with this MOU. These undertakings are personal to the Parties and this MOU shall not be assigned to any other person or entity unless all Parties agree.

UNDERSTANDINGS



1. Purpose and Term of Agreement. This MOU sets forth the basic terms of proposed agreements among the Parties with respect to the Project, which terms will be memorialized in future agreements and other documents (“Transaction Documents”). The Arena will be designed to host an NBA Team and an NHL Team, and is expected to host other sporting events, family shows, concerts, graduations, and civic and other events. This Agreement will terminate upon the earlier of the effective date of the Umbrella Agreement (defined in Section 7) or five (5) years from the Effective Date of this MOU.

2. Location. ArenaCo is proposing to develop and operate the Arena on the Project Site. In considering the City’s and County’s financial participation in the Project, the City and County will evaluate this location and one or more alternative sites, and a “no action” alternative as part of the SEPA review described in Section 5.

3. Description; Cost Reimbursement.

a. Description. The Arena will be designed and constructed with approximately 700,000 square feet of usable space and sufficient improvements to have a total approximate capacity of 19,000 attendees for concerts, 18,500 attendees for NBA games, and 17,500 attendees for NHL games. It is not currently possible to estimate the cost of the design, development, and construction of the Arena since the design is not complete and costs will be incurred in the future, and subject to unknown inflation in the costs of materials and labor. The Parties believe that construction and equipping of the Arena, including the cost of acquiring the Project Site, will be accomplished for an aggregate Project cost of approximately \$500 million. The Parties will work to agree upon Plans and Specifications for the Arena that, together with the Project Site acquisition costs, will result in a final Project cost in that approximate amount.

b. Cost Reimbursement. “Development Costs” means reasonable and documented out-of-pocket expenses actually incurred by the City and County directly in connection with development, execution and performance of this MOU, the interlocal agreement between the City and the County, the Umbrella Agreement and Transaction Documents, and the transactions contemplated herein through the Commencement Date (defined in Section 9) including, but not limited to, all reasonable and documented expenses of engineers and legal, financial and other required consultants paid by the City or County (but excluding the expenses described in Section 4 and any financing or other costs paid out of bond proceeds) and including up to \$150,000 in costs and expenses actually incurred by the City to assess the future of uses of Key Arena or the Key Arena site. ArenaCo shall reimburse the City and County for all reasonable and documented Development Costs up to a maximum amount of \$5 million, with each payment being due within thirty (30) days following ArenaCo’s receipt of an invoice from the City and County as provided herein, with the first payment of any such reimbursable Development Costs to be billed by the City and County at least thirty (30) days prior to the Closing Date, and becoming due and payable on the Closing Date (defined in Section 8). Following the Closing Date, any reimbursable Development Costs that become due and payable as provided in this Section 3.b through the Commencement Date will be billed by the City and County on a monthly basis and paid by ArenaCo within thirty (30) days following receipt by ArenaCo of any invoice from the City and County. The reimbursement of Development Costs is in addition to expenses payable by ArenaCo in connection with Section 4 below.



4. Initial Site Acquisition and Permitting. ArenaCo has acquired or will acquire the property that comprises the Project Site. At its sole cost and expense, ArenaCo will seek a master use permit and all other permits or approvals required for the Project, including but not limited to environmental review described in Section 5. At ArenaCo's expense, the City will provide dedicated planning staff to facilitate the review and processing of permit applications relating to the Project, with planning staff time to be billed at the then applicable rate schedules of the City.

5. SEPA. The Parties acknowledge that the Project is subject to review and potential mitigation under various laws, including the State Environmental Policy Act, Chapter 43.21C of the Revised Code of Washington ("RCW"), and the state and local implementing rules promulgated thereunder (collectively, "SEPA"). Before the City and County Councils consider approval of the Umbrella Agreement and any Transaction Documents, the City and County will complete a full SEPA review, including consideration of one or more alternative sites, a comprehensive traffic impact analysis, impacts to freight mobility, Port terminal operations, and identification of possible mitigating actions, such as improvements to freight mobility, and improved pedestrian connections between the Arena and the International District light rail station, the Stadium light rail station, the SODO light rail station, and Pioneer Square. The City and County anticipate that alternatives considered as part of the SEPA review will include a "no action" alternative and an alternative site at Seattle Center. The City or County may not take any action within the meaning of SEPA except as authorized by law, and nothing in this MOU is intended to limit the City's or County's exercise of substantive SEPA authority. Consistent with Section 4 of this MOU, ArenaCo will reimburse the City for the costs incurred by the City as part of the SEPA review and will be responsible for funding any required mitigation imposed through SEPA substantive authority.

6. Call for Bids. The City and County will make a call for bids for the Project. The call for bids will be made by publication in the *Puget Sound Daily Journal of Commerce* for two consecutive weeks before the date fixed for opening the bids as required by RCW 35.42.080.

7. Umbrella Agreement. If ArenaCo is the successful bidder for the Project, or if no bid is received on the call and the City and County determine to proceed with the Project without any further call for bids, then as soon as reasonably practicable the Parties intend to enter into a comprehensive agreement that will include the Transaction Documents in substantially final form as exhibits thereto (the "Umbrella Agreement"). The Umbrella Agreement will incorporate conditions precedent substantially in the form set forth in Sections 24 and 25 below, except to the extent that such conditions precedent shall have been met or waived at the time of the execution of the Umbrella Agreement.

8. Site Conveyance. Following execution of the Umbrella Agreement and satisfaction of the applicable conditions precedent, the City will fund the First Installment of the initial Public Financing, as defined and provided in Section 10, to purchase the Project Site from ArenaCo, and ArenaCo will sell and convey a fee simple interest in the Project Site to the City by statutory warranty deed, free and clear of all liens and encumbrances other than "permitted exceptions" (as hereinafter defined) contained in title reports for the Project Site as of the Closing Date that are reasonably approved by the City. The date on which the City acquires the Project Site from ArenaCo is referred to in this MOU as the "Closing Date." Permitted



exceptions will be agreed to by the Parties no later than the end of the due diligence period under Section 24.c below, subject to updating to account for the time period between the end of the due diligence period and the Closing Date. The purchase price for the Project Site will be paid by the City to ArenaCo in cash on the Closing Date. The purchase price will be the then fair market value of the Project Site, as permitted for construction of a facility for use as a multipurpose sports and entertainment arena, based on an appraisal by a mutually agreed-upon MAI- (Member of the Appraisal Institute) certified independent appraiser as of the date the master use permit is issued.

9. Ground Lease, Lease-Purchase Agreement and Arena Use Agreement. The City will ground lease the Project Site to ArenaCo for a period of at least 30 years (the "Ground Lease"), commencing on the Closing Date. The Ground Lease will require ArenaCo to pay ground rent in the amount of \$1 million annually, which annual rent will be paid by ArenaCo in equal semi-annual installments, and will be pro-rated for any partial year on a monthly basis. This annual Ground Lease rent obligation will terminate on the Commencement Date as defined below. Also on the Closing Date, the City and County will enter into an agreement ("Lease-Purchase Agreement") pursuant to which ArenaCo will construct the Arena building structure ("Arena Facility") in accordance with the Design Standards as defined in Section 16, for lease (with an option to purchase as described in this MOU) to the City and County. The term of the Lease-Purchase Agreement will be co-extensive with the original term of the Ground Lease and the payments to be made by the City and County under the Lease-Purchase Agreement will not exceed the prevailing rates for comparable space.

When the Arena Facility is ready for occupancy ("Commencement Date"), the City and County will commence paying rent, initially for a nominal amount, under the Lease-Purchase Agreement. The City and County will have the right to prepay or cause a trustee to prepay all or a portion of the principal component of all remaining lease payments required under the Lease-Purchase Agreement and will also have the right to exercise the option to purchase the Arena Facility at a price equal to the principal component of all remaining lease payments required under the Lease-Purchase Agreement, as those lease payments may be adjusted consistent with Section 10 below. The date that title to the Arena Facility transfers to the City and County is referred to as the "Transfer Date." The Transfer Date will occur on the day following the date when the Arena Facility is added to the property tax rolls or such later date, but not later than June 30th of the calendar year following the date the Arena Facility is added to the property tax rolls, as ArenaCo may request. ArenaCo will enter into a lease or sublease (the "Arena Use Agreement") for the Arena Facility with the City and County or trustee on the Commencement Date.

On the Transfer Date, the City and County will pay ArenaCo an amount equal to the principal component of all lease payments due under the Lease-Purchase Agreement, as they may be adjusted, or if the City and County have appointed a trustee with respect to certificates of participation in lease payments, then the City and County will cause the trustee to pay to ArenaCo an amount equal to the principal component of all lease payments under the Lease-Purchase Agreement. In either event, the City and County (or a trustee on behalf of the City and County) will purchase the Arena Facility from ArenaCo as provided in this MOU.



10. City-County Public Financing. The total amount to be paid to ArenaCo by the City and County for acquisition of the Project Site and the lease-purchase of the Arena Facility will be \$200 million; provided, however that the actual amount to be paid to ArenaCo will be subject to reduction as provided below. The structure of the Public Financing (as hereinafter defined) will be determined through a collaborative process among the City, the County and ArenaCo, recognizing that the Public Financing will be consistent with the City's and County's debt management policies, including policies related to debt capacity and risk profile. The "Public Financing" will include two installments of approximately thirty (30) year bonds or certificates of participation that have an effective cost of capital similar to general obligation bonds with debt service payments escalating from the Initial Principal Payment Date at a rate of 1% per annum for the first ten (10) years and will include consideration of: (i) financing obligations at market rates, including only usual and customary financing charges; (ii) utilizing tax-exempt debt; and (iii) utilizing various structuring techniques, including, but not limited to, non-callable bonds, premium bonds, refunding bonds, certificates of participation and discount bonds, as deemed appropriate by the City and County. The City and the County, in their discretion, may later refinance such obligations to improve borrowing terms. Further, at ArenaCo's request, the City and County will consider refinancing such obligations if market conditions allow for improved borrowing terms, provided that ArenaCo reimburses the City and County for the reasonable and necessary costs of such refinancing. Any refinancing of the Public Financing will endeavor to lower debt service costs each year as opposed to redeeming bonds only in late maturity years.

The Parties anticipate that an NHL Team will be committed to play in the Arena after the date on which the NBA Team is acquired and committed to play in the Arena. ArenaCo anticipates that it will proceed with the Project and, if necessary, operate the Arena during the period between the acquisition of the NBA Team and the NHL Team. The Parties recognize that the value of the Arena to the City and the County will be greater upon the commitment of an NHL Team to play in the Arena. In connection with the foregoing, the Public Financing shall only be committed in accordance with the following installments:

(i) **First Installment:** On the Closing Date, in an amount equal to the fair market value of the Project Site (as determined and provided for in Section 8, but in no event to exceed \$100 million) paid to ArenaCo ("First Installment").

(ii) **Second Installment:** On the Transfer Date, a second installment ("Second Installment") in an amount determined as follows: (a) if all of the conditions related to an NHL Team set forth in (b) of this Section 10.(ii) have not been satisfied by the Transfer Date, an additional amount supported by the Base Rent and a stabilized level of Arena Tax Revenues that will be based on projections of future tax revenue that take into account long term variables such as team performance and economic conditions in a manner that will be provided in the Umbrella Agreement and Transaction Documents, up to \$145 million less the amount paid to ArenaCo in the First Installment, which Second Installment will be comprised of funds (X) first paid to the SODO Transportation Infrastructure Fund, as described in Section 11, in an amount up to \$40 million to bring the total amount deposited in the SODO Transportation Infrastructure Fund (considering only deposits of Arena Tax Revenues and Key Arena Taxes) to a total of \$40 million, and (Y) then paid to ArenaCo in an amount not to exceed a total of \$120 million, or (b) if by the Transfer Date an NHL Team license agreement committing the NHL Team to play its



home games in the Arena has been executed, together with a non-relocation agreement as described in Section 18 and any other necessary agreements with the City and the County related to the NHL Team, and the NHL has acknowledged the Arena Use Agreement and the non-relocation agreement and has approved locating the NHL Team in Seattle, an amount equal to \$200 million less the amount paid to ArenaCo in the First Installment, which will be comprised of funds (X) first paid to the SODO Transportation Infrastructure Fund in an amount up to \$40 million to bring the total amount deposited in the SODO Transportation Infrastructure Fund (considering only deposits of Arena Tax Revenue and Key Arena Taxes) to a total of \$40 million, and (Y) then the balance paid to ArenaCo.

11. SODO Transportation Infrastructure Fund.

a. Fund Established. The City and County will establish a separate fund or account ("SODO Transportation Infrastructure Fund") to be managed in the sole discretion of the City and County, considering input from stakeholders affected by the Project, and used to fund transportation improvements in the area South of downtown Seattle. The SODO Transportation Infrastructure Fund will give first priority to projects protecting the operations of the Port of Seattle, such as those serving Terminal 46, and improving freight mobility, including projects that improve pedestrian safety, enhance transit service and connectivity, and overall traffic management in the SODO area. The Parties acknowledge that projects that improve pedestrian safety, transit service and connectivity, and overall traffic management in the SODO area may also result in improved freight mobility. Allocation among these priorities is to be determined by the City and County through interlocal agreement and approved by future ordinances. The City and County will seek other public and private partners and funding for the purposes of advancing the objectives of the SODO Transportation Infrastructure Fund, including but not limited to the Port of Seattle, the operators of Safeco Field and CenturyLink Field, and federal and state governments. Federal and state funding requests made through existing Puget Sound Regional Council ("PSRC") processes shall compete with other projects in accordance with existing PSRC transportation project funding criteria and procedures. Funding requests for competitively awarded federal and state funding sources made outside the PSRC process shall follow the appropriate competitive processes and give consideration to previously identified regional transportation improvement needs. It is the intent of the Parties that the existence of the SODO Transportation Infrastructure Fund also shall not adversely affect the competitive scoring of projects competing for these federal and state funds. The SODO Transportation Infrastructure Fund will be used to fund system improvements to the transportation network in the SODO area, including the area within which the Project Site is located, but will not be utilized to fund any Project-specific transportation infrastructure mitigation required through the permitting and SEPA process for the Project. Further details related to the partnerships, funding contributions, oversight and governance structure of the SODO Transportation Infrastructure Fund shall be delineated by future City and County ordinances.

b. Funding. Before the Transfer Date, all Ground Lease rent payments and all Base Rent payments will be deposited into the Arena Revenue Account and used to make debt service payments on the Public Financing for the First Installment or when required by Section 13.c to make payments of the Annual Reimbursement Amount. During this period, Arena Tax Revenues collected will be deposited into the SODO Transportation Infrastructure Fund, until such time, together with amounts deposited in the SODO Transportation



Infrastructure Fund pursuant to Section 17.b, a total of \$40 million has been deposited into the SODO Transportation Infrastructure Fund. If the total of all sums deposited from Arena Tax Revenues or Key Arena Taxes into the SODO Transportation Infrastructure Fund plus the amount deposited into the SODO Transportation Infrastructure Fund from the proceeds of the Second Installment do not result in the total amount deposited into the SODO Transportation Infrastructure Fund being equal to \$40 million, then following funding and payment of the Second Installment, ArenaCo will deposit into the SODO Transportation Infrastructure Fund any additional amount required to bring the total of the amounts from these four sources deposited into the SODO Infrastructure Fund to \$40 million in the aggregate. If the aggregate total amount of all sums actually deposited or that would otherwise be required to be deposited into the SODO Transportation Infrastructure Fund from Arena Tax Revenues or Key Arena Taxes as provided herein ever exceeds \$40 million, then any excess of any such amounts will be held in the SODO Transportation Infrastructure Fund until the Transfer Date and will be paid to ArenaCo on the Transfer Date as part of the principal component of lease payments due under the Lease-Purchase Agreement described in Section 9 and reduce the amount of the Second Installment.

12. Ownership of Arena Facility and Improvements. ArenaCo will install all tenant improvements and furnishings, including without limitation the seating, suite furnishings, offices, locker rooms, press areas, basketball floor, ice-making systems and equipment, dasher board systems, sound systems, scoreboards, ribbons, concession equipment, training equipment, and other items ("Arena Tenant Improvements"). For federal income tax purposes, ArenaCo will own all or a portion of those Arena Tenant Improvements, to be set forth in the Transaction Documents or in a schedule included in the Lease-Purchase Agreement or Arena Use Agreement, as applicable, which schedule may be amended from time to time by the mutual written agreement of the Parties. The initial Arena Tenant Improvements will be commensurate with the construction of a first-class arena as set forth in the Design Standards and Operating Standards. The Arena Tenant Improvements (but not any NBA Team- or NHL Team-owned equipment or fixtures) will become the property of the City and County upon the termination of the Arena Use Agreement without any further obligation on the part of the City or County. Upon termination of the Arena Use Agreement, ArenaCo will be obligated to surrender the Arena Facility and Arena Tenant Improvements to the City and County in a condition consistent with the program of capital repairs, replacements and improvements required pursuant to Section 14 and in a state of repair comparable to facilities of a similar age and suitable for continued uninterrupted use by NBA and NHL teams and as a major entertainment facility. Unless either the Put or Call Rights provided for in Section 13.j or the "put" right provided for in Section 13.g(ii).b are exercised and the sale and purchase of the Arena Facility, the Project Site and all of the Tenant Improvements are completed pursuant thereto as provided in either Section 13.j(i), 13.j(ii) or 13.g(ii).b, the Arena Tenant Improvements will be surrendered by ArenaCo upon expiration of the term of the Arena Use Agreement, including any extensions thereof, and shall at the time of such surrender be unencumbered by liens or third party obligations.

13. Arena Use Agreement. The Arena Use Agreement will provide for the following terms:

a. Term. The initial term of the Arena Use Agreement will be at least thirty (30) years, but in no event shall the initial term be less than the maturity of any Public Financing obligations. The Arena Use Agreement will provide for four options of five (5) years each for



ArenaCo to extend the term of the Arena Use Agreement. Subject to applicable law, the annual rental rate will be \$4 million during the first extension term. Beginning with the second extension term, rent will increase by the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (Seattle-Tacoma-Bremerton Local Area) ("CPI") between the first and last years of the preceding extension period, if any. During each of the extension terms that are exercised by ArenaCo, the City and County will deposit 100% of all annual rent payments under the Arena Use Agreement into the City-County Capital Account defined in Section 13.k.(iv). Terms regarding Arena Tax Revenues will be negotiated by the Parties for any extension agreement. ArenaCo cannot exercise the option to extend the term of the Arena Use Agreement, unless the obligations of the NBA Team and (if applicable) the NHL Team to play at the Arena, including non-relocation agreements, are similarly extended.

b. ArenaCo Revenues. For the initial term of the Arena Use Agreement, ArenaCo will be entitled to all cash and in-kind revenues associated with the operation, use and enjoyment of the Arena (other than for any City-County Events, as hereinafter defined) (the "Arena Revenues"), subject to the payments and reserves required as described in this Section 13, and not including any taxes, fees or charges ArenaCo may be obligated to collect and submit to a taxing or other government authority on behalf of others. Subject to the foregoing, Arena Revenues means all revenues, determined on a cash basis, of whatever kind or nature received or obtained by ArenaCo or a third-party, within the scope of ArenaCo's authority or responsibility under the Umbrella Agreement or the Transaction Documents for the management, operation or maintenance of the Arena, in all cases subject to all revenues reserved to the NBA Team or the NHL Team pursuant to applicable license agreements as required by the NBA and NHL. Arena Revenues include, but are not limited to, box office fees (excluding ticket revenue for the NBA Team and NHL Team), facility fees, parking revenues, revenues from consumable and non-consumable concessions, all other licensing and rent revenues, forfeited security deposits, ticket commission and convenience fees, and other fees actually received by ArenaCo, for or from the following: (1) the use or operation of, or admission to, the Arena or any portion thereof, (2) all rents, royalties, and concession payments from tenants, concessionaires and licensees, (3) interest on or proceeds of investment of any accounts (except the Reserve Account and Capital Account, as described in Sections 13.f(ii) and 14.a respectively), (4) rental or use of Arena equipment, (5) services rendered at or related to the Arena, (6) the amounts received from seat use charges and parking use fees, (7) the amounts generated from the use and operation of any Arena internet website and other similar media, (8) the right to sell, or the sale of permanent and ArenaCo temporary signage (but not temporary signage that is reserved or provided to the NBA Team and the NHL Team under their respective license agreements) and Arena sponsorships (including, without limitation, naming rights and founding partner sponsorships), (9) the non-ticket amounts generated from the sale or license of luxury suites and premium seating, and (10) club membership fees, but expressly excluding (notwithstanding the provisions above), in all events, sums received or collected by ArenaCo for and on behalf of and actually paid to a user of the Arena.

c. Rent Payments. Each year during the term of the Arena Use Agreement, ArenaCo will pay annual rent to the City and County in the amount of \$1 million ("Base Rent") at least thirty (30) days prior to the date of the City's first designated semi-annual debt service payment for the Public Financing. In addition, at least thirty (30) days prior to the City's Initial



Principal Payment Date (as defined below) and during each year of the Arena Use Agreement, ArenaCo will pay the City and County the amount (the "Additional Rent") that is sufficient, when combined with Base Rent and Arena Tax Revenues (described below) received by the City and County for use in that year, to equal the Annual Reimbursement Amount. "Annual Reimbursement Amount" means the total annual debt service obligations of the City and County for the Public Financing. The City's Initial Principal Payment Date is the earlier of (i) the first subsequent date after the Transfer Date on which principal and interest is to be paid, or (ii) the first scheduled debt service payment date on which both principal and interest are due after the fourth anniversary of the First Installment. A schedule of the estimated Annual Reimbursement Amount will be prepared as an attachment to the Transaction Documents and will be updated and delivered to ArenaCo on the Closing Date and further updated on the Transfer Date.

d. Arena Tax Revenues. "Arena Tax Revenues" means the dollar amount of: (i) all sales tax (including all construction sales tax), incremental property tax, all leasehold excise tax, and all admission tax revenues attributable to the Arena and Arena Tenant Improvements, as well as other tax revenues attributable to the Arena and Arena Tenant Improvements that have been received by the City or the County on and from the Project Site and Arena, and from all uses and activities conducted thereon, except for City utility taxes and those tax revenues that are subject to legal restrictions that preclude their use either for payment of Arena-related debt or expenses hereunder (other than parking taxes attributable by contract to the Arena) plus (ii) City business tax revenues imposed under Chapter 5.45 SMC or any successor provision that the City has reasonably determined it received from ArenaCo and from other business activities engaged in, at, or from the Arena (including without limitation revenues from the business activities that have a substantial nexus with the City). In the event the City or the County issue tax-exempt bonds in connection with the Public Financing, then the underlying tax stream identified by the City or County as the source for paying debt service on such bonds shall be excluded from the definition of "Arena Tax Revenues."

e. [Intentionally Left Blank].

f. Security for Rent. ArenaCo will secure payment of Base Rent and Additional Rent as described in Sections 13.f through 13h.

(i) Coverage Ratio. ArenaCo will be required to certify annually whether the Net Arena Revenues for the preceding fiscal year at fiscal yearend are equal to at least two times (2.0x) the Annual Reimbursement Amount for the following year in which debt service is paid (the "Coverage Ratio"). ArenaCo's annual certification must be accompanied by certification from an independent certified public accountant as to the accuracy of the financial information underlying the Coverage Ratio or alternative evidence from ArenaCo reasonably acceptable to the City and County as to the reliability of ArenaCo's certification. ArenaCo will pay the cost of acquiring such a certification and the City and County will be entitled to approve the selection of any third party involved in the certification, which approval will not be unreasonably withheld. "Net Arena Revenues" means the Arena Revenues less Arena Operating Expenses. ArenaCo will, on a date set forth in the Transaction Documents to be no later than 90 days after the end of the prior fiscal year, provide the City and County with an annual accounting to support certification and any reasonably requested documentation to confirm the Coverage Ratio. If Net Arena Revenues are insufficient and fail to meet the Coverage Ratio (a "shortfall"),



ArenaCo shall promptly (and in no event later than 30 days after the certification is provided to the City and County or 30 days after an annual accounting is provided and the City and County determine a shortfall exists based on the annual accounting) increase the Reserve Account balance by an amount such that (A) the balance of the Reserve Account equals at least 2.0x the following fiscal year's Annual Reimbursement Amount, and (B) the increased Reserve Account balance plus Net Arena Revenues equals at least three times (3.0x) the following year's Annual Reimbursement Amount. If (X) for 24 consecutive months after such increase in the Reserve Account is made by ArenaCo, no funds are withdrawn from the Reserve Account to make any other payments, then the balance required to be maintained in the Reserve Account will be reduced to an amount that, together with Net Arena Revenues for the prior fiscal year, will equal the three times (3.0x) the following fiscal year's Annual Reimbursement Amount, or (Y) for 12 consecutive months after such increase in the Reserve Account is made by ArenaCo no funds are withdrawn from the Reserve Account and the balance maintained in the Reserve Account together with Net Arena Revenues for the prior fiscal year equals at least four times (4.0x) the following fiscal year's Annual Reimbursement Amount, then the balance required to be maintained in the Reserve Account will be reduced to 1.0x the following year's Annual Reimbursement Amount. In no event will the amount held in the Reserve Account in any fiscal year be less than the Annual Reimbursement Amount for the following fiscal year.

(ii) Reserve Account. As collateral, ArenaCo will fund an account at a financial institution reasonably acceptable to the City and County (the "Reserve Account"). The Reserve Account shall be held in trust for the benefit of the City and County as provided in this MOU, the Umbrella Agreement and the applicable Transaction Documents, and will be governed/managed in accordance with an "account control agreement" to be included among the Transaction Documents, the terms of which control agreement -- which will include a grant to the City and County of a first lien and first priority security interest in the Reserve Account -- and all moneys or securities held in the Reserve Account. The terms of the account control agreement or other security agreement will be consistent with this MOU and mutually agreed upon in good faith by ArenaCo, and the City and County. The initial deposit into the Reserve Account will be due on the Closing Date and will equal the Annual Reimbursement Amount for the following fiscal year for the City and County. Thereafter, ArenaCo will make annual deposits into the Reserve Account by June 1 of each year during the term of the Arena Use Agreement that will cause the balance to equal the then next year's actual Annual Reimbursement Amount. All money held in the Reserve Account shall only be invested pursuant to the terms of the account control agreement and such money shall only be invested in investments reasonably acceptable to the City and County. To the extent that the Annual Reimbursement Amount declines due to a restructuring, principal pay-down, or other reduction of the debt service for the Public Financing, then the amount to be held in the Reserve Account will be similarly reduced (provided that the Coverage Ratio is still maintained).

(iii) Withdrawals and Replenishing Deposit. If the City or County draws on the Reserve Account or if the value of securities held in the Reserve Account decreases and the balance in the Reserve Account is less than the Annual Reimbursement Amount for the following year, ArenaCo will replenish the Reserve Account within 30 days.

g. Payment Default; First Priority Payment Position; Lien; Parent Guaranty



(i) Payment Default; First Priority Payment; Lien. If ArenaCo fails to pay all or any portion of the Base Rent or Additional Rent when due or to make any required deposit into the Reserve Account or the Capital Account when required, then the City and County may draw on the Reserve Account. The City's and County's right to receive required payments of Base Rent and Additional Rent and ArenaCo's obligation to fund the Reserve Account and the Capital Account will have a first-priority payment position on all revenue and receivables of ArenaCo. As the payment obligations of ArenaCo to the City and County hereunder constitute operating expenses, (e.g., including but not limited to rent) such payment obligations will be senior to all debt service payments on any Arena-related financing and intercompany debt. The City's and County's right to receive the required payments of Base Rent and Additional Rent as well as the amounts in the Reserve Account and the Capital Account will be secured by a lien on and security interest in revenues and receivables of ArenaCo. Such lien and its priority shall be agreed upon by lenders to ArenaCo, the City and County and shall be set forth in the, Transaction Documents and the Intercreditor Agreement described in Section 13.i below, and further secured as provided in Section 13.g.(ii) and (iii) below. In the event of a "Payment Default", which for the purposes of this MOU will be defined as ArenaCo's failure to replenish the Reserve Account or to increase the deposits therein to the required amount within thirty (30) days of receipt of notice from the City and County of any draw on the Reserve Account or confirmation of insufficient coverage amount, the City and County may exercise any and all remedies at law or equity or under or pursuant to this MOU, the Umbrella Agreement and the Transaction Documents.

(ii) Guarantees.

(a) Parent Guaranty. Except as provided below in this Section, ArenaCo hereby agrees that the direct equity owner of ArenaCo ("ArenaCo Parent") will also be the direct equity owner of the entity that owns and operates the NBA Team unless there is a sale, transfer or assignment in accordance with Section 23(iii)c. In addition to the security provided for in Section 13.f(i) above, ArenaCo shall deliver, on the Transfer Date, an unsecured and unconditional guaranty of ArenaCo Parent (the form of which shall be included in the Transaction Documents) unconditionally guaranteeing ArenaCo's obligations under the Arena Use Agreement, as well as the obligations of the NBA Team under the NBA Team's non-relocation agreement defined in Section 18 of this MOU (each such guaranty a "Parent Guaranty"). If any other entity is an equity owner of more than a ten percent (10%) equity interest in ArenaCo as of the date of the Transaction Documents or later acquires such an ownership interest in ArenaCo (individually an "Other ArenaCo Parent Entity" or collectively "Other ArenaCo Parent Entities"), then such Other ArenaCo Parent Entity shall be deemed an ArenaCo Parent for purpose of this Section 13.g.(ii) and shall be required to provide a Parent Guaranty; provided, however, that in such event the Parent Guaranty provided by ArenaCo Parent and the Parent Guaranty provided by any such Other ArenaCo Parent Entities shall provide that the obligations guaranteed by each such entity under their respective Parent Guaranty will be pro rata, based upon each of their respective equity interests in ArenaCo, rather than joint and several. In addition, if such Other ArenaCo Parent Entity is also the owner of the NHL Team, then such Other ArenaCo Parent Guaranty shall also guarantee the obligations of the NHL Team under the NHL Team's non-relocation agreement defined in Section 18 of this MOU.



(b) **Personal Guaranty.** In addition to delivery of the Parent Guaranty, on the Closing Date ArenaCo shall also deliver or cause to be delivered an unsecured, personal guaranty ("Personal Guaranty") of Chris Hansen ("Personal Guarantor") guaranteeing the obligations that are to be personally guaranteed as expressly provided for in this Section 13.g.(ii).(b). The Personal Guaranty will provide that the Personal Guarantor will guaranty the following obligations ("Personal Guaranty Obligations"):

(1) the Repayment Obligation set forth in Section 1.a(ii); and

(2) until the first to occur of (a) the termination or release of ArenaCo Parent's obligation under the Parent Guaranty to guaranty the payment obligations of ArenaCo to make the payments of the Annual Reimbursement Amount to the City and County pursuant to the Use Agreement, or (b) the Public Financing has been fully repaid or defeased, or (c) expiration of the "Remedy Period" of the Personal Guaranty as hereinafter defined, if and to the extent a Payment Default exists as set forth in Section 13.g.(i) and (x) if ArenaCo fails to make any required payment of the Annual Reimbursement Amount as and when due and payable as provided herein and in the Use Agreement and subsequently fails to replenish the Reserve Account as required herein and in the Use Agreement, and (y) Parent Guarantor fails to satisfy its obligations to make the required payment of the Annual Reimbursement Amount and to replenish the Reserve Account under the Personal Guaranty, then Personal Guarantor (or, if applicable, Successor Personal Guarantor(s), as hereinafter defined) shall personally guarantee and make payment as and when the payments become due of the difference between any such Annual Reimbursement Amounts and any sums paid to or received by the City and County in payment of any such Annual Reimbursement Amounts from any sources, including from any amounts remaining in the Reserve Account or sums or amounts thereafter deposited into the Reserve Account by ArenaCo or any Parent Guarantor.

In connection with the Personal Guaranty, the Personal Guarantor or any Successor Personal Guarantor(s) shall provide certification from an independent certified public accountant that Personal Guarantor's or such Successor Personal Guarantor(s)' net worth is no less than \$300 million ("Minimum Net Worth"). Such certification shall be made upon the reasonable request of the City and County, but in no event shall such certification be required to be made more frequently than annually. Any such certification shall be paid for as an operating expense of ArenaCo. If any such certification shows that the Personal Guarantor's or any Successor Personal Guarantor(s)' net worth is less than the Minimum Net Worth, then the Personal Guarantor or such Successor Personal Guarantor(s) shall be required to provide a nonrecourse letter of credit for the benefit of the City and County in an amount equal to 2.0x the then current year's Annual Reimbursement Amount until such time as such a certification is provided that shows that such Personal Guarantor's or successor owner(s)' Minimum Net Worth is no less than \$300 Million. In approving any future sale, assignment or transfer of interest as provided in Section 23(c) of this MOU, the City and County must be reasonably satisfied with a comparable Personal Guaranty from any successor majority or plurality owner(s) of any purchaser, assignee or transferee ("Successor Personal Guarantor(s)").

Notwithstanding anything to the contrary contained herein, the obligations of Personal Guarantor or any Successor Personal Guarantor under the Personal Guaranty will only require Personal Guarantor or any Successor Personal Guarantor to guaranty and make payment



of any shortfall in any payments of Annual Reimbursement Amounts during the Remedy Period as provided above as and when such Annual Reimbursement Amounts would otherwise have become due absent a Payment Default as provided in this MOU. The obligations of Personal Guarantor or any Successor Personal Guarantor(s) under the Personal Guaranty will continue only for a period of up to five (5) years (the "Remedy Period") from the date on which Personal Guarantor makes the first payment of the shortfall in any Annual Reimbursement Amount required under the Personal Guaranty, and will apply only to any shortfall in any Annual Reimbursement Amounts as and when the same would otherwise have become due during the Remedy Period as provided herein. During the Remedy Period, the City and County may, but shall not be obligated to, continue to pursue their remedies against ArenaCo and Parent Guarantor (and, if applicable, any Other ArenaCo Parent Entities) resulting from such Payment Default and default by any Parent Guarantor under the Parent Guaranty as provided for herein, and in the Use Agreement, the Parent Guaranty, and in any of the other Transaction Documents.

Any payments made by Personal Guarantor or any Successor Personal Guarantor(s) under the Personal Guaranty provided for in this Section 13.g.(ii).(b) will be considered to be and will be treated as recoupable advances by Personal Guarantor or Successor Personal Guarantor(s), and will be added to and included in any claims made or remedies that may be sought by the City and County against or from ArenaCo, Parent Guarantor and, if applicable any Other ArenaCo Parent Entities. In the event the City and County recoup, receive or collect amounts, whether from ArenaCo, Parent Guarantor, any Other ArenaCo Parent Entity, the NBA Team, NHL Team, or their respective successors, transferees, assigns, bankruptcy estates or trustees or administrators, sufficient to satisfy all damages incurred by the City and County as the result of the payment defaults plus all amounts necessary to satisfy all the obligations of the City and County under the Public Financing (the "Recoupment Amounts"), then, to the extent the City and County recoup amounts in excess of the Recoupment Amounts, the City and will repay and reimburse to Personal Guarantor or Successor Personal Guarantor(s), as applicable, any amounts so collected and received by the City and County, until such time as Personal Guarantor or any such Successor Personal Guarantor(s) have been reimbursed and repaid in full for any amounts previously paid and advanced to the City and County under the Personal Guaranty as provided for in this Section 13.g.(ii).(b), less all reasonable expenses incurred by the City and County in the recoupment of the Recoupment Amounts (including reasonable attorney's fees). Notwithstanding the foregoing, it is expressly understood and agreed that any amounts paid and advanced to the City and County under the Personal Guaranty are recoupable by Personal Guarantor or any Successor Personal Guarantor(s) only if and to the extent that the City and/or County collect or receive payment or reimbursement of such amounts as provided herein, and the City and County will otherwise have no obligation to repay or reimburse any such payments or advances to Personal Guarantor or any Successor Personal Guarantor(s).

In addition to and without limiting the foregoing, in the event of a sale of the NBA Team following a Payment Default by ArenaCo and the receipt by City and County of any proceeds from any such sale of the NBA Team as provided in Section 13.g.(ii) below, if all of the obligations due to the City and County under the Public Financing have not been previously fully repaid or fully defeased, or are not fully repaid or fully defeased from any such proceeds received by the City and County, then until either 120 days following receipt by the City and County of the proceeds from the sale of the NBA Team as provided in Section 13.g.(iii) below,



or if the NBA Team is sold as provided in Section 13.g.(iii) below but the City and County are not entitled to receive any proceeds from such sale, then 180 days following the date on which such sale of the NBA Team is completed, the City and County will have the right, but not the obligation, under the Use Agreement to "put" the Arena Facility, all the City's and County's rights in or to the Arena Tenant Improvements, the Project Site and all of the City's and County's rights under the Arena Use Agreement to Personal Guarantor or, if applicable, any Successor Personal Guarantor(s), and Personal Guarantor or such Successor Personal Guarantor(s) will have the obligation to purchase and acquire all of the same from the City and County, for a purchase price equal to (a) any then remaining unpaid or undefeased obligations of the Public Financing that have not been previously paid or defeased from all sources, including by application of any proceeds received or to be received by the City and County from or in connection with the exercise of any of their rights and remedies, including, but not limited to, such a sale of the NBA Team, plus (b) any legal fees and costs and City and County staff billable hours and costs actually paid or incurred by the City and County directly in connection with collecting any amounts due from Personal Guarantor or any Successor Personal Guarantor(s) under the Personal Guaranty. In the event that the City and County do not exercise this put right within the applicable time period provided for above, then this put right and all obligations of Personal Guarantor and any Successor Personal Guarantor(s) relating to this put right under the Personal Guaranty will terminate and be of no further force or effect.

(iii) **First Right to Distributions.** Further, to satisfy any default in (A) ArenaCo's obligations under the Arena Use Agreement and (B) the NBA Team's obligations under the non-relocation agreement required by Section 18, the City and County will also be entitled to receive the first distributions of any proceeds from any sale of the NBA Team, subject only to repayment of any obligations of the NBA Team related to any debt of the NBA Team to the NBA or other lenders approved by the NBA that are secured by the NBA franchise and other assets of the NBA Team up to the \$125 million cap plus the amount of Public Financing used to fund the SODO Transportation Infrastructure Fund in the Second Installment up to an additional \$25 million on such debt currently allowed under applicable NBA rules ("NBA Team Secured Debt Obligations"). The total NBA Team Secured Debt Obligations shall not exceed \$150 million. ArenaCo Parent shall covenant not to enter into any agreement that would interfere with City's and County's rights to receive distributions of the proceeds of sale of the NBA Team payable to City and County as and when provided for in this MOU, and the NBA Team shall covenant not to enter into any agreement granting any lien, security interest or other encumbrance on the NBA Team's assets in excess of the NBA Team Secured Obligations. The Parties also agree to explore further ways to secure the obligations of ArenaCo, ArenaCo Parent and the NBA Team subject to NBA requirements, rules, regulations and agreements. Notwithstanding the foregoing, however, if the NBA revises its rules to allow NBA teams to borrow in excess of the current limit of \$150 million that may be secured by the NBA franchise and other assets of NBA teams, then the NBA Team will be entitled to increase the amount of the NBA Team Secured Debt Obligations; provided, however, that the NBA Team will limit the amount of the NBA Team Secured Debt Obligations that will be senior to the right of the City and County to receive distributions of any proceeds from any sale of the NBA Team to the lesser of: (A) the maximum amount of NBA Team Secured Debt Obligations that is then allowed under NBA rules, or (B) 40% of the then "fair market value" ("FMV") of the NBA Team. The FMV of the NBA Team will be as mutually agreed upon in good faith by the Parties at that time; provided, however that if the Parties are unable to agree upon the FMV of the NBA Team at that



time, then the FMV of the NBA Team will be determined by a sports industry recognized appraiser with experience in valuing NBA teams selected by the mutual agreement of the Parties pursuant to a customary valuation process to be specified in the Umbrella Agreement; but provided further, however, that if the NBA Team Secured Debt increase of the NBA Team is being sought in connection with the acquisition of the NBA Team on an arm's-length basis by an unrelated party, then the FMV will be equal to the actual all-in acquisition price of the NBA Team.

h. Special Purpose Entity; Insolvency. ArenaCo and ArenaCo Parent shall be established as bankruptcy remote special purpose entities, with one or more independent managers or directors (as applicable) that would have to approve any bankruptcy filing. ArenaCo shall contribute a minimum of \$100 million in equity towards construction of the Arena. If ArenaCo is determined to be bankrupt or insolvent as defined in the Umbrella Agreement or the Transaction Documents; if any receiver, trustee or other similar official of all or any part of the business of ArenaCo is appointed and is not discharged within 60 days after appointment; if ArenaCo makes any general assignment of its property for the benefit of creditors; if ArenaCo files a voluntary petition in bankruptcy or a state court receivership proceeding, or applies for reorganization or arrangement with its creditors, under federal, state or other laws now in force or hereafter enacted; if an involuntary petition of bankruptcy or insolvency is filed against ArenaCo and is not dismissed within 60 days after the filing; and if ArenaCo is in Payment Default then the City and County, at their election and unless prohibited by law may (i) first - draw on the Reserve Account, and (ii) then - foreclose on their security interests in the revenues and receivables from ArenaCo or the Arena, and/or (iii) replace ArenaCo as operator of the Arena, and/or (iv) terminate the Umbrella Agreement and the Arena Use Agreement. These remedies are not exclusive and will be in addition to all other remedies available to the City and County. The provisions of this Section are in addition to and not instead of or dependent upon the remedies set forth in Section 13.g or elsewhere in this MOU.

i. Intercreditor Agreement. The Parties acknowledge that the Transaction Documents shall include an intercreditor agreement between the City and County and ArenaCo's lenders ("Intercreditor Agreement") which shall be in the form and substance reasonably satisfactory to the City and County and ArenaCo's lenders. For the avoidance of doubt and without limitation, the Intercreditor Agreement shall include provisions addressing removal of Arena Tenant Improvements as a remedy, identifying which party to the Intercreditor Agreement will be the controlling party or parties to direct remedies upon the occurrence of any Payment Default, other limitations and timing of remedies for all parties.

j. Put and Call Options.

(i) Put Option. Upon expiration of the Arena Use Agreement term (including any extensions exercised by ArenaCo or its designees or approved successors and assigns), the City and County will have the right (the "Put Option") to require ArenaCo or its designees or approved successors and assigns under the Arena Use Agreement to purchase from the City and County all of the City and County's right, title and interest in or to the Arena Facility, the Project Site and all of the Arena Tenant Improvements for a purchase price in the amount of \$200 Million; provided, however, that in order to exercise such right, the City and



County must provide ArenaCo or its designees or approved successors and assigns with written notice of such election within 180 days following the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns).

(ii) Call Option. In addition to the Put Option, at the end of the Arena Use Agreement term (including any extensions exercised by ArenaCo or its designees or approved successors and assigns), ArenaCo or its designees or approved successors and assigns under the Arena Use Agreement will have the right (the "Call Option") to require the City and County to sell to ArenaCo or its designees, approved successors and assigns, all of the City's and County's right, title and interest in or to the Arena Facility, the Project Site and all of the Arena Tenant Improvements for a purchase price equal to the greater of (a) the amount of the First Installment, as increased on an annual basis by CPI, or (b) \$200 Million; provided, however, that in order to exercise such right, ArenaCo must provide the City and County or their designees or approved successors and assigns with written notice of such election within 180 days following the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns). If ArenaCo or its designees or approved successors and assigns under the Arena Use Agreement exercises the foregoing Call Option, such purchasing party shall be obligated to build a substantially similar new arena on the Project Site, in the sole discretion of the City and County.

(iii) Demolition and Removal. If ArenaCo does not exercise the foregoing call option and the City and County do not exercise the foregoing put option, then at the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns), if neither the NBA Team nor NHL Team agree to continue to play at the Arena, then at the sole determination and election by the City and County, ArenaCo or its designees or approved successor or assigns shall be obligated to pay for the reasonable and actual direct costs of demolition and removal of the Arena Facility; provided, however, that in order to elect to exercise such right, the City and County must provide ArenaCo or its designees or approved successors and assigns with written notice of such election within 180 days following the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns).

(iv) All decisions provided for in this Section 13.j that are to be made by the City and County will be made jointly by the City and County. If there is a dispute regarding any such decision, the decision will be resolved by the dispute resolution process set forth in Section 8.E. of the Interlocal Agreement between the City and County. If neither party has submitted the dispute to binding arbitration by the deadline set under that process, then the decision will be made by the majority owner.

k. Flow of Arena Tax Revenues.

(i) Tax Benefits. The Parties acknowledge that transactions provided for in and authorized by this MOU may be structured in the Umbrella Agreement and Transaction Documents in a manner that results in more positive tax benefits to the Parties, including the ability of the City and County to issue tax-exempt debt.



(ii) Arena Tax Revenues. Arena Tax Revenues will be deposited in the Arena Revenue Account, except for those Arena Tax Revenues that are required to be deposited into the SODO Transportation Infrastructure Fund prior to the Transfer Date. The City and the County will provide ArenaCo with a monthly accounting detailing Arena Tax Revenues collected and distributed.

(iii) Arena Revenue Account. The City will create an "Arena Fund" (and accounts and subaccounts associated therewith) (collectively, "Arena Revenue Account") into which the City and County will deposit any Arena Tax Revenues (except those Arena Tax Revenues that are required to be deposited in the SODO Transportation Infrastructure Fund prior to the Transfer Date) plus Base Rent and Additional Rent payments received by the City and County.

(iv) City-County Capital Account. On an annual basis, after payment of the Annual Reimbursement Amount has been made and only to the extent of any excess Arena Tax Revenue, the City and County will deposit the first \$2 million of such excess into a separate account ("City-County Capital Account") to be used for Major Capital Projects, as defined in Section 14. The City-County Capital Account shall at all times be the property of the City and County, subject to use and application thereof as provided in this MOU and the applicable Transaction Documents. Any Arena Tax Revenues received annually in excess of such first \$2 million will either be used by the City and County to redeem or defease outstanding principal of the Public Financing, or will be deposited by the City and County into the City-County Capital Account; provided however, if, at any time during the first ten (10) years of the Arena Lease, the City-County Capital Account has a balance of \$10 million, no additional deposits will be made into the City-County Capital Account. After the tenth (10th) year of the Arena Lease, the allowed balance of the City-County Capital Account will increase by \$2 million annually, until the fifteenth (15th) year, and thereafter the maximum balance of the City-County Capital Account will be \$20 million. At such time as all outstanding principal of the Public Financing has been fully retired or defeased, the above caps will no longer apply and, until the end of the initial term of the Arena Use Agreement, any excess Arena Tax Revenues will thereafter be deposited into the City-County Capital Account, which will be used and applied in the manner provided for in this MOU and the applicable Transaction Documents. Upon expiration of the initial term of the Arena Use Agreement (not including any extensions that may be exercised by ArenaCo), any funds remaining in the City-County Capital Account will be retained by the City and County to be used for any purpose of their choice. The deposits described in this Section will not in any way limit ArenaCo's obligation to make its annual payment into the Capital Account and to make all capital repairs, replacements and improvements to the Arena as required in this MOU.

(v) Termination. Following the defeasance or redemption of all bonds or certificates of participation issued as part of the Public Financing, the City and County will notify ArenaCo that it may withdraw all amounts remaining in the Reserve Account not otherwise required to satisfy ArenaCo's obligations under the Arena Use Agreement. From and after the date the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors or assigns) is terminated, the City and County may withdraw all amounts remaining in the City-County Capital Account.



14. Capital Improvements.

a. **Capital Account.** ArenaCo will be required to make two equal semi-annual cash deposits of \$1 Million each (for a total of \$2 Million in annual deposits) into an account ("Capital Account") in an amount equal to \$2 million annually ("Capital Account Requirement"). Funds in the Capital Account shall be used to make capital repairs, replacements or improvements to the Arena in accordance with this Section 14. The initial Capital Account deposit will be made on the first anniversary of the Commencement Date and payments will be made semi-annually thereafter on the dates that Base Rent and Additional Rent are due.

b. **Capital Improvements.** Except as set forth herein, ArenaCo will, at its sole cost and expense, make all Capital Expenditures relating to the Arena or its use. "Capital Expenditures" means the purchase, installation, improvement, repair or replacement of items or systems in the Arena Facility and Arena Tenant Improvements with a life expectancy of at least three years, at a cost of five thousand dollars (\$5,000.00) per item or system, including labor costs, and that are necessary or appropriate to maintain the Arena throughout the term of the Arena Use Agreement in good repair in accordance with the Schematic Design Package, Design Standards and Operating Standards (as defined below) or which may be required by applicable law, including but not limited to, all capital improvements necessary to maintain the structural integrity of the Arena.

c. **Procedure for Making and Approving Capital Improvements and Maintenance Inspections.** ArenaCo will, on an annual basis, prepare a proposed five-year capital budget ("Five-Year CIP") for anticipated Capital Expenditures and Major Capital Projects, as defined below, to be funded by the Capital Account and the City-County Capital Account; provided, however, that nothing herein shall relieve ArenaCo of its obligations set forth in Section 14.b above, regardless of whether a Capital Expenditure is contemplated by the Five-Year CIP. Within sixty (60) days of the submission, the City and County will either accept the Five-Year CIP in totality, or provide ArenaCo with written notice of any line-items it reasonably believes are not prudent or do not meet the definition of Capital Expenditures or Major Capital Projects, with the undisputed line-items becoming the prevailing Five-Year CIP while any such disputed line-items are being resolved by the Parties as hereinafter provided. The Parties will undertake best efforts to come to a mutually acceptable agreement on the Five-Year CIP within sixty (60) days thereafter, and if the Parties are unable to reach an agreement within said 60-day period, then the issue will be submitted to the dispute resolution provisions of this MOU. In addition, the Parties will develop a procedure for periodic joint inspections and a schedule of major maintenance activities which shall be prepared or reviewed by professionals knowledgeable about life-cycle cost analysis for comparable public facilities. This procedure will include (i) the right of the City-County Representative to receive material non-privileged information regarding major capital improvements during the progress of any major capital improvement projects, and (ii) the right of the City and County to enter upon the Arena for the purposes of performing inspections of the Arena and Tenant Improvements. An ArenaCo representative will, at the request of the City and County, accompany the City and County Representative on the inspections. Within 30 days after such inspection, the City and County may provide ArenaCo with a list of Capital Expenditures, including Major Capital Projects that the City-County Representative reasonably determines are necessary to maintain the Arena and Tenant Improvements in accordance with the Operating Standards; provided that any such Major



Capital Projects undertaken by ArenaCo pursuant to the request of the City-County Representative, may be funded from the City-County Capital Account notwithstanding any other provisions of this MOU. If ArenaCo disputes the City-County Representative's determination, the ArenaCo representative and the City-County Representative will promptly meet to attempt to resolve the dispute. If they fail to resolve the dispute, the parties will attempt to mediate the dispute. If the parties fail to resolve the dispute through mediation, the Parties will submit their dispute the dispute resolution provisions of this MOU.

d. Capital Account Availability. Upon Payment Default, the Capital Account will be available as additional security to the City and County to meet the payment obligations under the Public Financing. ArenaCo may draw on the Capital Account to make any Capital Expenditures including Major Capital Projects consistent with the Five-Year CIP and to fund any other Capital Expenditures. Subject to the rights of ArenaCo under the Arena Use Agreement, all such Capital Expenditures and Major Capital Projects will become the property of the City and County upon completion unless such repairs, replacements or improvements are Tenant Improvements and owned by ArenaCo or the NBA Team or the NHL Team.

e. City-County Capital Account Availability. Provided there is no Payment Default, and subject to any other mutually agreed-upon expenditures to be paid from funds in the City-County Capital Account that are covered in any Five-Year CIP, the first \$2 million in any funds deposited on an annual basis in the City-County Capital Account may be utilized by ArenaCo for the purposes specifically provided for in this MOU, including for routine and any other maintenance and repairs performed by ArenaCo to the Arena Facility or to the City and County owned Arena Tenant Improvements and for other capital repairs, replacements and improvements to the Arena and the Tenant Improvements. If ArenaCo uses the City-County Capital Account for routine and other maintenance and repairs, ArenaCo will make a deposit of an equal amount into the Capital Account, with such funds to be used periodically by ArenaCo only for Major Capital Projects. Other funds deposited in the City-County Capital Account on an annual basis shall only be utilized for major repairs to base systems and other major improvements (e.g., major repairs to the (i) roof, (ii) HVAC system, (iii) primary sound system, (iv) primary lighting system, (v) ice sheet refrigeration system, (vi) primary scoreboards, (vii) plumbing improvements and replacements, and (viii) primary electrical systems) ("Major Capital Projects"). Any City and County-owned Capital Expenditures and Major Capital Projects are subject to the rights of ArenaCo under the Arena Use Agreement. Notwithstanding the foregoing and in the event of a Payment Default, the City and County may, at their discretion, use any money in the City-County Capital Account for the payment, redemption or defeasance of the Public Financing.

15. Management, Operations and Use.

a. Operating Expenses. ArenaCo will control and will be solely responsible for all day-to-day operations, expenses, and costs for routine maintenance of and repairs to the Arena ("Arena Operating Expenses") to maintain it to a standard comparable to three mutually agreed upon professional basketball and ice hockey arenas suitable for NBA and NHL teams and recently constructed, serving as the home facility for NHL and NBA Teams or under construction ("Operating Standards"). The City and County will have no responsibility for any Arena Operating Expenses (except for incremental out-of-pocket expenses associated with City-



County Events). ArenaCo shall at all times maintain at least three times (3.0x) the average monthly Arena Operating Expenses in an Operations and Maintenance Fund to be maintained by ArenaCo and its lenders.

(i) Arena Operating Expenses. Arena Operating Expenses means all expenses or obligations, as determined on a cash basis, of whatever kind or nature made or incurred by ArenaCo or any third-party management company that may be engaged by ArenaCo, within the scope of ArenaCo's authority or responsibility under this MOU or the Transaction Documents for the management, operation or maintenance of the Arena, including, but not limited to, all reasonable costs of the City and County related to the City-County Representative and ArenaCo's expenses (to the extent not duplicative of other expenses enumerated herein); all payments to be made by ArenaCo or its affiliates under the terms of this MOU, the Umbrella Agreement or the Transaction Documents, including but not limited to: rent payments; Impositions (as defined below); expenses related to parking areas (if applicable); box office expenses for third-party events; all expenses incurred to obtain Arena Revenues (pro-rated where appropriate to reflect an appropriate allocation of revenues between ArenaCo and either the NBA Team or NHL Team); salaries, wages and benefits of personnel working at the Arena including personnel employed by ArenaCo or through its affiliates or service contractors; human resource support services and training and development expenses; contract labor expenses; maintenance and repairs; utilities; deposits for utilities; telephone expenses; management fees paid to any third-party management company; expenses incurred under use or license agreements with licensees or other users of the Arena; telescreen, video and/or scoreboard operation expenses, dues, memberships and subscriptions; security expenses; police, fire, emergency services and other public safety expenses related to the Arena (the estimate and pro ration of which in the event of multiple venue events shall be set forth in the Transaction Documents or as otherwise mutually agreed upon by the Parties); other event-handling activities at the Arena; all expenses payable by ArenaCo under any license agreements with the NBA and NHL teams; audit fees; legal fees; other professional fees; fees payable to concessionaires or other subcontractors; refuse removal expenses; cleaning expenses; taxes (but excluding any taxes, fees or charges ArenaCo may be obligated to collect and submit to a taxing or other government authority on behalf of others); building maintenance supplies; ticket commissions for third-party events; insurance premiums; data processing expenses; advertising expenses relating to Arena advertising and sponsorships; maintenance of advertising and signage relating to all permanent advertising, sponsorships and naming rights; marketing; public relations expenses; expenses and losses (to the extent not duplicative of other expenses enumerated herein) incurred in the production and promotion of events at the Arena; pest control; office supplies; employment fees; freight and delivery expenses; expenses for leasing of equipment; credit and debit facilities and telecheck fees and expenses; Arena-related travel, lodging and related out-of-pocket expenses for officers and directors of ArenaCo or an affiliate; and all damages, losses or expenses incurred by the ArenaCo, its affiliates or any third-party management company as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys' fees incurred in litigation or otherwise, assessed, incurred or sustained by or against any of them (to the extent not covered by insurance proceeds actually received). Operating Expenses do not include any payments to third party lenders.

(ii) Impositions. As used herein, the term "Impositions" means (without duplication of any expense set forth above) all governmental assessments, franchise



fees, excises, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever which at any time may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (a) all or any part of the Arena; (b) any payments received by ArenaCo or its affiliates from any holders of a leasehold interest or license in or to the Arena, from ticketholders (including, without limitation, suite licensees and premium seat ticketholders) attending events at the Arena; or (c) the transactions contemplated hereby or any agreement or document to which ArenaCo or its affiliates are a party which creates or transfers rights with respect to all or part of the Arena.

b. Operations. ArenaCo will operate and manage the Arena in accordance with the Operating Standards, as they may change from time to time by the mutual agreement of the Parties. ArenaCo will not enter into any multi-year contracts or grant any rights with respect to the operation of the Arena that would extend beyond ArenaCo's occupancy under the Arena Use Agreement unless such agreements contain provisions reasonably acceptable to the City and County regarding assignment or termination to be set forth in the Transaction Documents. ArenaCo will provide the City and County with a copy of any such contract. Failure of ArenaCo to operate and manage the Arena in accordance with the Operating Standards or to pay Arena Operating Expenses shall be a default under the Arena Use Agreement and, in addition to other remedies, and subject to reasonable notice and cure provisions mutually agreed upon by the parties, shall entitle the City and County to replace ArenaCo as the operator and manager of the Arena; provided, however, that in the event that ArenaCo disagrees with the City and County that such a default under the Arena Use Agreement has occurred, then such dispute will be submitted and resolved by the parties in accordance with the dispute resolution provisions specified in this MOU. Inspections relating to maintenance of the Arena are permitted as provided in Section 1414.c.

c. City-County Events. The City and County will be permitted to use the Arena or portions thereof to host no fewer than 12 events per year that do not conflict with previously scheduled events or hold dates ("City-County Events"). The City and County will have the right to schedule City-County Events in advance based on Arena availability. For City-County Events, the City and/or County will (i) pay no rent or use or license fees, and (ii) be required to pay only the incremental operating costs incurred by ArenaCo with respect to such City-County Events and any applicable taxes. Incremental costs shall not include the costs of foregoing alternative events or attributed overhead operational costs.

d. Marketing. ArenaCo will use commercially reasonable efforts to market the Arena in a manner that promotes and encourages economic development in the area.

e. Team License and Related Agreements. ArenaCo shall enter into license agreements, or other similar agreements, regarding the use of the Arena with the NBA Team and the NHL Team (the "Team License Agreements."). The Team License Agreements shall be subject to the approval of the City and County as being consistent with the terms of this MOU and the Transaction Documents, and shall recognize the City and the County as third-party beneficiaries. In connection with such approval right, each Team License Agreement shall provide (i) that the team shall play its preseason, regular season and playoff home games at the Arena in accordance with Section 18; (ii) that the team shall acknowledge and accept, in a



separate agreement in the form that will be one of the Transaction Documents, that the Team agrees to the non-relocation provisions in accordance with Section 18; (iii) that there is scheduling priority for the team (but if there is both an NBA Team and an NHL Team then playing in the Arena, subject to reasonable accommodation for any scheduling priority granted to either such team); (iv) for a term of at least 30 years; (v) for payment of rent; (vi) for allocation of the payment of game day expenses; (vii) for allocation of other expenses including maintenance; (viii) for an acknowledgment that ArenaCo shall retain all revenues related to naming rights, Arena founding partner sponsorships and other primary sponsorships related to the Arena; (ix) that ArenaCo shall retain all revenues related to suite sales; (x) that ArenaCo shall retain all revenues not retained by or payable to the teams or leagues for other premium and club seats; (xi) for allocation of revenues from parking, concessions, merchandise, and ticket surcharges (if any); (xii) for marketing of the Arena and the teams; (xiii) for insurance; and (xiv) for indemnification, including indemnification of the City and the County.

16. Arena Design, Development and Construction. ArenaCo will develop, design and construct the Arena as a first-class arena as set forth in the agreed-upon Schematic Design Package and related Design Standards (all as defined below). The City and County will have reasonable ongoing input through a designated representative (the "City-County Representative") in addition to whatever regulatory design procedures and requirements apply. Within ten (10) business days after execution of the Umbrella Agreement, ArenaCo shall designate an individual who shall serve as the ArenaCo representative for the purposes of communicating with the City-County Representative and decision-making regarding any and all matters related to the construction of the Arena and its operation ("ArenaCo Representative"). The ArenaCo Representative shall have the authority to legally commit ArenaCo regarding any matter relating to Arena construction. ArenaCo will use all reasonable efforts to involve and keep the City-County Representative fully informed on a timely basis of all significant aspects and decisions for design and construction of the Arena. In order to enable the City-County Representative to attend, become informed about the status of the Project, participate in discussions and present the City's and the County's position with respect to matters being discussed, the ArenaCo Representative will schedule regular meetings of senior design and construction staff of ArenaCo and other design and construction principals to discuss major issues related to the development and construction of the Project. The City-County Representative will also be notified of weekly design meetings. The City-County Representative will be notified of the time and place of such meetings and of any special meetings held by senior ArenaCo development staff to address similar development issues. The ArenaCo Representative will also participate in such separate meetings with the City-County Representative as the City-County Representative may reasonably request with at least three (3) days' prior notice. The ArenaCo Representative will also timely provide the City-County Representative with copies of significant construction-related documents including schedule updates, meeting minutes, requests for information (RFIs), responses to the RFIs, change order proposals and design changes. The City-County Representative will be entitled to full disclosure of all material matters relating to the Project as more fully described in Section 16.1.m. below and will have the rights to specific prior review and approval as set forth in this Section 16.1.m including, without limitation, reasonable approval on the acceptability of the exterior design program. ArenaCo will fully and fairly review and make good faith efforts to address satisfactorily the City-County Representative's reasonable concerns prior to making a final decision in any matters concerning the Arena exterior design, so long as such input is timely received. However, the City-County Representative's review and recommendations, or other



actions performed by the City-County Representative as described herein, will not in any manner cause the City or the County to bear any responsibility for the design or construction of the Arena or any defects related thereto.

a. Cost Allocation and Arena Site Repurchase Obligation.

(i) As between ArenaCo, on the one hand, and the City and County, on the other hand, ArenaCo (a) will be solely responsible for the cost of design, permitting and construction of the Arena, including any cost overruns and any remediation of any hazardous materials on the Project Site (to the extent any such hazardous materials are required to be remediated by a state or federal agency with jurisdiction in connection with the construction of the Arena on the Project Site), and (b) will be solely responsible for any defects related thereto. Nothing herein shall create any obligations on the part of ArenaCo to any third parties. On the Closing Date, ArenaCo will furnish a payment and performance bond issued by a surety reasonably satisfactory to the City and the County naming the City and County as dual obligees in compliance with Chapter 35.42 RCW. As required by RCW 35.42.060, no part of the cost of the construction of the Arena Facility shall ever become an obligation of the City and the County under the Lease-Purchase Agreement.

(ii) In the event that the Arena Facility and the Arena Tenant Improvements are not completed as described in the Design Standards within five (5) years following funding of the First Installment to ArenaCo for a reason other than based upon the occurrence of a "Force Majeure" event (which will be defined by the Parties in the applicable Transaction Documents) or "Regulatory Changes" (as hereinafter defined), then at the written request of the City and County given to ArenaCo within 180 days following the expiration of such five (5) year period, ArenaCo and ArenaCo Parent or their designee shall repurchase and the City and County shall sell to ArenaCo and ArenaCo Parent or their designee ("Repurchase Obligation") the Project Site and any improvements thereon or thereto that have previously been made, at a purchase price equal to (a) the First Installment, plus (b) any capitalized unpaid interest or accreted value on the First Installment, less (c) any amounts previously received by the City and County that are applied to or that are required to be applied to redemption or defeasement of the principal amount of the First Installment (the "Repurchase Price"). For the purposes of this Section 16.a.(ii), Regulatory Change shall mean any new or modified law, rule, regulation, ordinance or requirement adopted and/or enforced by the City or County (or any party acting under the authority thereof) acting in its legislative, regulatory or administrative capacity, that prevents or materially impairs or restricts ArenaCo from completing the Arena Facility and the Arena Tenant Improvements within said five (5) year period. In the event of the occurrence of a "Force Majeure" event (as defined in the applicable Transaction Documents) during said five (5) year period that prevents or materially impairs or restricts the ability of ArenaCo to complete the Arena Facility and the Arena Tenant Improvements within said five (5) year period, then such five (5) year period within which ArenaCo is required to complete the Arena Facility and the Arena Tenant Improvements will be extended for an additional period of time during which such Force Majeure event continues to prevent or materially impair or restrict ArenaCo's ability to complete the Arena Facility and the Arena Tenant Improvements, and if the Arena Facility and the Arena Tenant Improvements are not completed by the end of such extended period of time, then the Repurchase Obligation will again be applicable for the 180 day period immediately following the end of such extended period of time. In the event of a



Regulatory Change within said five (5) year period, then the Repurchase Price will be adjusted downward by an amount equal to the diminution in value of the Project Site (in its then current condition) taking into consideration any negative impacts of any such Regulatory Change, as determined by an independent appraiser selected by the Parties. In the event that the Parties are unable to agree upon an independent appraiser to make such determination of such adjusted Repurchase Price, the selection of such independent appraiser will be submitted by the Parties to the dispute resolution procedures provided for in this MOU. This Repurchase Obligation shall be an obligation secured by the Personal Guaranty described in Section 13.g(ii).

b. Design Standards. The Arena will, among other things,

(i) conform to the size, configuration and description of the Project Site and conform to the Design Standards and Operating Standards;

(ii) enable ArenaCo to maximize returns generated within the Arena from sources including, without limitation, ticket sales, lease or license of suites and club seats, sales of food, beverages and merchandise, license of intellectual property and advertising, promotional activities and sponsorship;

(iii) be in compliance with the then applicable NBA and NHL requirement standards for arenas and be substantially similar in the quality of the design, construction and capabilities to three (3) mutually agreed upon arenas with the capability to accommodate both NBA and NHL teams, the construction or substantial remodel of which was completed after 1999; and

(iv) meet the requirements of all applicable federal and state laws and City and County codes and ordinances.

c. Sustainability. The Arena will be designed and constructed to comply with applicable City requirements for sustainable construction and will strive to utilize the most modern practices of sustainable design and construction available at the time of construction in accordance with ArenaCo's business interests.

d. NBA and NHL Approvals. ArenaCo will obtain advance acknowledgements from both the NBA and NHL indicating that the Arena has been designed in a manner sufficient to permit the NBA Team and NHL Team to play their home games at the Arena.

e. Design Process. ArenaCo, with ongoing input from the City-County Representative, will work with the architect to develop a "Schematic Design Package." The Schematic Design Package will conform to the Design Standards and will, at a minimum, consist of a master plan, drawings, plans and specifications and a development program in sufficient detail to describe all material design elements of the Arena. The Parties will continue this collaborative process through the preparation of design development plans and outline specifications. As part of the collaborative process, the Design Review Board and the Seattle Design Commission will coordinate their review of the Arena.



f. City-County Design Approval. The City-County Representative will have the right to approve the Schematic Design Package for the Arena, which approval shall not be unreasonably withheld or delayed.

g. Construction. ArenaCo will cause the Arena to be constructed in all material respects in accordance with the Design Standards and Schematic Design Package.

h. Construction Decisions. It is the intent of the Parties to cause the Arena to be constructed and open for events as soon as reasonably practicable. Consistent with the foregoing, any material deviation from the approved Design Standards or the Schematic Design Package will require the approval of the City-County Representative, which approval shall not be unreasonably withheld or delayed. Nothing in the dispute resolution provisions of the Transaction Documents will limit the City's or County's right to seek injunctive or other relief if ArenaCo fails to comply with the provisions of this Section.

i. Contracting. Contracts for construction of the Arena ("Arena Contracts") will be put out for bid to a group of potential contractors who have had extensive experience constructing significant sports and entertainment facilities and are otherwise acceptable to ArenaCo. Arena Contracts will provide for substantial liquidated damages in case of late completion and require payment and performance bonds in favor of ArenaCo and the City and County consistent with industry standards. The Arena Contracts will also include contingency allowances and other appropriate cost overrun and completion protections as reasonably determined by ArenaCo, it being understood that, as between ArenaCo, on the one hand, and the City and County, on the other, any cost overruns will be the sole responsibility of ArenaCo. Arena Contracts will provide for the payment of prevailing wages at the rates specified by regulation for the specific categories of work performed. The selection of and contracts with principal subcontractors, principal engineers, architects, design and other consultants and significant suppliers will be subject to review by the City-County Representative, but ArenaCo will have the final decision-making authority with respect to such matters.

j. Other Provisions. The Project should promote and include the racial and ethnic communities of the City of Seattle and King County. Part of this Project's economic and community contribution is to engage local minority workers and businesses who are historically disenfranchised, as well as low-income workers and businesses. All Parties agree upon the importance of effective strategies and programs to include local minority and woman workers and firms in Project design and construction, with an ongoing commitment by ArenaCo to use reasonable efforts to use such local workers in the operations and maintenance aspects of the Arena. To that end, ArenaCo commits to using the City of Seattle's Inclusion Plan as guidance for use of Women and Minority Business Enterprises (WMBEs) on the Project. This includes using specific strategies such as the use of the "Worksheet of Possibilities" that helps bidders analyze what work or supply could be subcontracted to WMBE firms, the use of the "Contract Commitment Log" that documents (i) WMBE firms the prime contractor commits to subcontract with and (ii) contract amounts awarded to WMBE firms.

k. Insurance and Indemnification. All contracts for the design and construction of the Arena will include typical provisions for insurance covering, among other things, errors and omissions, general liability, workers' compensation, business interruption, and



builder's risk. Upon completion of construction of the Arena and during the term of the Arena Use Agreement, ArenaCo will continuously maintain general liability insurance, and property insurance for the full replacement value of the Arena, including casualty due to earthquakes and flood, and other insurance the City and County deem reasonable and applicable to the Arena. The City and County will be additional insureds or loss payees on all insurance policies and will approve the forms and limits of liability of all policies. ArenaCo will defend, hold harmless, and indemnify the City and the County for any costs, expenses or losses arising from the design, construction and operation of the Arena.

l. Disputes with Architects, General Contractors and Other Project Parties. The City and County may, at the sole discretion of each, intervene and join as a party in any action at law or equity or in any arbitration between ArenaCo any one or more of the architects, and any Arena contractor, subcontractor, consultants or suppliers relating to design or construction of the Arena.

m. Access to Information and Personnel. In addition to the access provided to the City-County Representative as set forth in this Section, all material non-privileged written and electronic communications from or to ArenaCo will include the City-County Representative on the distribution list and will promptly be furnished to the City-County Representative. All material non-privileged documents and other information in all media generated by any of the Key Project Personnel in connection with the Project will be made available to the City-County Representative on a timely basis upon the City-County Representative's request.

n. Labor Peace Agreement. Following the execution of the Umbrella Agreement, ArenaCo will enter into a "labor peace agreement" providing for the matters specified in the draft agreement set forth in Exhibit A attached hereto and incorporated herein.

17. Key Arena.

a. Use of Key Arena. Prior to completion of the Arena, any NBA and NHL franchise owned by ArenaCo or by an affiliate of or major investor in ArenaCo, or that has committed to play its home games in the Arena, will have the option to play their home games in Key Arena. During the tenancy of any such NBA or NHL teams at Key Arena, ArenaCo will cause certain improvements to be made to Key Arena, and those improvements which are of a permanent nature, which may include modernization of the telephone, data and broadcast "backbones" of the arena, as well as refurbishment and minor renovation to the event-level locker rooms and other spaces, will remain behind after the Arena is completed and opens and will become the property of the City.

b. Key Arena Fund. The City will establish a separate fund or account ("Key Arena Fund") to be managed by the City and used for improvements to Key Arena or to fund improvements at the new Arena, which will be determined by the City in accordance with the provisions of this Section 17.b, considering input by ArenaCo. The first \$7 million of Key Arena Taxes, as defined below, will be deposited into the Key Arena Fund and will be used and applied as provided in Section 17.a, or to fund improvements at the new Arena, as follows: (i) if the City and the existing professional team anchor tenant of the Key Arena are, within 24 months of the Effective Date, able to reach agreement on mutually agreeable terms for a long-term lease



extension for such professional team anchor tenant to continue to play its home games at the Key Arena, then the City will direct the full \$7 million in the Key Arena Fund to be utilized for improvements to the Key Arena as provided for in Section 17.a above; (ii) if no such long-term lease extension for the professional team anchor tenant to continue playing its home games at Key Arena is agreed to, but in the event that by no later than the Commencement Date, ArenaCo and such professional team anchor tenant are able to reach agreement on mutually acceptable terms for a long term lease for such professional team anchor tenant to play its home games at the new Arena containing terms that are commercially viable for both ArenaCo and such tenant, then the City will direct that \$5 million of the monies in the Key Arena Fund be used to support investments and fund improvements of the new Arena as provided for in this MOU; and (iii) if neither of the above in 17.b.(i) or 17.b.(ii) occurs, then the full \$7 million in the Key Arena Fund will be directed by the City to fund the improvements to the Key Arena as provided for in Section 17.a of this MOU. To facilitate negotiations with Key Arena's existing professional team anchor, the City anticipates concluding a feasibility assessment of operating Key Arena in its current configuration, or a configuration that would effectively serve this tenant, within 18 months of the Effective Date. After a cumulative total \$7 million of Key Arena Taxes are deposited in the Key Arena Fund, any additional Key Arena Taxes collected prior to the Transfer Date will be deposited into the SODO Transportation Infrastructure Fund. Notwithstanding the fact that certain of the funds from the Key Arena Fund may be used and applied as provided in this Section 17, the creation of the Key Arena Fund does not relieve ArenaCo of its obligations provided for under this Section 17 of the MOU.

c. Key Arena Taxes. "Key Arena Taxes" means the dollar amount of incremental sales tax, leasehold excise tax, and admission tax attributable to Key Arena and generated while the NBA Team and/or NHL Team is playing at Key Arena, plus City business tax revenues imposed under Chapter 5.45 SMC or any successor provision that the City has reasonably determined it received from ArenaCo and from other business activities engaged in, at or from Key Arena (including and without limitation revenues from the business activities that have a substantial nexus with the City).

18. Non-Relocation. ArenaCo will cause the NBA and NHL franchises committed to play home games in the Arena to enter into binding and enforceable non-relocation agreements with the City and County that will include specific performance, liquidated damages that recognize the direct and indirect damages that would be incurred by the City and by the County, including loss of financial, social and civic benefits that are derived by the City and the County from the presence of an NBA Team or an NHL Team and the playing of their respective home games in the City, and injunctive relief provisions, pursuant to which the teams will irrevocably and unconditionally commit and guarantee to be domiciled in Seattle and to play at least two (2) pre-season and all their home regular season and post-season games at the Arena for a term of at least 30 years (subject to a limited number of league-approved neutral site games and other agreed upon customary exceptions). The non-relocation agreements will contain terms that require the NBA and NHL franchises to maintain their NBA or NHL membership in good standing during the term of the Arena Use Agreement. Under those non-relocation agreements, the NBA and NHL teams will not relocate from the City of Seattle, will not apply to the NBA or the NHL to transfer to another location outside of the City of Seattle, will not enter into or participate in any negotiations or discussions with, or apply for, or seek approval from, third-parties with respect to any agreement, legislation or financing that contemplates or would be

reasonably likely to result in any breach of the non-relocation agreement, and will have no right to terminate the non-relocation agreement during the term of the agreement, in each case except as provided in the definitive non-relocation agreement. The non-relocation agreements will expressly provide that specific performance requiring the NBA franchise and the NHL franchise to play pre-season, regular season and post-season games at the Arena is an appropriate remedy for breach.

19. Governing Law. This MOU is, and the Umbrella Agreement and the Transaction Documents will be, governed by the laws of the State of Washington. Venue for any action under the Transaction Documents, including any bankruptcy proceeding, will be in King County, Washington. The terms of this MOU are not intended to establish or to create any rights in any persons or entities other than the Parties and the respective approved successors or assigns of each of the Parties.

20. Tax Matters. The Parties will mutually endeavor to preserve and/or maximize, as applicable, the tax benefits accruing to each of them. Specifically, the federal tax benefits for ArenaCo and the state and local tax benefits to the City and the County will be maximized to the extent permitted by law. The structure of the transactions as set forth herein may be modified in a manner that results in more positive tax effects to the Parties.

21. Scheduling Coordination. ArenaCo will coordinate with the Seattle Mariners, the Seattle Sounders and the Seattle Seahawks, as well as the Washington State Public Stadium Authority (CenturyLink Field) and the Washington-King County Stadium Authority (Safeco Field), to minimize the number of conflicting and overlapping events held at the existing stadiums and the proposed Arena. The Transaction Documents will include specific provisions limiting the number and duration of such conflicts and providing for City oversight and enforcement of these provisions.

22. City Commitments.

a. **Key Arena.** During the 12 months following approval of the MOU, the City will lead a planning process to evaluate options for the future of Key Arena or the Key Arena site. The process will draw upon input from the Seattle Center Advisory Commission, professionals from the real estate and entertainment fields, local stakeholders, and others with relevant expertise and interest. The goal of this process will be to identify an option(s) that is financially sustainable and that significantly contributes to the vitality of Seattle Center. As part of this process, the City will consider the interests of Key Arena's current tenants and their role in ensuring the future success of Key Arena and the Key Arena site and the new Arena. As provided in Section 3.b of this MOU, the reasonable costs incurred by the City to assess the future of uses of Key Arena or the Key Arena site up to a maximum of \$150,000 will represent a reimbursable Development Cost. At least \$2 million of deposits in the Key Arena Fund will be reserved to implement the results of this study.

b. **Land-use protections for Port and Industrial Areas.** With participation of stakeholders in the Greater Duwamish Manufacturing and Industrial Center ("MIC")/SODO area, including representatives from all the sports facilities, Pioneer Square and the



Chinatown/International District, the Port of Seattle, the County, the Manufacturing Industrial Council and other MIC manufacturing, industrial, freight and shipping businesses, the City will undertake the following planning and land use study intended to develop new land use mechanisms to maximize the economic viability of the MIC, and civic vitality of the Stadium Transition Area Overlay District. These efforts will be coordinated with the transportation planning efforts and investments related to the SODO Transportation Infrastructure Fund.

(i) **MIC Policy and Land Use Study.** Evaluate the necessary policies, land uses, and zoning mechanisms, such as a Port Overlay District, to protect maritime and industrial uses and reinforce the role of the MIC as a manufacturing and industrial sanctuary. Industrial zoned land is a vital economic asset and industrial businesses located there are critical to the city's and region's overall economic health and global competitiveness, and contribute significantly to Seattle's family-wage job base and the economy. The planning effort ("MIC Policy and Land Use Study") will build on the City's Comprehensive Plan policies and goals for the MIC and the Container Port Element, the MIC Neighborhood Plan, as well as the Port of Seattle's Century Agenda. The objectives of this planning effort are to strengthen the long-term viability of the MIC, protect industrial uses and Port operations, such as at Terminal 46, outside of the Stadium Transition Area Overlay District from encroachment and conversion to non-industrial uses, reinforce the MIC as an industrial sanctuary, and coordinate with the Seattle Industrial Areas Freight Access Project that is scheduled to begin in January 2013.

(ii) Reevaluate the effectiveness of the Stadium Transition Area Overlay District and the City's Comprehensive Plan policies and goals for this area, particularly in light of the removal of the Alaskan Way Viaduct and other recent transportation improvements, the Central Waterfront Plan, and the Stadium District Concept Plan. Consider policy and regulatory changes that would better orient the District to the needs and experience of stadium patrons, improve pedestrian connections to and from the stadiums, and produce a pedestrian-friendly streetscape compatible with Pioneer Square, while recognizing the importance of preserving industrial uses outside of the District.

(iii) The MIC Policy and Land Use Study shall include recommendations to the City Council and Mayor for new land use regulatory changes to implement the goals and purposes of this Section and shall be completed no later than December 31, 2014.

23. Additional Provisions.

a. Naming Rights. ArenaCo will have the right to designate the name of the Arena, subject to approval by the City-County Representative as hereinafter provided, and to name other areas of within the Arena. The City-County Representative will not withhold his or her approval of any name of the Arena, so long as it does not, in the City-County Representative's reasonable judgment, violate the standards of good taste existing in the Seattle-King County area and will not otherwise be an embarrassment to the City or County. Unless the City and County agree otherwise, which agreement will not be unreasonably withheld, the name given to the Arena will not include reference to any state, local or other municipality name unless such reference is to "Seattle" or "King County."



b. Team Name. Subject to NBA approval and applicable rules, regulations, requirements and agreements of the NBA, ArenaCo or an affiliate of ArenaCo shall use its best efforts to acquire from the current owner thereof the "Seattle Sonics / Supersonics" name, trademarks, memorabilia (banners, trophies and retired jerseys), and the right to use and refer to the history of the "Seattle Supersonics" (as those rights are more thoroughly described below), and any NBA Team domiciled in Seattle, Washington and operated by ArenaCo or an affiliate of ArenaCo that owns such NBA team will use the name "Seattle Supersonics." The City will use its best efforts to assist ArenaCo or an affiliate of ArenaCo that owns such NBA Team to: (i) acquire the unrestricted rights to use the name trademarks, any logos, symbols, designs, trade dress (including, but not limited to, team colors) or other indicia associated with the Seattle SuperSonics/Supersonics for purposes of identifying such NBA Team, and (ii) obtain the right to use and refer to the Seattle SuperSonics history (e.g., statistics, player histories and records) from prior NBA seasons during which the NBA Team formerly known as the Seattle SuperSonics played their NBA home games in Seattle, and (iii) obtain a transfer of the trophies, banners, and retired jerseys and other related memorabilia from the current owner thereof. Subject to NBA approval and applicable rules, regulations, requirements and agreements of the NBA, and subject to ArenaCo or an affiliate of ArenaCo having successfully obtained the rights to the "Seattle Sonics / Supersonics" name, trademarks, memorabilia (banners, trophies and retired jerseys), and the right to use and refer to the history of the "Seattle Supersonics" as provided above, and provided further that the City and County are not in breach of the Arena Use Agreement or any of their other material obligations to ArenaCo under the Transaction Documents, if the NBA team domiciled in Seattle and operated by ArenaCo or an affiliate of ArenaCo that owns such rights ever relocates to a City other than Seattle, then ArenaCo or such affiliate of ArenaCo that operates such NBA team shall transfer all rights to the name, trademarks, memorabilia and right to use and reference the history related to the "Seattle Supersonics" to the City, and further, subject to NBA approval and the applicable rules, regulations, requirements and agreements of the NBA this transfer requirement shall apply to any new name, trademarks, memorabilia or right to use and refer to the history of such NBA team if such NBA team domiciled in Seattle ever adopts a new name with the approval of the City and County or otherwise, and thereafter relocates to a City other than Seattle.. When appropriate, ArenaCo or an affiliate will prominently include "Seattle" as part of the team name in public references for marketing, advertising, promotional and other business purposes, subject to the requirements and restrictions of the NBA; provided, however, that it is understood and agreed that the names "SuperSonics" and "Sonics" may be used without the name "Seattle" to market, advertise and promote the team and for other business purposes when deemed appropriate by ArenaCo or an affiliate of ArenaCo that owns the NBA Team.

c. Arena Agreements. The Umbrella Agreement and the Transaction Documents associated with design, development, construction, operation, and maintenance of the Arena will contain such other provisions, representations, warranties, covenants and indemnities as the Parties may agree or as are customarily included in similar documents related to the lease, design, development, construction, operation, and maintenance of NBA and NHL arenas in the United States or of other major public facilities within the City of Seattle. The Umbrella Agreement and the Transaction Documents will not be assignable without the written consent of all Parties, which consent will not be unreasonably withheld, hindered or delayed; provided, however, that the City and County agree that ArenaCo may assign the Transaction Documents: (i) to an affiliate or subsidiary of ArenaCo that is owned or controlled by ArenaCo or ArenaCo's



majority or controlling owners, or (ii) in connection with a sale, transfer or assignment by ArenaCo or such affiliate or subsidiary of a controlling interest in ArenaCo or such an affiliate or subsidiary, or a transfer by ArenaCo or such an affiliate or subsidiary of substantially all of the assets of ArenaCo if (x) the purchaser, transferee or assignee assumes all obligations and liabilities of ArenaCo, or its assignee, under the Transaction Documents, including provision of a guaranty satisfying the requirements of Section 13.g(ii), (y) ArenaCo demonstrates to the reasonable satisfaction of the City and County that such purchaser, transferee or assignee has sufficient financial capability to meet all such obligations and liabilities of ArenaCo and its affiliates under the applicable Transaction Documents, and (z) the purchaser, transferee or assignee together with the individual persons that own, directly or indirectly, such purchaser, transferee or assignee, are of a moral character reasonably acceptable to the City and County.

d. Seattle Domicile. ArenaCo and any affiliate entity of ArenaCo that owns the NBA Team or the NHL Team will be domiciled in Seattle, Washington, and will maintain their headquarters, offices and substantially all of their employees in Seattle, Washington.

e. Review of ArenaCo Financial Information. In addition to the condition precedent set forth in Section 24.a and during the term of the Arena Use Agreement, the City and County will have the right to review all relevant financial records of ArenaCo relating to the ability of ArenaCo to carry out any of its financial obligations under this MOU, the Arena Use Agreement and the Transaction Documents, and of ArenaCo Parent relating to the ability of ArenaCo Parent to carry out any of its financial obligations under this MOU, the Arena Use Agreement and the Transaction Documents, provided that disclosure of such financial records is not otherwise prohibited or restricted by contractual obligations or applicable laws, or the rules, regulations or policies of the NBA or NHL, and only if a statutory exemption for such financial records is available under chap. 42.56 RCW (the Public Records Act), and if such an exemption under chap. 42.56 RCW (the Public Records Act) is not available or disclosure is prevented by contractual obligations or applicable laws, or the rules, regulations, or policies of the NBA or NHL, ArenaCo and ArenaCo Parent shall provide, to the satisfaction of the City and County, an alternative and reliable means by which the City and County can assess the ability of ArenaCo and ArenaCo Parent to carry out their financial obligations under the Arena Use Agreement, this MOU and the Transaction Documents. Any direct reasonable and necessary costs actually incurred by the City and County completing any such financial review will be reimbursed by ArenaCo.

f. Community Benefit Agreement. Prior to the Closing Date, ArenaCo shall enter into a Community Benefit Agreement ("CBA") with appropriate community organizations to foster equity and social justice and provide benefit to the communities that will be affected by the Arena, including for example Pioneer Square, and the Chinatown/International District. ArenaCo shall communicate with a variety of community organizations, community members and the City and County to identify the appropriate issues to be addressed by the CBA, which may include economic development, employment opportunities with living wages, job training and apprenticeships, transportation and parking, community amenities, and public safety, as they relate to the Arena and its operations. The CBA shall also provide the structure for meaningful ongoing community dialog and partnership with ArenaCo once the Arena is operational, including annual reporting on fulfillment of mitigating measures.



(i) Community Involvement. ArenaCo is committed to having the NBA franchise that will play home games in the Arena maintain a strong presence in the community, as professional sports franchises can have a positive impact on youth. As a regional asset, the NBA franchise will work to establish partnerships with organizations throughout King County that serve youth and underserved communities, particularly in areas where Public Health-Seattle & King County have identified health and education disparities. The NBA franchise will establish partnerships with the goal of contributing to the future success and health of youth with initiatives such as scholarship funds, afterschool programs, youth mentorship and improved basketball facilities in the region to increase opportunities to play and learn the game of basketball.

(ii) Access and Affordability. A successful NBA franchise is one that enables people from all communities and all income levels to attend games. ArenaCo is committed to making tickets to NBA games affordable to middle and low income individuals and families. To demonstrate this, the NBA franchise will go beyond the league standard for providing affordable tickets (current standard is an average of 500 tickets per game at \$10 or less), by offering an average of 500 tickets per game at \$10 or less plus an additional average of 1,000 tickets per game at \$20 or less for a total of 1,500 tickets at reduced prices and increased annually by CPI.

g. Economic Impact Analysis.

(i) ArenaCo shall reimburse the City and County for the cost (not to exceed \$200,000) to conduct an economic impacts analysis ("Analysis") that examines the net economic impacts of the construction and operation of the Arena. The Analysis shall study the net economic costs and benefits of the construction and operation of the Arena in the geographical areas that would be affected by the construction and operation of the Arena and shall consider all relevant segments of the economy that would be affected by the construction and operation of the Arena, including without limitation retail, commercial, industrial and freight transportation. The Analysis shall include, without limitation, study of (a) the net changes in employment, wages, economic activity and tax revenues; (b) the net effects on Port of Seattle economic activity; (c) the net effects on the overall regional economy and the Arena's compatibility with regional economic development plans; and (d) the net effects on women-owned and minority-owned businesses.

(ii) The Analysis shall be prepared by an independent consultant fully qualified to prepare the Analysis ("Consultant") selected by the City and County with the approval of ArenaCo, which approval shall not be unreasonably withheld, conditioned or delayed. The scope of the Analysis shall be determined by the City and County based on the reasonable recommendations of the Consultant consistent with the requirements of this Section 23.g and with the approval of ArenaCo, which approval shall not be unreasonably withheld, conditioned, or delayed. Upon selection of the Consultant, the City shall enter into a written contract with the Consultant ("Consultant Contract") with the County identified as a third party beneficiary regarding the preparation of the Analysis. The Consultant Contract shall require (a) that unless otherwise agreed to in writing by the City and County, the Consultant shall not act as an advocate for or otherwise be retained by ArenaCo or an ArenaCo affiliate until after the Closing Date and the Consultant shall not act as an advocate for or otherwise be retained by any



other entity (except City and County) with regard to any of the issues that are addressed in the Analysis until after the Closing Date, and (b) that any preliminary drafts of the Analysis be made available for review by ArenaCo at the same time as they are made available for review by the City and County. The City and County shall supervise the Analysis preparation process and will have sole authority to approve the final Analysis.

(iii) The Analysis shall be completed according to the following timeline: (a) The City and County will select the Consultant and inform ArenaCo of the selection within twenty-five (25) days of the Effective Date and ArenaCo shall respond within five (5) days thereafter (and if ArenaCo reasonably disapproves the selection the City and County will select a different Consultant consistent with the timeline and process set forth in this Section) and (b) the Analysis shall be completed within ninety (90) days following execution of the Consultant Contract. The Parties may agree to modify these timelines and a failure to meet these timelines shall not interfere with the ability of the City and County to exercise their rights under the condition precedent in Section 24.g of this MOU.

h. WNBA Team. The Parties hereby affirm the value and importance of maintaining the presence of a Women's National Basketball Association (WNBA) team in the Seattle region. The current WNBA team is the Seattle Storm. The Parties shall use reasonable efforts to support the Seattle Storm or any successor WNBA team operating in Seattle at either the Arena or Key Arena.

24. City/County Conditions Precedent. The obligations of the City and County under this MOU to commit Public Financing are expressly conditioned on the following conditions precedent:

a. Financing and Delivery of Initial Deposit to Reserve Account. Before the Umbrella Agreement and Transaction Documents may be authorized as described in Section 24.e below, (i) ArenaCo has arranged for all financing or other funding necessary to fully finance or fund the Project; and (ii) the City and County and their respective councils reasonably determine they are satisfied that ArenaCo and its investors have the resources to meet their financial obligations under this MOU and the applicable Transaction Documents. Before the City and County commit Public Financing, ArenaCo shall have arranged for delivery of the required initial deposit into the Reserve Account. The City and County, or a third party selected by the City and County, will be provided with access to all relevant information and documentation provided to ArenaCo third party lenders to enable the City and County to make the determinations specified in Sections 24.a.(i) and 24.a.(ii) above, unless and to the extent that any such relevant information and documentation cannot be protected by a statutory exemption for such information and documentation under chap. 42.56 RCW (the Public Records Act), or unless and to the extent that the access to such information and documentation is otherwise prohibited or restricted by contractual obligations imposed by third parties, or by applicable laws, or the rules, regulations or policies of the NBA or NHL, in which case ArenaCo and ArenaCo Parent will provide, to the reasonable satisfaction of the City and County, alternative and reasonably reliable means by which the City and County can make the determinations specified in Sections 24.a.(i) and 24.a.(ii) above.



b. SEPA and Permitting. Before the Umbrella Agreement and Transaction Documents may be authorized as described in Section 24.c below, (i) SEPA review associated with any City or County actions as described in Section 5 of this MOU has been completed through issuance of a Final Environmental Impact Statement; (ii) the master use permit and all other permits required for construction of the Project have been obtained; (iii) the City and County and their respective councils have considered the SEPA review in connection with their respective actions and have determined whether it is appropriate to proceed with or without additional or revised conditions based on the SEPA review; and (iv) any challenges to the Project have been resolved in a manner reasonably acceptable to the Parties.

c. Due Diligence for Site Acquisition. The City and County shall have determined, in their reasonable discretion, that the condition of title to, and the environmental condition of, the Property is suitable for acquisition and subsequent development for the Arena Facility consistent with this MOU. The City and County shall complete their review and determination no later than 150 calendar days after the Effective Date, or such other date as may be mutually agreed upon by the Parties. The City-County Representative may give written notice on or prior to 150 calendar days after the Effective Date or such mutually agreed upon date that the condition of title to or the environmental condition of the Property are not suitable for acquisition and subsequent development for the Arena Facility consistent with this MOU, specifying the reasons therefore, in which case, unless the Parties otherwise mutually agree in good faith upon a reasonably satisfactory method for ArenaCo to resolve the City's and County's objections to the condition of title to and environmental condition of the Property, this MOU shall terminate. No later than ten days after the Effective Date, ArenaCo shall provide the City-County Representative with copies of all documents in the possession of ArenaCo that relate to the condition of the Property, including a preliminary commitment for title insurance and any documents relating to the environmental condition of the Property, but excluding any documents that are privileged or proprietary. Such documents shall be provided without warranty. ArenaCo shall also provide the City-County Representative, and other designated employees and consultants of City and County as may be reasonably requested by the City-County Representative, with access to the Property for purposes of conducting due diligence review provided for in this Section 24.c, subject to any required consents from current owners and occupants and subject to the City's and County's agreement to indemnify ArenaCo for any costs or damages arising in connection with or relating to such entry ("Right of Entry Agreement"). Such entry and such due diligence testing or investigations to be conducted as provided for in this Section 24.c, shall also be subject to the further terms and conditions of such Right of Entry Agreement. If any land is acquired or proposed to be acquired and added to the Project Site after the Effective Date for which ArenaCo has not previously provided the City and County with the documents and access described above for the purposes of enabling the City and County to determine that the condition of title to, and the environmental condition of such additional property is suitable for acquisition and subsequent development of the Arena Facility consistent with this MOU, then the City and County will have up to an additional one-hundred fifty (150) days after receiving written notice of such acquisition or proposed acquisition from ArenaCo and after receiving such documents and access to complete due diligence review of such additional land consistent with this Section.

d. NBA Team, Use Agreement, Non-Relocation Agreement and Community Benefits Agreement. ArenaCo or a third party under contract with ArenaCo has secured (i)



ownership rights to an NBA franchise and (ii) subject to NBA approval and applicable rules, regulations, requirements and agreements of the NBA, the rights to the "Sonics" name, trademarks, memorabilia and right to use and refer to the history or has used its best efforts to do so, as provided for and described in Section 23.b of this MOU; and that NBA franchise and the Parties have entered into a non-relocation agreement as described in Section 18; and that the Parties and the appropriate community organizations have entered into the Community Benefit Agreement described in Section 23.f; and that the NBA has acknowledged the Arena Use Agreement, the NBA has approved locating the NBA Team in Seattle and the NBA has acknowledged the non-relocation agreement; and that ArenaCo has entered into a Team License Agreement with the NBA Team as required by and consistent with Section 1515.e.

e. Document Approval. The Umbrella Agreement and the Transaction Documents have been negotiated and the City and County are authorized by their councils to execute the documents.

f. Material Adverse Conditions. As of the date of this MOU, the Parties acknowledge that the City and County have sufficient debt capacity and access to financial markets to meet their obligations under this MOU. However, in the case of a natural disaster, a significant change in state or federal law, or a substantive change in financial markets or conditions such that the City and County are unable to issue debt on reasonable terms consistent with Section 10 and the Parties are unable to agree in good faith on viable alternatives, the Public Financing will not occur and the City and County will not be required to make any further financial investment or to provide for the payments to ArenaCo under Section 10 or otherwise.

g. Economic Impact Analysis Findings. The Analysis required by Section 23.g of this MOU has been completed and the City and County and their respective councils have considered the Analysis and have determined whether it is appropriate to proceed with or without additional or revised conditions based on the Analysis. The City and County councils shall make this determination by vote within forty-five (45) calendar days following the completion of the Analysis. Calculation of this forty-five (45) day period shall include weekends but shall exclude any City or County holidays and any City Council or County Council recesses.

25. ArenaCo Conditions Precedent. The obligations of ArenaCo under this MOU are expressly conditioned on the following conditions precedent:

a. Permitting. All permits necessary for construction, use and operation of the Arena, and all parking and other facilities accessory to the Arena, shall have been issued and shall be in form and substance satisfactory to ArenaCo in its sole discretion, and the costs and expenses required to remediate any hazardous materials or conditions in connection with the design and construction of the Arena Facility that ArenaCo is required to remediate as provided in Section 16.a are reasonably acceptable to ArenaCo.

b. Financing. ArenaCo shall have obtained financing in an amount adequate to construct the Arena and upon rates, terms and conditions satisfactory to ArenaCo in its sole discretion. In connection therewith the Parties understand that ArenaCo may be required by its lenders to request an amendment to the terms hereof in order to facilitate such financing. The City and County shall consider such request, but any amendments hereto shall be (i) in the sole



and absolute discretion of each of the City and the County and (ii) subject to all required approvals of each of the City and the County.

26. City and County Cooperation. The City and County may elect to apportion between themselves any of the rights or obligations described herein as rights or obligations of both the City and County, including that the City and the County may elect to apportion all of their rights and obligations to the City. At the option of the City and County, any right obtained by one of them in a contract with ArenaCo, under any of the Transaction Documents may be conferred on the other as a third-party beneficiary. As to any Key Arena issue addressed by the MOU, the Umbrella Agreement or the Transaction Documents, such agreement is only between ArenaCo and the City, and the County shall have no rights or obligations with regard to such agreement.

27. Counterparts. This MOU may be executed in one or more counterparts, each of which will be deemed an original, but all of which, when taken together, will constitute one and the same instrument.

28. Dispute Resolution.

a. In the event any dispute, disagreement, claim or controversy arises between the Parties concerning this Agreement or any of the provisions hereof (each, a "Disputed Matter"), the City-County Representative and the ArenaCo Representative will meet and attempt to resolve the Disputed Matter through negotiations, except as provided in Section 16.h. If the representatives are unable to reach agreement, the Disputed Matter shall be referred jointly to the City's Director of Finance and ArenaCo's chief executive officer. If such executives do not agree upon a decision, then the City's Mayor, the County Executive and ArenaCo's owners or managing members shall meet and attempt to resolve the matter. If such individuals are unable to resolve the Disputed Matter within ten (10) days, then either the City and County, collectively, or ArenaCo may, upon written notice, submit the matter to mediation.

b. Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the Disputed Matter and the relief requested. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Following compliance with the provisions of Section 28.a, the parties each covenant that they will participate in the mediation in good faith, and that they will share equally in the costs of such mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to any Disputed Matter submitted to mediation until after the completion of the initial mediation session provided for in this Section 28.b, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

29. Oral Agreements and Commitments. The Parties acknowledge that oral agreements or oral commitments to lend money, extend credit, or forbear from enforcing repayment of a debt are not enforceable under Washington law.



30. Notice Provisions. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service or mailed in the United States mail postage prepaid and, if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a Party shall from time to time direct:

City:

Copies to:

County:

Copies to:

ArenaCo:

Copies to:



Executed as of the date first written above

THE CITY OF SEATTLE
a Washington municipal corporation

By: _____
Its: _____

KING COUNTY, WASHINGTON
a political subdivision of the State of Washington

By: _____
Its: _____

WSA Properties III, LLC, a Delaware limited liability company:

By: Horton Street, LLC, a Delaware limited liability company
Its: Manager

By: _____
Its: Christopher Hansen
Its: Manager



EXHIBIT A

LABOR PEACE AGREEMENT

In order to protect the City of Seattle's, King County's, and the Developer's investment in the Arena from the financial risks of labor disputes, the Developer (ArenaCo) will enter into labor peace or project labor agreements with labor organizations which represent workers in King County and have indicated or may indicate their intent to organize workers at the Arena.

These organizations include but are not necessarily limited to the Seattle Building & Construction Trades Council (project construction), Unite Here Local 8 (food & beverage concessions, restaurant, and hotel employees), Teamsters Local 117 (operations employees), SEIU Local 6 (janitorial employees), and IATSE Local 15 (staging and audiovisual employees).

For construction, the project labor agreements will include a promise by the labor organizations limiting their rights during construction of the Arena to engage in concerted economic action at the Arena aimed at bringing economic pressure to bear against the Developer, including such activities as striking, picketing and boycotting.

For Arena operations, the labor peace agreements shall provide the same guarantee after opening of the facility, and shall extend to any successor or replacement contractor, sub-contractor, operator, or developer acquiring the right to develop or operate business opportunities covered by this agreement during the term of the Arena Use Agreement between ArenaCo and the City of Seattle and King County. This requirement is severable from the obligations to have such a guarantee for the construction phase.

The Developer shall maintain such labor peace or project labor agreements with such labor organizations for the duration of the proprietary interest of the City and County or other public agencies in uninterrupted revenues from the operation of the Arena which agreements will limit the rights of such union and its members to engage in economic activity against the operation.

Copies of the labor peace and project labor agreements will be submitted to the City and County promptly following the execution and delivery thereof by Developer.



October 8, 2012

INTERLOCAL AGREEMENT
ARENA DEVELOPMENT, FINANCING, ACQUISITION AND OPERATION

THE CITY OF SEATTLE and KING COUNTY

This Interlocal Agreement is entered into as of the _____ day of _____, 2012, by and between THE CITY OF SEATTLE (the "City") and KING COUNTY (the "County") (collectively, the "Parties" and each a "Party"). This Interlocal Agreement ("Interlocal Agreement") is made pursuant to chapter 39.34 RCW (the "Interlocal Cooperation Act") and has been authorized by the governing body of each Party. Each of the Parties is a "public agency" as defined in the Interlocal Cooperation Act.

1. Recitals.

A. A private entity known as "ArenaCo" has approached the Parties with a proposal for a new multi-purpose sports and entertainment facility (the "Arena") to be located on the Project Site. ArenaCo will sell the Project Site to the City and then ground lease it back from the City. ArenaCo will construct the Arena at its sole cost and expense and on completion, will lease it to the Parties with an option to purchase. The Parties will thereafter sublease or lease the Arena Facility to ArenaCo to operate pursuant to an "Arena Use Agreement." The general provisions of the contemplated transaction between the Parties and ArenaCo are outlined in the MOU.

B. Each of the Parties has authority to enter into interlocal agreements under the Interlocal Cooperation Act for joint and cooperative action, including actions consistent with Chapter 35.42 RCW, RCW 36.68.090, and other laws applicable to City and County development, financing and operation of multi-purpose sports and entertainment facilities and the provision of services to be provided by one government to another in connection with those facilities.

C. The City and County acknowledge that the Project is subject to review and potential mitigation under various laws, including the State Environmental Policy Act, Chapter 43.21C of the Revised Code of Washington, and the state and local implementing rules promulgated thereunder (collectively, "SEPA"). Before the City and County Councils consider approval of the Umbrella Agreement and any Transaction Documents, the City and County will complete a full SEPA review, consistent with the MOU, including specifically Section 5, 7 and 24.

D. Subject to environmental and certain other review detailed in the MOU, the Parties have determined that, if developed, the Arena would provide general public benefits as well as specific direct and indirect benefits to both Parties and their residents. As more



specifically described in the MOU, ArenaCo is responsible for development and construction of the Arena, including all construction costs and overruns. Public financial investment in the Project may occur only consistent with and upon the occurrence of specific actions described in the MOU. The MOU will be implemented through an Umbrella Agreement and Transaction Documents to be negotiated between the Parties and ArenaCo. The MOU, Umbrella Agreement and Transaction Documents are collectively referred to herein as the "Arena Facility Agreements."

E. The Parties have determined to enter into the MOU, and the purpose of this Interlocal Agreement is to establish their respective rights and responsibilities in the event the Arena is developed. It is anticipated that future agreements between the City and County may be necessary to fully describe the respective rights and responsibilities of the Parties.

2. Definitions. Unless otherwise defined in this Interlocal Agreement, capitalized terms have the meanings given them in the MOU.

3. Duration. Subject to Section 4.E(ii), this Interlocal Agreement will terminate upon the later of (a) the date when all Public Financing is retired or defeased, (b) the termination of the Arena Use Agreement and any extensions thereto; and (c) the payment to the City and County of the Purchase Price if the Put or Call Options are triggered.

4. Acquisition of Property; Development and Acquisition of Arena.

A. The City will make a call for bids for the Project consistent with RCW 35.42.080. Subject to the conditions described in the Arena Facility Agreements, the City will acquire the title to the Project Site by payment of the First Installment to ArenaCo. The City will then ground lease the Project Site to ArenaCo. Concurrent with the Ground Lease, the Parties will enter into a Lease-Purchase Agreement with ArenaCo under which ArenaCo will have an obligation to build the Arena and the Parties will have the obligation to lease the Arena building structure ("Arena Facility") with an option to purchase. On the Commencement Date, the Parties will become co-tenants in the leasehold estate in the Arena Facility with the City holding a 60% interest and the County holding a 40% interest, subject to amendment to conform to their actual shares in the Public Financing as of the Transfer Date, as provided in Section 4.C below.

B. On the Transfer Date, the Parties will either (i) exercise the option to purchase the Arena Facility, holding title as tenants in common, or (ii) cause a trustee to prepay the principal component of all remaining lease payments required under the Lease-Purchase Agreement..

C. If the Parties exercise the option to purchase the Arena Facility, as described in Section 4.(B)(i) above, the Second Installment of the Public Financing may be structured as bonds issued by the City and the County, respectively. In that event the Ground Lease terminates, the City and County will thereafter hold title to the Arena Facility as tenants in common (with ownership percentages in proportion to their respective actual shares of the Public Financing). If the Parties cause a trustee to prepay the principal component of all



remaining lease payments required under the Lease-Purchase Agreement, as described in Section 4.(B)(ii) above, the Public Financing will be structured as certificates of participation in a stream of lease revenues. In either case, the City will convey to the County an interest in the Project Site so that the Parties will be tenants in common in the Project Site (with ownership percentages in proportion to their respective actual shares of the Public Financing).

D. Notwithstanding the foregoing, if on the Transfer Date the total principal amount of the County's participation in the Public Financing (excluding any County participation in funding the SODO Fund Contribution, as defined in Section 5.C. in this ILA) does not exceed \$5 million, the County may at its option determine not to hold any ownership or leasehold interest in the Arena Facility or the Project Site and may assign its rights to acquire ownership and leasehold interests to the City. In that case, all of the rights and obligations of the Parties under this Interlocal Agreement will remain in place, except that the County will not own an interest in either the Arena Facility or the Project Site.

E. If the County holds an ownership or leasehold interest in the Arena Facility or the Project Site, (i) neither Party may transfer its common interest without the express written consent of the other Party and (ii) on and after the end of the initial 30-year term of the Arena Use Agreement, the County may assign and transfer to the City all of the County's ownership or leasehold interests at no cost to the City, in which case this Interlocal Agreement will terminate. The County shall provide the City with notice of such election within 120 days after the later of the expiration of the Put Option, Call Option or deadline for notice to receive demolition cost reimbursement as described in the MOU.

F. Subject to Section 7 of this Interlocal Agreement, as between the Parties the City will be the lead with respect to reviews and approvals under the Arena Facility Agreements relating to the design and construction of the Arena. Subject to Section 7, the City-County Representative is authorized by the Parties to take the actions described with respect to that position in the Arena Facility Agreements.

G. Under the Arena Facility Agreements, ArenaCo will reimburse the City and the County for up to \$5 million for their pre-development costs incurred (exclusive of permit fees and other fees imposed by the City and the County in their regulatory capacities and exclusive of the costs incurred by the City in connection with the activities of the City-County Representative after the Commencement Date). If, on the Commencement Date, the total of those City and County costs exceeds \$5 million, each Party's respective reimbursement share will be adjusted to allocate each Party's reimbursement in a manner approximately proportional to its share of total costs reasonably incurred.

H. If the Arena Use Agreement is terminated prior to the end of its initial term, and if the City and the County are tenants in common and become responsible for costs relating to the Arena, the City and County will contribute to those costs proportionately to their shares of the Public Financing. Arena Tax Revenues and any rental payments under any Arena Use Agreement or other third-party obligation to the City or County that replaces the Arena Use Agreement shall be applied as provided in Section 6 of this Interlocal Agreement.



5. Financing.

A. As reflected in MOU, the total amount to be paid to ArenaCo by the City and County for acquisition of the Project Site and the lease-purchase of the Arena Facility paid to ArenaCo will not exceed \$200 million.

B. The City may finance public acquisition of the Project Site (*i.e.*, First Installment). The amount paid to ArenaCo by the City in connection with the acquisition of the Project Site will not exceed \$100 million. Between the Commencement Date and the Transfer Date, the City will be responsible for paying (nominal) rent to ArenaCo under the terms of the Lease-Purchase Agreement, and upon the Transfer Date those payments will be treated as a credit to the City's share of the Second Installment, consistent with RCW 35.42.040.

C. On the date of the Second Installment, and in connection with the lease and/or purchase of the Arena on or after the Transfer Date, each Party will incur a share of Public Financing obligations for the Arena and also a share of any required "SODO Fund Contribution" (defined as up to \$40 million in Public Financing from the Second Installment required to bring the cumulative contributions to the SODO Transportation Infrastructure Fund to \$40,000,000 as set forth in Section 11.b of the MOU).

i. *NBA and NHL Scenario.* Assuming the conditions related to an NHL Team as set forth in Section 10.ii of the MOU have been satisfied, the County's payment obligation will be up to \$80,000,000 (including 40% of any necessary SODO Fund Contribution); and the City's payment obligation will be up to \$120,000,000 (including 60% of any necessary SODO Fund Contribution).

ii. *Only NBA Scenario.* If, as set forth in Section 10.ii of the MOU, all of the conditions related to an NHL Team have not been satisfied by the Transfer Date, the County's payment obligation will not exceed the sum of (a) \$5,000,000 (or a lesser amount that the County reasonably determines can be prudently financed from its anticipated property taxes attributable to the Arena and the Arena Tenant Improvements) and (b) the County's SODO Fund Contribution to be calculated as the lesser of \$10 million and forty percent of the SODO Fund Contribution. In this scenario, the City's payment obligation will not exceed the total of (a) \$120,000,000 less (b) \$5,000,000 (or a lesser amount that the County reasonably determines can be prudently financed from its anticipated property taxes attributable to the Arena and the Arena Tenant Improvements) plus (c) the remaining SODO Fund Contribution after calculation of the County's SODO Fund Contribution.

D. City and County long-term obligations are expected to have the same payment dates. Neither Party may refinance its respective long-term Arena obligations to change payment dates, extend the term or increase annual debt service, without the consent of the other Party. Each Party will be solely responsible for its obligations incurred in connection with the Arena Project, and neither the City nor the County will guarantee or be responsible in any way for the payment of the other Party's obligations.

6. Application of Arena Tax Revenue.



A. The City will establish and maintain for the benefit of the Parties a special fund designated as the "City-County Arena Project Fund" or such other designation that the City deems appropriate (the "Arena Fund"). The Arena Fund will be administered by the City. The Advisory Board (defined and described below) will provide advisory oversight of the maintenance and uses of the Arena Fund. The City will create, within the Arena Fund, an Arena Revenue Account, and a City-County Capital Account, and the City may create other accounts, subaccounts or subfunds within or associated with the Arena Fund, all consistent with the Arena Facility Agreements. Interest earnings on amounts held in each account will be retained in that account, except as otherwise permitted or required under the Arena Facility Agreements.

B. The City and the County will each dedicate to the Project all Arena Tax Revenues and Ground Lease, Base and Additional Rent revenues during the term of the Arena Use Agreement.

C. Except as otherwise agreed to by the Parties, each Party will deposit in the Arena Revenue Account, as received, all Arena Tax Revenues received by that Party and dedicated to the Project.

D. The City will receive from ArenaCo, and deposit in the Arena Revenue Account, all Ground Lease, Base Rent and Additional Rent. The City will also receive and deposit in the Arena Revenue Account (or in such other funds or accounts established by the City after notice to the Advisory Board) all other payments received from or in respect of obligations to the Parties of ArenaCo, its affiliates, or others.

E. The City and County will each, in proportion to their respective "Allocation" (Allocation amounts shall be defined in future documents and shall be calculated at least annually based on each Party's respective share of annual costs related to the combined total of the First Installment and Second Installment), be entitled to transfers from the Arena Revenue Account. If amounts in the Arena Fund exceed the amounts necessary to provide for each Party's Allocation, the Parties shall mutually determine how to apply the excess amounts in the Arena Fund consistent with Section 13.k of the MOU.

F. In the event of a Payment Default by ArenaCo, and so long as that Payment Default continues: (a) Arena Tax Revenues and Base Rent (if any) received from ArenaCo will be divided between the Parties in proportion to each Party's Allocation, except that after year 15 of the Arena Use Agreement, to the extent necessary to pay for the County annual Allocation, up to 50% of Arena Tax Revenues will be allocated first to the County, with the balance allocated to the City, and (b) Additional Rent payments and withdrawals of balances in the Reserve Account, the Capital Account and the City-County Capital Account, will be paid first to the County in an amount sufficient, together with any Arena Tax Revenues and Base Rent, to equal the amount of the County annual Allocation, and next to the City. Further amounts received by the Parties from or in respect of obligations to the Parties from ArenaCo, its affiliates, or others (*e.g.*, amounts received from the Parties' security interest (as described in Section 13.f of the MOU and any corresponding terms in the Arena Facilities Agreements)) will be allocated to the Parties in proportion to their respective Allocations.



G. In connection with security provided by ArenaCo for its financial obligations to the Parties, the City will make and maintain the appropriate UCC filings necessary to perfect security interests, as described in the Arena Facility Agreements, with each Party named as a “secured party” in those UCC filings.

7. Governance.

A. The City will serve as administrator of the joint and cooperative undertaking established in this Interlocal Agreement and will be responsible for day-to-day decision-making with respect to the Arena and for supervising the City-County Representative. The City will appoint the City-County Representative after consultation with the County. The City may also remove and/or replace the City-County Representative after consultation with the County. The County Executive will designate a County employee to serve as a liaison with the City-County Representative. The City-County Representative will regularly report to and consult with that liaison concerning day-to-day decision-making and other matters and decisions concerning the Arena Facility Agreements, the Arena and the Arena Fund.

B. There is established the Arena Project City-County Advisory Board (“Advisory Board”) to act in an advisory role by providing oversight of, and recommendations to City and County officials concerning the Arena Facility Agreements, the Arena and the administration of the Arena Fund. The Advisory Board will consist of one appointee from each of the following, which appointee will be an elected official or other employee of the City or the County, as applicable:

- o The Mayor of the City (and if the Mayor fails to appoint someone, the City’s Budget Director)
- o The County Executive (and if the Executive fails to appoint someone, the County’s Budget Director)
- o The City Council (and if the Council fails to appoint someone, the chair of the City Council’s primary budget and finance committee, currently the Government Performance and Finance Committee)
- o The County Council (and if the Council fails to appoint someone, the chair of the County Council’s primary budget and finance committee, currently the Budget and Fiscal Management Committee).

C. Notwithstanding the foregoing, if the principal amount of the County’s participation in the Public Financing does not exceed \$15,000,000, considering up to \$10 million as the County’s portion of the SODO Fund Contribution, the only County representative on the Advisory Board will be the County’s Chief Administrative Officer or that person’s designee.

D. The Advisory Board will make recommendations to City and County officials on Milestone Decisions (defined in Section 7.H(iii) below) or other significant decisions the



Advisory Board may identify concerning the Arena Facility Agreements, the Arena and the Arena Fund. The Advisory Board will attempt to reach consensus agreement on any issue before it. If consensus is not reached, members of the Advisory Board may make separate recommendations on an issue.

E. The City-County Representative will provide the Advisory Board with at least quarterly reports detailing the status of all revenues of, expenditures from and balances in the Arena Fund and associated accounts, describing the status of activities and decisions that have occurred regarding the Arena Facility Agreements, the Arena and the Arena Fund, and providing other information that the City-County Representative may deem appropriate to provide or that the Advisory Board may request. The City-County Representative will report to the Advisory Board regarding proposed Milestone Decisions (as defined below) and any other significant decisions that the Advisory Board may identify. The City-County Representative will provide the Advisory Board with sufficient advance notice of such decisions so that it may meaningfully evaluate and recommend a decision based on the City-County Representative's Report.

F. The City-County Representative will promptly provide a copy of the reports described in Section 7.E to the City Council and the County Council, together with such other reports as either council may from time to time request.

G. The City-County Representative will report immediately to the Advisory Board, the City's Mayor, the County Executive and the County Liaison upon the occurrence of an event of default under the Arena Facility Agreements.

H. The process for making decisions with regard to the Arena Facility Agreements, the Arena and the Arena Fund will vary depending on the nature and scope of the decision as follows:

(i) The City will make decisions on day-to-day operations ("Day-to-Day Decisions").

(ii) The City and the County will agree on important decisions that could materially affect the interests of the Parties ("Material Decisions"). If they are unable to agree, either Party may reasonably promptly thereafter invoke Dispute Resolution. Subject to Section 7.H(v), such decision may not be acted upon until resolved through Dispute Resolution.

(iii) The City and the County will agree on milestone decisions that could significantly affect the interests of the Parties ("Milestone Decisions") after obtaining a recommendation from the Advisory Board. If they are unable to agree, either Party may reasonably promptly thereafter invoke Dispute Resolution. Subject to Section 7.H(v), such decision may not be acted upon until resolved through Dispute Resolution.

(iv) Either Party may at any time invoke Dispute Resolution to address any issue that materially adversely affects that Parties interests or to address a breach of this Interlocal Agreement by the other Party.



(v) If in an emergency an immediate decision must be made (a) in order to avoid direct, significant and material negative or irreparable impacts on the interests of the Parties related to the Arena Facility Agreements, the Arena or the Arena Fund, or (b) in order to avoid missing a deadline in the Arena Facility Agreements, the City (in close consultation with the County) may act, with prompt notice given to the Advisory Board. In such case the City may act even if the Parties have invoked Dispute Resolution concerning the issue.

(vi) The table in Exhibit A attached hereto and incorporated herein sets forth the types of decisions that fit into the separate categories set forth in this Section 7. The table does not list all decisions, but rather lists examples of the types of decisions expected. If a decision is not listed, it may be classified using the terms set forth in this Section 7 and by comparing the decision to the examples in the Table.

(vii) The Parties intend to act primarily through the City-County Representative and the County Liaison. Either Party may, however, designate a different person within that Party's organization to act on behalf of that Party. The Parties also acknowledge and agree that the collaborative decision-making required herein will require each to provide the other with reasonable advance notice of matters requiring decisions and reasonably prompt resolution of such matters in order to assure effective, efficient and timely interactions with ArenaCo.

I. The MOU in Section 23.g requires that an economic impact analysis ("Analysis") be completed. All decisions related to the Analysis shall be Material Decisions as defined in Section 7.H(ii) of this Agreement, except that Section 7.H(v) of this Agreement shall not apply to any decisions related to the Analysis. As such the City and County must agree on all decisions related to the Analysis, including without limitation decisions on the selection of the Consultant, the scope of the Analysis, comments on the Analysis, and approval of the Analysis. Further, City and County staff shall both have the opportunity to jointly participate in any communications with the Consultant or ArenaCo concerning the Analysis, including without limitation, meetings, phone calls, correspondence and emails. City and County shall also simultaneously receive all drafts, correspondence, emails and other written documents from the Consultant.

8. Dispute Resolution.

A. Whenever any dispute arises between the Parties under this Agreement which is not resolved by routine meetings or communications, the Parties agree to seek resolution of such dispute by the process described in this Section 8 ("Dispute Resolution"). The Dispute Resolution provisions provided for in Section 8.A through Section 8.D of this Agreement do not apply to resolution of any dispute between the City and County as described in Section 13.j.(iv) of the MOU.

B. The Parties will seek in good faith to resolve any such dispute or concern by arranging a meeting between City and County officials with authority to resolve the matter (including without limitation a meeting between the Mayor and the County Executive) within five business days after either Party receives notice of a dispute. If the Parties are unable to



resolve the dispute informally within 10 working days, either Party may request the assistance of a mediator.

C. If it proves impossible to arrive at a mutually satisfactory solution through mediation within 30 working days of the request for the mediator, the Parties may refer the dispute to an arbitrator, who will be authorized to make a decision regarding the dispute, and that decision will be final and binding on the Parties. The Parties will share equally the costs of mediation and/or arbitration, and each Party will assume its own costs.

D. This provision does not prevent the Parties, upon mutual agreement, from engaging in any other alternative dispute resolution process of their choosing and, anything else in this Section notwithstanding, if either Party, at any time, believes that there is the need to maintain the status quo pending resolution by one or more of the methods set forth in this Section 8, that Party may seek a temporary restraining order, preliminary injunction or other equitable relief from any court of competent jurisdiction.

E. The City and County shall agree in writing on all of the joint City and County decisions described Section 13.j. of the MOU ("Decisions Agreement"). If the City and County have not entered into the Decisions Agreement at the end of the Arena Use Agreement term, then within 30 calendar days following the end of the term of the Arena Use Agreement, the Parties will seek to resolve the dispute informally and enter into the Decisions Agreement ("Informal Dispute Resolution Time"). If informal meetings and communications between the Parties do not resolve the dispute and the Parties have not entered into the Decisions Agreement, then within 10 calendar days following the Informal Dispute Resolution Time, either Party may submit the dispute to mediation. Once submitted to mediation, the Parties have 30 calendar days to mediate the dispute ("Mediation Time"). The Parties shall participate meaningfully in the mediation. If the dispute remains unresolved and the Parties have not entered into the Decisions Agreement after the Mediation Time and either Party seeks resolution through arbitration, then that Party must submit the dispute to binding arbitration within 10 calendar days following the Mediation Time. Among the criteria utilized as the basis for a final and binding decision, the arbitrator may consider the relative financial participation of the Parties. The arbitrator shall make a final and binding decision regarding the dispute within 60 calendar days after submission (amounting to a total period of time for all steps described in this Section 8.E that is not greater than 140 calendar days after the end of the term of the Arena Use Agreement). The costs of any such mediator and/or arbitrator shall be shared equally by the Parties. In recognition of the importance of complying with each of the deadlines described in this Section 8.E, the Parties agree that such deadlines will in no circumstance be extended unless both Parties mutually agree in writing to a different set of deadlines.

9. KeyArena and Key Arena Fund. As between the Parties, the City (and not the County) will be solely responsible for any activities, decisions and costs associated with Key Arena under the Arena Facility Agreements and the Key Arena Fund.



10. SODO Transportation Infrastructure Fund. The City and County will agree through future interlocal agreement to management and decision-making for the SODO Transportation Infrastructure Fund.

11. Environmental Impact Statement. The City and County will enter into a lead agency agreement and will coordinate with one another so that full SEPA review is completed for the respective actions of the City and County.

12. Risk Provisions.

A. Each Party shall defend, indemnify and hold harmless the other party, and all of its officials and employees, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property (collectively "Claims"), which arise out of or are related to any negligent acts or omissions or any breach of this Agreement by the indemnifying party or its employees, contractors or agents. Provided, that if any such Claims are caused by or result from the concurrent negligence or breach of this Interlocal Agreement by the City or its employees, contractors or agents and the County or its employees, contractors or agents, each party's obligation hereunder applies only to the extent of the negligence or breach of such party or its employee, contractor or agent.

B. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under industrial insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

C. As between the Parties and ArenaCo under the Arena Facility Agreements, ArenaCo will bear all costs and responsibility for investigating, responding to and remediating Hazardous Materials associated with the Project Site. As between the City and the County, the City will bear all costs and responsibility for investigating, responding to and remediating Hazardous Materials associated with the Project Site, and to the maximum extent allowed by law, shall indemnify, defend and hold harmless the County and all of its officials and employees from all liability arising out of the discovery of such Hazardous Materials. "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

D. To the maximum extent allowed by law, the City agrees to defend, indemnify and hold harmless the County, and all of its officials and employees, from any and all claims, demands, suits, and actions (collectively "Claims"), which arise out of or are related to any claim that the Arena Facility Agreements or the transactions contemplated thereunder do not comply with Seattle Municipal Code 20.47.

13. Binding Effect. This Agreement shall inure to the benefit of the Parties and shall be binding upon the Parties and their successors. This Agreement may not be assigned.



14. No Rights Created in Third Parties. The terms of this Agreement are not intended to establish or to create any rights in any persons or entities other than the Parties and the respective successors of each.

15. Force Majeure. Neither Party shall be liable to the other or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of such Party and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

16. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

17. Amendments. This Agreement may be amended, changed, modified or altered by an instrument in writing duly executed by the Parties (or the successors in title of each). The Parties anticipate that this Agreement will be adjusted to conform to the provisions of the Umbrella Agreement and the Transaction Documents.

18. Effective Date. This Agreement shall become effective upon its full execution. All acts performed by any Party prior to the effective date of this Agreement and consistent with its terms, are ratified and confirmed.

19. Recording. This Agreement may be recorded or made otherwise available consistent with applicable law

20. Applicable Law and Venue. This Agreement shall be construed and interpreted in accordance with Washington law. Venue will be in the Superior Court for the State of Washington in and for King County.

21. Notices. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service or mailed in the United States mail postage prepaid and, if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a Party shall from time to time direct:

City:

Copies to:



County:

Copies to:

22. Execution. This Agreement may be executed in one or more counterparts.



IN WITNESS WHEREOF, the City and the County have caused this Agreement to be executed in their respective names by their duly authorized officers, and have caused this Agreement to be dated as of the date set forth on the first page hereof.

KING COUNTY, WASHINGTON

CITY OF SEATTLE

By: _____
County Executive

By: _____
Mayor

Date: _____

Date: _____



EXHIBIT A

Material and Milestone Decisions (* Denotes Milestone Decisions)

Pre-Development and Planning Phase

Agreement on terms of Umbrella Agreement and Transaction Documents
Agreement on allocation of reimbursable development costs
Economic Impact Analysis Decisions

Design and Construction Phase

Agreement on three NBA/NHL arenas for Design Standards
Agreement on Schematic Design Package
Agreement on approval of material deviations from Design Standards
Agreement on approval of material deviations from Schematic Design
Agreement to intervene and join as a party in action between ArenaCo and specified construction and design-related entities
Agreement on naming rights

Conditions Precedent/Public Financing

*Agreement that all City-County conditions precedent have been satisfied prior to Public Financing *
Agreement on structure of Public Financing for First Installment
Agreement on exercising option or causing lease prepayment on Transfer Date
Agreement on structure of Public Financing for Second Installment
Agreement on use of excess Tax Revenue to apply excess amounts to pay down Public Financing or to deposit in City-County Capital Account
Agreement to refinance, redeem or defease outstanding Public Financing principal

Operations Phase

Agreement on three NBA/NHL arenas for Operating Standards
Agreement on approval of material changes to Operating Standards
Agreement on approval of investment of Reserve Account money
Agreement to draw on Reserve Account
Agreement on responses to default, enforcement of security interests/guarantees, and draws on Capital Account and City-County Capital Account
Agreement on Five-Year CIP
Agreement on repairs, replacements or maintenance for Arena
Agreement on use funds in City-County Capital Account
Agreement on use of the Arena for City-County Events
*Agreement on sale of ArenaCo or assignment of Arena contracts *



Agreement on Dispute Resolution decisions

Day-to-Day Decisions

Pre-Development and Planning Phase

Issue call for bids for the Project
Agreement on Fair Market Value of Project Site

Design and Construction Phase

Attend meetings with and provide input to ArenaCo on development, design and construction
Object to material deviations from approved Schematic Design
Review ArenaCo selection of and contracts with construction/design entities
Review construction and design contracts for compliance with Other Provisions, Insurance, Indemnification, and Labor Peace Agreement requirements

Conditions Precedent/Public Financing

Prepare and update schedule of estimated Annual Reimbursement Amount

Operations Phase

Monitor Rent and Additional Rent Payments
Monitor Coverage Ratio and Reserve Account Requirements
Make/maintain filings to perfect security interests
Prepare monthly accounting on Arena Tax Revenues
Inspect Arena and retain professional to assist with development of schedule of major maintenance
Monitor marketing efforts



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Ben Noble / 684-8160 Dan Eder/ 684-8147	

Legislation Title:

AN ORDINANCE related to a new multi-purpose sports and entertainment facility; authorizing the Mayor to execute a memorandum of understanding with King County and ArenaCo; to execute an interlocal agreement with the County; and superseding the authority provided by ordinance 123979.

Summary of the Legislation:

This ordinance executes Attachment A, a Memorandum of Understanding (MOU) between the City, King County, and ArenaCo. ArenaCo is the company that will design, build and operate the proposed arena. The ordinance also executes Attachment B, an Inter-Local Agreement (ILA) between the City and King County. The MOU and ILA are consistent with each other, and outline a plan to design, build and operate a multi-purpose arena that would serve as home to National Basketball Association and National Hockey League teams and a first class venue for concerts and other cultural events. These two attachments have been slightly modified from the versions authorized under ordinance 123979, however there have been no substantive changes to the financial elements of the agreements.

For a detailed summary of terms of the MOU and ILA, please see Fiscal Note Attachment A.

The MOU is a binding agreement between the City, County, and ArenaCo, but does not limit in any way the City or County's ability and obligation to perform any regulatory function or due diligence. It identifies the responsibilities of each party, including public financing; security provisions for the public investment; arena construction including permitting and State Environmental Policy Act (SEPA) review; facility ownership and lease; and operations and capital improvements.

The City would commit up to \$120 million in financing and the County would commit up to \$80 million in financing to support the Arena specifically, which would leverage an estimated direct investment of \$290 million into development of the arena and additional amounts to secure NBA and NHL teams. In addition, \$40 million would be provided in funding for transportation improvements in the area south of downtown and up to \$7 million would be provided for investments in KeyArena or the KeyArena site. These public amounts and all public financing related to this project are subject to the satisfaction of numerous conditions. Repayment of this



financing would be supported by rent payments from ArenaCo and taxes generated directly as a result of this project. The City and County investment is secured through a variety of mechanisms, including certain personal guarantees from the project's lead investor.

The specific tax revenues that would support project public financing repayment and capital work are limited to taxes that are available for general purposes, including increased property taxes, sales tax, B&O taxes, admissions tax, leasehold excise tax, and the City's parking tax. The amounts of taxes dedicated to support the project are limited to those taxes created directly as a result of the project and which can be verified by the City and County. For example, this includes admissions taxes on tickets for events at the facility but would exclude sales tax paid on food at restaurants across the street. Only parking taxes that are collected under contract with ArenaCo would be included – and none are assumed in our modeling. Fiscal Note Attachment B has a detailed breakdown of projected tax revenue flows based on current financial modeling.

ArenaCo would pay for all design, development, and construction costs of the arena, and would be required to operate and maintain the facility over its lease which would be at least 30 years in duration. The NBA and NHL franchises would enter into non-relocation agreements in addition to regular lease agreements, and would be required to remain in Seattle for the duration of the lease and public financing.

Following the execution of the MOU and ILA, the City, County and ArenaCo would begin to work on additional documents, referred to as the "Transaction Documents". ArenaCo would also begin design and permitting work for the project.

In the near-term, the MOU identifies KeyArena as potential interim home for NBA and NHL franchise teams prior to completion of the new arena. If KeyArena is used as an interim home, ArenaCo would make improvements to the facility. Some of these improvements would be of a permanent nature, which may include modernization of telephone, data, and broadcast systems, as well as other capital refurbishments.

In the longer-run, the development of a new arena, whether in Seattle, Bellevue, or elsewhere in the region, will have impacts on the operations of KeyArena. Even under the status quo, KeyArena roughly breaks even on operating costs annually, but limited funding is available for major upkeep of the facility. Recognizing these realities, the proposed MOU commits the City to evaluate potential future options for the KeyArena or the KeyArena site. Up to \$150,000 of the costs this evaluation represents a reimbursable cost to be paid by ArenaCo. In addition, \$2 million has been specifically set aside to help fund the implementation of any recommendations that emerge regarding the future of KeyArena or the KeyArena site.

The MOU also provides up to \$150,000 from ArenaCo to pay the cost of a study to assess the potential economic impacts of the new Arena. This study will be conducted in conjunction with the County and appropriations of the required funding will be incorporated into a future ordinance.

A separate companion ordinance includes appropriation requests for other anticipated City costs in 2012 that would be required if the MOU and ILA are executed.



For a detailed summary of terms of the MOU and ILA, please see Fiscal Note Attachment A.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2012 Appropriation	2013 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes:

This legislation has a separate companion ordinance that would create appropriation authority to perform work required in 2012 as a result of the execution of the MOU and ILA. Additional detail can be found in that companion ordinance, but it covers these general areas:

ArenaCo will pay to support the costs of a City-County Representative who will represent the interests of the City and County in arena matters. The City-County Representative will be a City employee in the Department of Finance and Administrative Services (FAS).

Approval of this MOU would entail the City incurring costs related to necessary consultants, legal work, any engineering work required by the City and County and other related costs.

ArenaCo will also pay to provide dedicated staffing in the Department of Planning and Development (DPD) to expedite the review of permits, as is common with major projects. Based on current projections, DPD has sufficient appropriation authority and position authority to fulfill this work so no additional appropriations are requested.

Up to \$150,000 will be paid by ArenaCo to cover the costs of an economic impact study.

Costs for work leading up to the transmittal of the MOU and ILA are being absorbed within departments' existing appropriation authority.

Anticipated Revenue/Reimbursement Resulting from this Legislation:



Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
TOTAL				

Revenue/Reimbursement Notes:

A separate companion ordinance authorizes required appropriation for 2012 and describes anticipated revenues. High level details are included here for reference.

The MOU requires ArenaCo to reimburse the City and County for development costs of up to \$5 million. The first reimbursement would occur on the date at which the City purchases the project site from ArenaCo, known as the Transfer Date. Subsequent billings would occur monthly through the opening of the Arena, known as the Commencement Date. If circumstances prevent the project from ever reaching the Transfer Date, ArenaCo would not reimburse the City and County for development costs.

ArenaCo will also pay to provide dedicated staffing in the Department of Planning and Development to facilitate the review and processing of permits, as is common with major projects.

In addition, ArenaCo will pay to support the costs of a City-County Representative who will represent the interests of the City and County in arena matters. The City-County Representative will be a City employee in the Department of Finance and Administrative Services (FAS).

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2012 Positions	2012 FTE	2013 Positions*	2013 FTE*
TOTAL							

* 2013 positions and FTE are total 2013 position changes resulting from this legislation, not incremental changes. Therefore, under 2013, please be sure to include any continuing positions from 2012.

Position Notes:

The companion ordinance adds a position that functions as the City-County Representative.

Do positions sunset in the future?

The position would exist for the life of the arena lease (30+ years).

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2012 Expenditures	2013 Anticipated Expenditures



TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes:

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

The Arena MOU outlines a public/private partnership that would last over 30 years. It is anticipated that the operation of a multi-purpose arena as contemplated in the MOU would induce indirect economic activity within the City, although that activity is not directly accounted for in the revenues described above.

b) What is the financial cost of not implementing the legislation?

In the event that the City does not move forward with this agreement, it is reasonable to anticipate that such a venue might be constructed elsewhere in the region. This may draw economic activity out of the City and would present operational challenges in particular for KeyArena as competition for attracting events would be increased.

c) Does this legislation affect any departments besides the originating department?

This legislation would require the collaboration of the City Council, Department of Finance and Administrative Services, the City Attorney's Office, the City Budget Office, the Department of Planning and Development, the Department of Transportation and Seattle Center. These departments have been actively involved in the development of this proposal.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

The primary alternative to the proposed agreement would likely involve an alternative site. The SEPA review process will evaluate, from an environmental impacts perspective, the relative merits of at least one alternative site (per the specific terms of the MOU).

e) Is a public hearing required for this legislation?

Yes. In addition, while not official public hearings, four public meetings were held on this topic to gather input and comment from the public, as well as to discuss concepts addressed in the MOU.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

Given the public/private partnership, a CLEAN hearing will likely be required.

g) Does this legislation affect a piece of property?

The MOU sets in motion additional processes that may involve the City purchasing property for the arena site. The private investor has acquired land adjacent to First Avenue South between



South Massachusetts Street and South Holgate Street.

Other Issues:

The parties acknowledge that the acquisition of a NHL franchise would occur after the acquisition of an NBA franchise. The MOU also acknowledges that ArenaCo is likely to move ahead with development and construction of the arena in the event that it has not yet been able to secure an NHL franchise team tenant. Irrespective of when an NHL franchise tenant is secured, the arena will be built to specifications that will accommodate an NHL franchise team once it is secured. The MOU outlines the process that will be followed in the event an NHL franchise team tenant has not yet been acquired at the time of the second public financial installment. These details are summarized in Fiscal Note Attachment A, but it is important that without an NHL team the maximum public combined contribution decreases from \$200 million to \$145 million. In this NBA-only scenario, \$120 million be available for the Arena and up to \$25 million in public financing would support transportation infrastructure projects.

List attachments to the fiscal note below:

- Fiscal Note Attachment A – Summary of MOU and ILA terms
- Fiscal Note Attachment B – Arena Finance Model – Project Taxes by Year
- Fiscal Note Attachment C – Arena Finance Model – Output Summary



Summary and Key Terms

Memorandum of Understanding (MOU)

Overview

- Parties to the MOU are the City of Seattle, King County, and ArenaCo. ArenaCo is the company that will construct, operate and maintain the arena.
- Binding agreement, but does not impact ability of City or County to perform their regulatory roles, including SEPA review, and is subject to each Party successfully fulfilling obligations.
- All parties agree to work and negotiate in good faith.
- This MOU document, while detailed, is the first of many documents that would be developed and executed. The set of future documents is referred to as the "Transaction Documents". One of the key future transaction documents is the "Umbrella Agreement", which will further define details.
- Following the execution of this MOU, the City, County and ArenaCo have up to 5 years to execute the more detailed Umbrella Agreement; otherwise the MOU expires.

Description of Project

- The project is to develop, build and operate a multi-purpose sports and entertainment arena.
- Approximately: 700,000 sq.ft.
- Will accommodate approximately 19,000 attendees for concerts, 18,500 attendees for NBA games, 17,500 attendees for NHL games.
- Location is adjacent to First Avenue South between South Massachusetts Street and South Holgate Street.

SODO Transportation Infrastructure Fund

- The project will create a \$40 million SODO Transportation Infrastructure Fund. These funds will come from incremental tax revenues at the KeyArena, Arena taxes generated during construction and the period of arena operations before the Transfer Date, and potentially some portion of the second installment of public financing.
- The SODO Transportation Infrastructure Fund will give first priority to projects protecting the operations of the Port of Seattle and improving freight mobility, and then to projects that improve pedestrian safety, enhance transit service and connectivity, and overall traffic management in the SODO area.
- The City and County will seek other public and private partners and funding for the purposes of advancing the objectives of the SODO Transportation Infrastructure Fund, including but not limited to the Port of Seattle, the operators of Safeco Field and CenturyLink Field, and federal and state governments.
- Further details related to the oversight and governance structure of the SODO Transportation Infrastructure Fund shall be delineated by future City ordinance.



KeyArena Fund

- The project will create a \$7 million KeyArena Fund. These funds will come from the first \$7 million in increment taxes generated by the temporary location of an NBA team (and potentially an NHL team) at the KeyArena.
- The fund will pay for improvements to the new Arena; provided, however, that in the event that ArenaCo negotiates a long term lease containing terms that are commercially viable for both ArenaCo and each existing anchor tenant at Key Arena with regularly scheduled events that do not and will not conflict with regularly scheduled NBA Team or NHL Team events, then the City will direct \$5 million of the Key Arena Fund to be used to support investments or fund improvements to the new Arena.
- At least \$2 million of the fund will be reserved to implement recommendations that emerge from a planning process to determine the future of the KeyArena or the KeyArena site.

Construction and Delivery Method

- The City and County will use the Lease-Purchase method to call for bids to construct the facility. Under this approach, the winning bidder constructs the facility and the City and County agree to lease or purchase the facility following completion.
- ArenaCo will be a bidder in this process.
- All public financing and most obligations contained in the MOU are contingent upon ArenaCo being selected through the bid process.
- If awarded the contract, ArenaCo would be responsible to build the facility, with the City and County obligated to lease or purchase it following completion.
- Prior to the completed arena being added to the new construction property tax rolls ArenaCo will own the facility. The City and County will lease the Arena for a nominal rent and then lease it back to ArenaCo.
- Within 12 months of when the facility is added to the property tax rolls, the City and County are obligated to either purchase the facility or to have a trustee prepay the 30 year facility lease. This date is the "Transfer Date".
 - If the City and County exercise the option to purchase the facility from ArenaCo, ArenaCo would then lease the facility from the City and County and operate and maintain it. This is the option most commonly discussed.
 - If the City and County instead exercise the option to have a trustee prepay the facility lease, the City and County would then lease the facility for 30 years, and ArenaCo would sub-lease the facility and operate and maintain it.

Due Diligence and First Installment of Public Financing

- Prior to the City and County entering in the Transaction Documents, ArenaCo will provide the financial data needed for both governments to complete their due diligence regarding ArenaCo's ability to meet the financial commitments called for under these agreements.
- Prior to any public financing occurring, ArenaCo must meet these requirements:
 - Acquisition of ownership rights to an NBA franchise with NBA acknowledgment of the Arena Lease and a non-relocation agreement in place.



- Acquisition of all land required for the Arena and facilitation of the City's and County's due diligence on the land as to its environmental condition.
 - Successfully complete land use processes and secure any required permits, including a master use permit.
 - Completion of SEPA review, including an assessment of Seattle Center as a potential location.
 - Secure required financing to complete construction of arena facility.
 - Funded the City/County Reserve Account (described below).
 - ArenaCo and NBA team are domiciled in Seattle for tax purposes.
 - Successfully complete any transaction documents required.
 - Be the successful bidder of the City and County's call for proposals to construct the arena.
- Once these criteria are met, the City will purchase the land from ArenaCo. The value will be based on an independent appraisal, but is capped at \$100 million. This is the first installment of public financing and does not involve the County. This date is referred to as the "Closing Date".
 - In the case of a significant natural disaster or other material adverse condition that may occur prior to financing, the City and County are not obligated to make any financial contribution.
 - If after the first installment ArenaCo is unable to complete the arena project, Chris Hansen will buy the property back at the price paid by the City and County.

Second Installment of Public Financing

- The second installment of public financing occurs on the Transfer Date and will involve both the City and the County.
- The amount of the second installment of public financing is dependent upon whether an NHL team has been secured and all conditions met, including a non-relocation agreement for the term of the Arena Lease.
 - If these NHL conditions have been satisfied, the second installment will be an amount that, when combined with the first installment, will total \$200 million.
 - If these NHL conditions have not been satisfied, the second installment will be an amount that, when combined with the first installment, is no more than \$145 million. Of this total, no more than \$120 million can be used for the Arena, with the remaining available to "fill" the SODO Transportation Fund to a total of \$40 million.

Structure of Public Financing

- Public financing will include two installments of Limited Tax General Obligation bonds or Certificates of Participation, with durations of approximately 30 years.
- The MOU contemplates debt service amounts rising at one percent annually for the first 10 years and level debt service from Year 11 on for each installment. Debt service during the period of construction and the initial period of Arena operations before the Transfer Date will be structured to accommodate limited revenue flows. In particular, \$1 million per year (the ground lease and then base rent) will be made available to pay debt service on the first installment for the first four years. The tax revenues generated during this period will be directed into the KeyArena Fund and SODO Transportation Infrastructure Fund.



- The MOU acknowledges that most of the public financing obligations will be taxable. If the City and County determine that tax-exempt debt can be issued, the revenue streams supporting those debt service payments would be excluded from Arena Tax Revenues and would not be guaranteed by ArenaCo. The City and County would use this strategy only with otherwise secure revenue streams, such as property taxes.
- The MOU leaves flexibility for the City and County, in consultation with ArenaCo, to work collaboratively to structure debt in the most cost-effective manner available at the time financing occurs. Public financing will be consistent with City and County debt management policies.

Ground Lease and Arena Lease

- The City will lease the site to ArenaCo for \$1 million annually during construction. This ground lease will continue until the arena is ready for occupancy ("Commencement Date").
- On the Commencement Date, the Arena Lease begins. Provisions of the Arena Lease include:
 - Term of at least 30 years, and no less than the term of any public financing.
 - ArenaCo will pay Base Rent in the amount \$1 million annually. ArenaCo will also pay Additional Rent if required such that the combination of Base Rent, Arena Tax Revenues, and Additional Rent are sufficient pay City and County public financing obligations. The total annual debt service obligations of the City and County public financing are referred to as the "Annual Reimbursement Amount".
 - "Arena Tax Revenues" means the amount of property tax, sales tax, leasehold excise tax, admissions tax, business and occupation tax, and parking tax revenues attributable to the arena and arena tenant improvements that have been received by the City and County on and from the project site and arena. Arena Tax Revenues excludes taxes that are restricted in their use, such as dedicated sales taxes for Metro Transit and criminal justice purposes, and dedicated property taxes, such as those that support Emergency Medical Services. Only parking taxes collected directly by ArenaCo or an affiliate that can be directly tied to activity at the arena are included. Business taxes paid by the NHL and NBA teams are included in Arena Tax Revenues.
 - The Arena Lease includes options for four 5-year extensions, with base rent increasing to \$4 million during the first extension, and by inflation thereafter. Lease extensions are contingent upon extensions of NHL and NBA non-relocation agreements.

City and County Oversight

- The City and County will appoint a "City-County Representative" who will represent the City and County during the regular course of business.
- The City-County Representative will have access to all non-privileged major meetings involving ArenaCo and project managers during all phases of the project and will also have access to all written and electronic non-privileged information.

Arena Design, Development and Construction

- ArenaCo is solely responsible for the cost of design, permitting and construction, including any cost overruns, and any cost of remediation of any hazardous materials on the project site.



- The City and County will have reasonable ongoing input during design and will have the right to approve the schematic design and design standards. Approval will not be unreasonably withheld.
- ArenaCo will make good faith efforts to address concerns raised by the City-County Representative. The City and County do not have any responsibility for the design or construction of the arena.
- The design will conform to any applicable City and County codes, any NBA and NHL requirements for arenas, and be substantially similar in quality to three mutually agreeable NBA/NHL arenas. The design will also will be in conformance with applicable City requirements for sustainable construction and will strive to utilize the most modern practices of sustainable design.
- The City and County have the right to object to material deviations during construction from the approved design schematics or to the extent there is a violation of federal or state law.
- The City and County will be a beneficiary of a performance bond guaranteeing timely completion of the facility and securing appropriate insurance.
- All parties agree upon the importance of inclusion of minority workers who are traditionally disenfranchised and low-income workers and businesses in project design and construction.

Operations and Management

- ArenaCo is solely responsible to operate and maintain the facility in a standard comparable to three mutually agreeable professional basketball and ice hockey arenas.
- Failure to operate the facility in accordance with standards constitutes a default, and enables the City and County to replace ArenaCo as the operator, among other remedies.
- The City and County will have the right to use the facility for at least 12 events each year rent free. The City and County would pay direct operating costs for these events
- ArenaCo will market the arena in a manner that promotes economic development in the area.
- ArenaCo will enter into license agreements with the NBA and NHL teams for terms consistent with the public financing. The City and County have the right to review and approve these agreements to ensure they include non-relation agreements and definitions of arena and team revenue streams.
- ArenaCo will maintain ongoing general liability insurance and property insurance for the full replacement value of the arena.
- ArenaCo makes an ongoing commitment to use reasonable efforts to use minority and low-income workers and businesses in the operations and maintenance of the arena.

Security Provisions and Default

- ArenaCo will fund a Reserve Account held in escrow that totals at least the amount required for City and County debt service obligations for the following year.
- ArenaCo will be required to certify annually that Net Arena Revenues for the preceding fiscal year are at least two times the amount required for the following year's total City and County debt service. This amount is referred to as the "Coverage Ratio". Net Arena Revenues are the total amount of revenues received by ArenaCo, less operating costs, which includes rent obligation to the City and County. If Net Arena Revenues are less than the Coverage Ratio,



ArenaCo must fund the reserve account to two times the debt service obligation for the following year.

- The City's and County's right to receive rent payments are secured by a first priority payment position from Arena Revenues, senior to any private debt service. This includes revenues from facility naming rights, suite and premium seating sales, concession payments, box office fees, and other arena-related revenues. This excludes revenues reserved by the NBA and NHL to the teams themselves, such as ticket revenues. The City and County will be further secured by a lien on revenues and receivables of ArenaCo, the terms of which are to be agreed upon between the City, County and private lenders to ArenaCo.
- The MOU specifically acknowledges that the City and County will be party to an "intercreditor agreement" with the project's third-party commercial lenders. This agreement will address how the parties will address potential situations of default, the remedies available to each party and the relative claim of each party to specific arena revenues.
- Should the City or County need to draw down the Reserve Account, ArenaCo has 30 days to refill the account. A default occurs if ArenaCo fails to refill the Reserve Account within 30 days.
- The company that owns the equity in both ArenaCo and the NBA team will provide a guaranty of the Arena Lease. Further, in the event of default and the team(s) ceasing to play in the Arena, the City and County will have first rights to the proceeds of the sale of an NBA team, subject only to repayment of any NBA team obligations to the NBA. Debt obligations to the NBA by the NBA team owner are capped (initially at \$150 million) to ensure that the team owner has sufficient equity in the team to meet obligations of the City and County in a default scenario.
- If ArenaCo and its parent corporation fail to necessary rent payments or "refill" the reserve account, the City and County will be able to turn to the principle investor who has offered a personal guarantee to make necessary debt service payments for up to 5 years.
- The NBA and NHL teams each will be subject to a non-relocation agreement with specific performance requirements, including the playing of home games in the arena, liquidated damages and injunctive relief provisions.
- Assignment of the Arena Lease to another party is subject to the written consent of all parties, and in particular subject to the City and County being satisfied of the financial capacity of the assignee to meet all ArenaCo obligations. In such event, the assignee must assume all obligations of ArenaCo.
- Both the Capital Account and the City-County Capital Account also serve as security for debt service payments.

Surplus Arena Tax Revenues

- If the combination of Arena Tax Revenues and Base Rent exceeds debt service levels, then each year the first \$2 million of any surplus arena tax revenues will be deposited into a City-County capital account. Beyond this \$2 million, the City and County can use additional surplus arena tax revenues for advanced debt retirement.
- The City-County Capital Account has a cap of \$10 million during the first 10 years. This cap grows by \$2 million annually until year 15, when the cap is \$20 million. Surplus revenues that



would cause the City-County Capital Account to exceed the cap must be used to redeem or defease outstanding principal of the public financing.

- If the total public financing is retired, then the City-County Capital Account cap is removed.

Capital Improvements

- ArenaCo will annually prepare and submit a five-year capital plan for anticipated expenditures that will be subject to review by the City and County.
- Regular independent inspections for compliance with standards will be performed.
- ArenaCo is required to deposit \$2 million annually into the Capital Account. The Capital Account will hold funds from ArenaCo designated for capital improvements. This account is distinct from the City-County Capital Account, in which surplus Arena Tax Revenues will be placed by the City and County, which are also designated for capital improvements.
- The Capital Account is designated for repairs, replacements and improvements, defined as relating to items with a lifespan of at least three years and costing at least \$5,000 per item, or other systems required for the functioning and maintenance of the arena in accordance with agreed upon standards or laws.
- The City-County Capital Account is designated for repairs identified in the five-year capital plan, or for major repairs to components of base systems or the facility. Up to \$2 million per year of this fund can be used for more general Arena purposes, but only if a dollar-for-dollar match is deposited into the Capital Account. The matching funds deposited into the Capital Account can only be used for the same types of major repairs that qualify as expenditures from the City-County Capital Account.
- ArenaCo is required to fund all capital work relating to the arena. ArenaCo's obligation does not depend on available funds in the Capital Account or City-County Capital Account. If funds are not available from those sources, ArenaCo must fund the required work with other funds.

City and County Costs and Reimbursements

- ArenaCo will pay for dedicated staff in the Department of Planning and Development to facilitate the processing of permit applications.
- ArenaCo will pay for the City-County Representative.
- ArenaCo will also reimburse the City and County for up to \$5 million in costs associated with development of the MOU, Transaction Documents, and other work leading to the opening of the Arena. This includes up to \$150,000 for the cost of the City evaluating potential options for the KeyArena or the KeyArena site. The first reimbursement occurs at the time of the first public financing and monthly thereafter through the opening of the arena.
- During operation of the arena, ArenaCo is required to contract with City departments for any services provided by departments, such as traffic management and emergency medical staff that may be required.

Ownership of Arena Facility Improvements

- ArenaCo will install all tenant improvements.
- During the Arena Lease, ArenaCo will own all or a portion of tenant improvements, as to be defined in the Transaction Documents.



- Upon the termination of the Arena Lease or its extensions, all tenant improvements (excluding NBA or NHL team owned equipment) will become the property of the City and County. The condition of these improvements must be consistent with the operating standards and in a condition suitable for uninterrupted use. However:
 - At the termination of the Arena Lease or its extensions, the City and County may require that ArenaCo purchase the facility and site for \$200 million; and
 - At the termination of the Arena Lease or its extensions, may choose to purchase the site for the greater of (a) \$200 million or (b) the cost of the first installment increased by the consumer price index, but this purchase is conditioned upon the commitment to build a new arena to replace the then aging facility.
 - In addition, if ArenaCo does not exercise this purchase option and the City does not choose to force a sale, then the City can require that ArenaCo demolish the Arena.

KeyArena

- Prior to completion of the project, the NBA and NHL franchises will have the option to play their home games at KeyArena.
- In this event, ArenaCo will make improvements to KeyArena related to this interim use. Improvements that are permanent in nature become the property of the City. These may include modernization of telephone, data and broadcast backbones of the arena, in addition to renovation of some spaces in KeyArena.

Other Provisions

- City-County Representative can deny names for the facility that violate the standard of good taste or references to other states or municipalities other than Seattle or King County.
- Subject to its ability to obtain applicable rights and approvals, the NBA franchise will use the name "Seattle Supersonics".
- Terms may be mutually modified in the future to take advantage of tax benefits.
- ArenaCo and affiliated NHL and NBA teams must be domiciled in Seattle for tax purposes.
- ArenaCo agrees to enter into labor peace or project labor agreements.
- ArenaCo commits to using the City's Inclusion Plan as guidance for use of Women and Minority business Enterprises on the Project.

Inter-local Agreement (ILA)

Overview

- Binding agreement between the City and County.
- Identifies relative obligations between the City and County as they relate to the MOU with ArenaCo.
- Terminates upon the latter of the Arena Lease or when all public financing is retired or defeased.

City Responsibilities



- The City will be responsible to appoint and supervise the City-County Representative in consultation with the County and will be responsible for the day-to-day decision making with respect to the arena. The City can also replace the City-County Representative.
- The City is responsible to issue the call for bids for the project.
- The City will acquire title to the land and ground lease the land to ArenaCo as provided for in the MOU.
- The City will be the lead party with respect to reviews and approvals relating to design and construction.
- The City is responsible to pay nominal rent to ArenaCo under the terms of the lease-purchase between the Commencement Date and the Transfer Date. Those payments are credited against the City's share of the second installment of public financing.
- The City will administer a common fund that will hold City and County revenues attributable to the project and rent payments from ArenaCo. This is the "Arena Revenue Account".

City and County Joint Responsibilities

- The City and County will both enter into a lease-purchase agreement with ArenaCo, assuming they are the winning bidder in the call for bids. On the Commencement Date, the City and the County become tenants in common in the leasehold estate in the arena with ownership in proportion to their anticipated shares of public financing.
- On the Transfer Date, the City and County will jointly exercise the option to purchase the facility or will cause a trustee to prepay the full lease amount. Ownership shares under both scenarios are in proportion to the share of public financing.
- In the event that the Arena Lease is terminated prior to the end of the initial term, the City and County become responsible for costs and will contribute proportionately based on their relative shares of public financing.
- The City and the County both dedicate all Arena Tax Revenues to the benefit of the project for the duration of the Arena Lease, except for those legally restricted as to their use (other than parking taxes attributable by contract to the arena). These taxes will be deposited into the Arena Revenue Account. Funds in the Arena Revenue Account are used to pay taxable debt service by the City and the County.

Public Financing

- The City will finance the public acquisition of the project site for the fair market value of the site, but not to exceed \$100 million. This is the First Installment of public financing.
- The Second Installment of public financing will consist of financing from both the City and the County and it is anticipated to involve both taxable and tax-exempt financing from each party.
 - If conditions related to an NHL franchise are not yet satisfied as of the Transfer Date, then the relative shares of City and County for the Second Installment of public financing are:
 - The County is limited to \$5 million plus 40% of any additional debt issued to "fill" the SODO Transportation Infrastructure Fund.
 - The City in an amount that, in combination with the First Installment and the County's contribution that shall not exceed \$145 million.



- Of this \$145 total, no more than \$120 million will be used for the Arena. Up to \$25 million may be issued to “fill” the SODO Transportation Infrastructure Fund. Of this up to \$25 million figure, 40% will be issued by the County and 60% by the City.
 - If conditions related to an NHL franchise are satisfied as of the Transfer Date, then the County Obligation will be \$80 million and the City obligation will be the amount that, in combination with the first installment, totals \$120 million.
- In the event that the County’s participation in the public financing does not exceed \$5 million plus its share of the up to \$25 million needed to “fill” the SODO Transportation Infrastructure Fund , the County may determine not to hold an ownership interest in the arena site, facility, or leasehold and may instead assign its rights to the City.
- City and County debt structures will have the same basic structure and neither structure can be modified without the consent of the other party.
- It is anticipated that debt supported by property taxes will be issued as tax-exempt debt, and in that event those revenues are not deposited into the Arena Revenue Account.
- Neither party guarantees the debt of the other party.

City-County Advisory Board

- The City and County will appoint members to an Advisory Board that will provide oversight of the administration of the Arena Fund and will make recommendations to the City and County officials on arena-related matters.
- The City-County Representative will provide reports to the Advisory Board at least quarterly on the status of all expenditures and fund balances. Monthly updates of related revenues are also called for.
- The Advisory Board will consist of four representatives, one from the executive and legislative branches of the City and County. Representatives will be elected officials or employees of the City or County.
- If the County financial contribution is limited to \$5 million, then the County will have only one representative on the Advisory Board, appointed by the County Executive.
- The Mayor of the City may take action or direct the City-County Representative to take action on unforeseen issues if an immediate decision is required and notice is promptly given to Advisory Board representatives.

Cost Reimbursement

- The City and County will be reimbursed by ArenaCo for up to \$5 million for pre-development costs, exclusive of fee associated with permit review and costs for the City-County Representative. If the total of related costs exceeds \$5 million, each party’s respective share is reduced proportionately.

Default

- In the event of default, the City and County are entitled to amounts of Arena Tax Revenues and Base Rent proportionate to current debt service. Except that after year 15 of the Arena Lease,



to the extent necessary to pay current debt service, the County is entitled to up to half of these revenue streams, and the City is entitled to at least half of these revenues streams.

- Additional rent and withdrawals from the Reserve Account, Capital Account and City-Capital Account are allocated first in any year to support County current debt service as needed, and then to support City current debt service as needed.
- Amounts received in connection with other security interests from ArenaCo or its affiliates are distributed between the City and County in proportion to the their outstanding public obligations.





	CITY TAXES					
	Property Tax Revenue Increment	Sales Tax Revenue Increment	Admissions Tax Revenue Increment	B&O Tax Revenue Increment	Leasehold Excise Tax Revenue Increment	Total City Taxes

	COUNTY TAXES			
	Property Tax Revenue Increment	Sales Tax Revenue Increment	Leasehold Excise Tax Revenue Increment	Total County Taxes

Total										
Nominal	\$27,395,046	\$9,427,875	\$176,186,700	\$38,492,409	\$7,026,548	\$258,528,579	\$8,315,099	\$1,663,743	\$3,513,274	\$13,492,116
NPV	\$11,565,202	\$4,875,106	\$71,770,543	\$15,686,346	\$2,942,363	\$106,839,561	\$3,510,335	\$860,313	\$1,471,181	\$5,841,830
Year										
1	-	531,250	-	-	-	531,250	-	93,750	-	93,750
2	195,000	1,593,750	-	-	-	1,788,750	59,188	281,250	-	340,438
3	781,950	177,795	4,543,998	993,878	202,000	6,699,620	237,342	31,376	101,000	369,717
4	789,770	181,351	4,621,629	1,010,749	204,020	6,807,518	239,715	32,003	102,010	373,728
5	797,667	184,978	4,700,591	1,027,908	206,060	6,917,205	242,112	32,643	103,030	377,786
6	805,644	194,272	4,780,909	1,046,774	208,121	7,035,720	244,534	34,283	104,060	382,877
7	813,700	196,877	4,862,604	1,064,227	210,202	7,147,611	246,979	34,743	105,101	386,823
8	821,837	196,800	4,945,702	1,081,159	212,304	7,257,302	249,449	34,641	106,152	390,242
9	830,056	200,226	5,030,225	1,099,517	214,427	7,374,451	251,943	35,334	107,214	394,491
10	838,356	210,286	5,116,200	1,119,720	216,571	7,501,133	254,463	37,109	108,286	399,858
11	846,740	213,106	5,203,649	1,138,389	218,737	7,620,621	257,007	37,607	109,369	403,983
12	855,207	212,481	5,292,600	1,156,490	220,924	7,737,703	259,577	37,497	110,462	407,536
13	863,759	216,731	5,383,078	1,176,132	223,134	7,862,834	262,173	38,247	111,567	411,987
14	872,397	227,620	5,475,109	1,197,766	225,365	7,998,258	264,795	40,168	112,683	417,646
15	881,121	230,673	5,568,721	1,217,737	227,619	8,125,870	267,443	40,707	113,809	421,959
16	889,932	229,997	5,663,940	1,237,088	229,895	8,250,851	270,117	40,588	114,947	425,652
17	898,831	234,596	5,760,793	1,258,104	232,194	8,384,519	272,818	41,399	116,097	430,315
18	907,820	246,384	5,859,311	1,281,272	234,516	8,529,302	275,547	43,479	117,258	436,284
19	916,898	249,688	5,959,520	1,302,635	236,861	8,665,601	278,302	44,063	118,430	440,795
20	926,067	248,956	6,061,451	1,323,323	239,229	8,799,026	281,085	43,933	119,615	444,633
21	935,328	253,935	6,165,132	1,345,809	241,622	8,941,825	283,896	44,812	120,811	449,519
22	944,681	266,694	6,270,595	1,370,620	244,038	9,096,627	286,735	47,064	122,019	455,817
23	954,128	270,270	6,377,869	1,393,473	246,478	9,242,218	289,602	47,695	123,239	460,536
24	963,669	269,478	6,486,987	1,415,591	248,943	9,384,668	292,498	47,555	124,472	464,525
25	973,306	274,867	6,597,980	1,439,650	251,433	9,537,235	295,423	48,506	125,716	469,645
26	983,039	288,678	6,710,880	1,466,222	253,947	9,702,765	298,377	50,943	126,973	476,294
27	992,869	292,549	6,825,721	1,490,669	256,486	9,858,294	301,361	51,626	128,243	481,231
28	1,002,798	291,691	6,942,535	1,514,316	259,051	10,010,391	304,375	51,475	129,526	485,375
29	1,012,826	297,525	7,061,358	1,540,058	261,642	10,173,409	307,419	52,504	130,821	490,744
30	1,022,954	312,474	7,182,223	1,568,516	264,258	10,350,425	310,493	55,142	132,129	497,764
31	1,033,183	316,664	7,305,166	1,594,668	266,901	10,516,583	313,598	55,882	133,450	502,930
32	1,043,515	315,736	7,430,223	1,619,950	269,570	10,678,994	316,734	55,718	134,785	507,237



ARENA FINANCING - SAMPLE OUTPUT FROM MODEL

City/County Revenues	Annually	Nominal (Over Lease)	NPV (Over Lease)	% of Total
City Direct Taxes	\$ 6,699,620	\$ 264,597,141	\$ 110,482,538	55%
County Direct Taxes	\$ 369,717	\$ 13,347,631	\$ 6,013,730	3%
Subtotal - Direct Taxes	\$ 7,069,337	\$ 277,944,771	\$ 116,496,269	58%
Base Rent	\$ 1,000,000	\$ 32,000,000	\$ 14,904,198	7%
Imputed Additional Rent	<i>As Needed</i>	\$ 156,766,083	\$ 68,759,260	34%
Subtotal - Rent	<i>As Needed</i>	\$ 188,766,083	\$ 83,663,458	42%
	<i>Covers</i>			
	<i>Financial</i>			
Total Revenues	<i>Obligations</i>	\$ 466,710,855	\$ 200,159,726	100%

NOTE: Additional rent in any given year will cover any gap between City / County financial obligations and the total of taxes and base rent.

Tax Revenue Detail	Annually	Nominal (Over Lease)	NPV (Over Lease)	% of Total
<u>CITY TAX REVENUES</u>				
Property Tax	\$ 781,950	\$ 29,513,486	\$ 11,917,700	11%
Sales Tax	\$ 177,795	\$ 10,088,158	\$ 4,984,916	5%
Admissions Tax	\$ 4,543,998	\$ 191,430,956	\$ 74,306,873	67%
B&O Tax	\$ 993,878	\$ 41,817,877	\$ 16,239,626	15%
Leasehold Excise Tax	\$ 202,000	\$ 7,573,802	\$ 3,033,423	3%
TOTAL	\$ 6,699,620	\$ 280,424,279	\$ 110,482,538	100%
<u>COUNTY TAX REVENUES</u>				
Property Tax	\$ 237,342	\$ 8,958,100	\$ 3,617,327	60%
Sales Tax	\$ 31,376	\$ 1,780,263	\$ 879,691	15%
Leasehold Excise Tax	\$ 101,000	\$ 3,786,901	\$ 1,516,712	25%
Total	\$ 369,717	\$ 14,525,264	\$ 6,013,730	100%



October 8, 2012

**MEMORANDUM OF UNDERSTANDING
SEATTLE SPORTS AND ENTERTAINMENT FACILITY**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated this ___ day of _____, 2012 (“Effective Date”) is entered into among the following parties: The City of Seattle, a Washington municipal corporation (“City”), King County, a political subdivision of the State of Washington (“County”), and WSA Properties III, a Delaware limited liability company (“ArenaCo”). The City, the County and ArenaCo are referred to jointly as the “Parties.”

RECITALS

A. ArenaCo or its affiliate has acquired land (“Project Site”) south of downtown Seattle, Washington, adjacent to First Avenue South between South Massachusetts Street and South Holgate Street, on which it proposes to develop and operate a new multi-purpose sports and entertainment facility (“Arena”). The Arena will be designed to host a National Basketball Association (“NBA”) team (“NBA Team”) and a National Hockey League (“NHL”) team (“NHL Team”) and other events.

B. ArenaCo has approached the City and the County with a proposal for the two governments to participate in the development and ownership of the Arena on the Project Site.

C. An advisory panel (“Panel”) formed by the Mayor for the City and the King County Executive reviewed the ArenaCo proposal. The Panel conducted four public meetings and considered the comments and reports from experts and other members of the community. The Panel has recommended that the City and the County pursue development of the Arena and has identified a number of important issues that should be addressed in any agreements for the development and operation of the Arena.

D. This MOU is intended to be a binding and enforceable agreement of the Parties (a) establishing the process to be followed by the Parties in order to complete necessary reviews, including all environmental reviews, fulfill conditions precedent, and, as appropriate, approve the Transaction Documents (as defined below), and (b) setting forth the business terms and conditions that will be included in the Transaction Documents. It reflects the mutual understandings of the Parties regarding those actions, permits, approvals and/or agreements lawful and necessary to accomplish the location, financing, acquisition, design, development, construction, lease, management, operation, use and occupancy of the Arena (collectively, the “Project”). The Parties intend to actively participate and to work together collaboratively, in good faith and with due diligence, to carry out the process described herein and to negotiate the terms of the Transaction Documents consistent with this MOU. These undertakings are personal to the Parties and this MOU shall not be assigned to any other person or entity unless all Parties agree.

UNDERSTANDINGS

THIS VERSION IS NOT ADOPTED



1. **Purpose and Term of Agreement.** This MOU sets forth the basic terms of proposed agreements among the Parties with respect to the Project, which terms will be memorialized in future agreements and other documents ("Transaction Documents"). The Arena will be designed to host an NBA Team and an NHL Team, and is expected to host other sporting events, family shows, concerts, graduations, and civic and other events. This Agreement will terminate upon the earlier of the effective date of the Umbrella Agreement (defined in Section 7) or five (5) years from the Effective Date of this MOU.

2. **Location.** ArenaCo is proposing to develop and operate the Arena on the Project Site. In considering the City's and County's financial participation in the Project, the City and County will evaluate this location and one or more alternative sites, and a "no action" alternative as part of the SEPA review described in Section 5.

3. **Description; Cost Reimbursement.**

a. **Description.** The Arena will be designed and constructed with approximately 700,000 square feet of usable space and sufficient improvements to have a total approximate capacity of 19,000 attendees for concerts, 18,500 attendees for NBA games, and 17,500 attendees for NHL games. It is not currently possible to estimate the cost of the design, development, and construction of the Arena since the design is not complete and costs will be incurred in the future, and subject to unknown inflation in the costs of materials and labor. The Parties believe that construction and equipping of the Arena, including the cost of acquiring the Project Site, will be accomplished for an aggregate Project cost of approximately \$500 million. The Parties will work to agree upon Plans and Specifications for the Arena that, together with the Project Site acquisition costs, will result in a final Project cost in that approximate amount.

b. **Cost Reimbursement.** "Development Costs" means reasonable and documented out-of-pocket expenses actually incurred by the City and County directly in connection with development, execution and performance of this MOU, the interlocal agreement between the City and the County, the Umbrella Agreement and Transaction Documents, and the transactions contemplated herein through the Commencement Date (defined in Section 9) including, but not limited to, all reasonable and documented expenses of engineers and legal, financial and other required consultants paid by the City or County (but excluding the expenses described in Section 4 and any financing or other costs paid out of bond proceeds) and including up to \$150,000 in costs and expenses actually incurred by the City to assess the future of uses of Key Arena or the Key Arena site. ArenaCo shall reimburse the City and County for all reasonable and documented Development Costs up to a maximum amount of \$5 million, with each payment being due within thirty (30) days following ArenaCo's receipt of an invoice from the City and County as provided herein, with the first payment of any such reimbursable Development Costs to be billed by the City and County at least thirty (30) days prior to the Closing Date, and becoming due and payable on the Closing Date (defined in Section 8). Following the Closing Date, any reimbursable Development Costs that become due and payable as provided in this Section 3.b through the Commencement Date will be billed by the City and County on a monthly basis and paid by ArenaCo within thirty (30) days following receipt by ArenaCo of any invoice from the City and County. The reimbursement of Development Costs is in addition to expenses payable by ArenaCo in connection with Section 4 below.

THIS VERSION IS NOT ADOPTED



4. Initial Site Acquisition and Permitting. ArenaCo has acquired or will acquire the property that comprises the Project Site. At its sole cost and expense, ArenaCo will seek a master use permit and all other permits or approvals required for the Project, including but not limited to environmental review described in Section 5. At ArenaCo's expense, the City will provide dedicated planning staff to facilitate the review and processing of permit applications relating to the Project, with planning staff time to be billed at the then applicable rate schedules of the City.

5. SEPA. The Parties acknowledge that the Project is subject to review and potential mitigation under various laws, including the State Environmental Policy Act, Chapter 43.21C of the Revised Code of Washington ("RCW"), and the state and local implementing rules promulgated thereunder (collectively, "SEPA"). Before the City and County Councils consider approval of the Umbrella Agreement and any Transaction Documents, the City and County will complete a full SEPA review, including consideration of one or more alternative sites, a comprehensive traffic impact analysis, impacts to freight mobility, Port terminal operations, and identification of possible mitigating actions, such as improvements to freight mobility, and improved pedestrian connections between the Arena and the International District light rail station, the Stadium light rail station, the SODO light rail station, and Pioneer Square. The City and County anticipate that alternatives considered as part of the SEPA review will include a "no action" alternative and an alternative site at Seattle Center. The City or County may not take any action within the meaning of SEPA except as authorized by law, and nothing in this MOU is intended to limit the City's or County's exercise of substantive SEPA authority. Consistent with Section 4 of this MOU, ArenaCo will reimburse the City for the costs incurred by the City as part of the SEPA review and will be responsible for funding any required mitigation imposed through SEPA substantive authority.

6. Call for Bids. The City and County will make a call for bids for the Project. The call for bids will be made by publication in the *Puget Sound Daily Journal of Commerce* for two consecutive weeks before the date fixed for opening the bids as required by RCW 35.42.080.

7. Umbrella Agreement. If ArenaCo is the successful bidder for the Project, or if no bid is received on the call and the City and County determine to proceed with the Project without any further call for bids, then as soon as reasonably practicable the Parties intend to enter into a comprehensive agreement that will include the Transaction Documents in substantially final form as exhibits thereto (the "Umbrella Agreement"). The Umbrella Agreement will incorporate conditions precedent substantially in the form set forth in Sections 24 and 25 below, except to the extent that such conditions precedent shall have been met or waived at the time of the execution of the Umbrella Agreement.

8. Site Conveyance. Following execution of the Umbrella Agreement and satisfaction of the applicable conditions precedent, the City will fund the First Installment of the initial Public Financing, as defined and provided in Section 10, to purchase the Project Site from ArenaCo, and ArenaCo will sell and convey a fee simple interest in the Project Site to the City by statutory warranty deed, free and clear of all liens and encumbrances other than "permitted exceptions" (as hereinafter defined) contained in title reports for the Project Site as of the Closing Date that are reasonably approved by the City. The date on which the City acquires the Project Site from ArenaCo is referred to in this MOU as the "Closing Date." Permitted

THIS VERSION IS NOT ADOPTED



exceptions will be agreed to by the Parties no later than the end of the due diligence period under Section 24.c below, subject to updating to account for the time period between the end of the due diligence period and the Closing Date. The purchase price for the Project Site will be paid by the City to ArenaCo in cash on the Closing Date. The purchase price will be the then fair market value of the Project Site, as permitted for construction of a facility for use as a multipurpose sports and entertainment arena, based on an appraisal by a mutually agreed-upon MAI- (Member of the Appraisal Institute) certified independent appraiser as of the date the master use permit is issued.

9. Ground Lease, Lease-Purchase Agreement and Arena Use Agreement. The City will ground lease the Project Site to ArenaCo for a period of at least 30 years (the "Ground Lease"), commencing on the Closing Date. The Ground Lease will require ArenaCo to pay ground rent in the amount of \$1 million annually, which annual rent will be paid by ArenaCo in equal semi-annual installments, and will be pro-rated for any partial year on a monthly basis. This annual Ground Lease rent obligation will terminate on the Commencement Date as defined below. Also on the Closing Date, the City and County will enter into an agreement ("Lease-Purchase Agreement") pursuant to which ArenaCo will construct the Arena building structure ("Arena Facility") in accordance with the Design Standards as defined in Section 16, for lease (with an option to purchase as described in this MOU) to the City and County. The term of the Lease-Purchase Agreement will be co-extensive with the original term of the Ground Lease and the payments to be made by the City and County under the Lease-Purchase Agreement will not exceed the prevailing rates for comparable space.

When the Arena Facility is ready for occupancy ("Commencement Date"), the City and County will commence paying rent, initially for a nominal amount, under the Lease-Purchase Agreement. The City and County will have the right to prepay or cause a trustee to prepay all or a portion of the principal component of all remaining lease payments required under the Lease-Purchase Agreement and will also have the right to exercise the option to purchase the Arena Facility at a price equal to the principal component of all remaining lease payments required under the Lease-Purchase Agreement, as those lease payments may be adjusted consistent with Section 10 below. The date that title to the Arena Facility transfers to the City and County is referred to as the "Transfer Date." The Transfer Date will occur on the day following the date when the Arena Facility is added to the property tax rolls or such later date, but not later than June 30th of the calendar year following the date the Arena Facility is added to the property tax rolls, as ArenaCo may request. ArenaCo will enter into a lease or sublease (the "Arena Use Agreement") for the Arena Facility with the City and County or trustee on the Commencement Date.

On the Transfer Date, the City and County will pay ArenaCo an amount equal to the principal component of all lease payments due under the Lease-Purchase Agreement, as they may be adjusted, or if the City and County have appointed a trustee with respect to certificates of participation in lease payments, then the City and County will cause the trustee to pay to ArenaCo an amount equal to the principal component of all lease payments under the Lease-Purchase Agreement. In either event, the City and County (or a trustee on behalf of the City and County) will purchase the Arena Facility from ArenaCo as provided in this MOU.

THIS VERSION IS NOT ADOPTED



10. City-County Public Financing. The total amount to be paid to ArenaCo by the City and County for acquisition of the Project Site and the lease-purchase of the Arena Facility will be \$200 million; provided, however that the actual amount to be paid to ArenaCo will be subject to reduction as provided below. The structure of the Public Financing (as hereinafter defined) will be determined through a collaborative process among the City, the County and ArenaCo, recognizing that the Public Financing will be consistent with the City's and County's debt management policies, including policies related to debt capacity and risk profile. The "Public Financing" will include two installments of approximately thirty (30) year bonds or certificates of participation that have an effective cost of capital similar to general obligation bonds with debt service payments escalating from the Initial Principal Payment Date at a rate of 1% per annum for the first ten (10) years and will include consideration of: (i) financing obligations at market rates, including only usual and customary financing charges; (ii) utilizing tax-exempt debt; and (iii) utilizing various structuring techniques, including, but not limited to, non-callable bonds, premium bonds, refunding bonds, certificates of participation and discount bonds, as deemed appropriate by the City and County. The City and the County, in their discretion, may later refinance such obligations to improve borrowing terms. Further, at ArenaCo's request, the City and County will consider refinancing such obligations if market conditions allow for improved borrowing terms, provided that ArenaCo reimburses the City and County for the reasonable and necessary costs of such refinancing. Any refinancing of the Public Financing will endeavor to lower debt service costs each year as opposed to redeeming bonds only in late maturity years.

The Parties anticipate that an NHL Team will be committed to play in the Arena after the date on which the NBA Team is acquired and committed to play in the Arena. ArenaCo anticipates that it will proceed with the Project and, if necessary, operate the Arena during the period between the acquisition of the NBA Team and the NHL Team. The Parties recognize that the value of the Arena to the City and the County will be greater upon the commitment of an NHL Team to play in the Arena. In connection with the foregoing, the Public Financing shall only be committed in accordance with the following installments:

(i) **First Installment:** On the Closing Date, in an amount equal to the fair market value of the Project Site (as determined and provided for in Section 8, but in no event to exceed \$100 million) paid to ArenaCo ("First Installment").

(ii) **Second Installment:** On the Transfer Date, a second installment ("Second Installment") in an amount determined as follows: (a) if all of the conditions related to an NHL Team set forth in (b) of this Section 10.(ii) have not been satisfied by the Transfer Date, an additional amount supported by the Base Rent and a stabilized level of Arena Tax Revenues that will be based on projections of future tax revenue that take into account long term variables such as team performance and economic conditions in a manner that will be provided in the Umbrella Agreement and Transaction Documents, up to \$145 million less the amount paid to ArenaCo in the First Installment, which Second Installment will be comprised of funds (X) first paid to the SODO Transportation Infrastructure Fund, as described in Section 11, in an amount up to \$40 million to bring the total amount deposited in the SODO Transportation Infrastructure Fund (considering only deposits of Arena Tax Revenues and Key Arena Taxes) to a total of \$40 million, and (Y) then paid to ArenaCo in an amount not to exceed a total of \$120 million, or (b) if by the Transfer Date an NHL Team license agreement committing the NHL Team to play its



home games in the Arena has been executed, together with a non-relocation agreement as described in Section 18 and any other necessary agreements with the City and the County related to the NHL Team, and the NHL has acknowledged the Arena Use Agreement and the non-relocation agreement and has approved locating the NHL Team in Seattle, an amount equal to \$200 million less the amount paid to ArenaCo in the First Installment, which will be comprised of funds (X) first paid to the SODO Transportation Infrastructure Fund in an amount up to \$40 million to bring the total amount deposited in the SODO Transportation Infrastructure Fund (considering only deposits of Arena Tax Revenue and Key Arena Taxes) to a total of \$40 million, and (Y) then the balance paid to ArenaCo.

11. SODO Transportation Infrastructure Fund.

a. Fund Established. The City and County will establish a separate fund or account ("SODO Transportation Infrastructure Fund") to be managed in the sole discretion of the City and County, considering input from stakeholders affected by the Project, and used to fund transportation improvements in the area South of downtown Seattle. The SODO Transportation Infrastructure Fund will give first priority to projects protecting the operations of the Port of Seattle, such as those serving Terminal 46, and improving freight mobility, including projects that improve pedestrian safety, enhance transit service and connectivity, and overall traffic management in the SODO area. The Parties acknowledge that projects that improve pedestrian safety, transit service and connectivity, and overall traffic management in the SODO area may also result in improved freight mobility. Allocation among these priorities is to be determined by the City and County through interlocal agreement and approved by future ordinances. The City and County will seek other public and private partners and funding for the purposes of advancing the objectives of the SODO Transportation Infrastructure Fund, including but not limited to the Port of Seattle, the operators of Safeco Field and CenturyLink Field, and federal and state governments. Federal and state funding requests made through existing Puget Sound Regional Council ("PSRC") processes shall compete with other projects in accordance with existing PSRC transportation project funding criteria and procedures. Funding requests for competitively awarded federal and state funding sources made outside the PSRC process shall follow the appropriate competitive processes and give consideration to previously identified regional transportation improvement needs. The SODO Transportation Infrastructure Fund will be used to fund system improvements to the transportation network in the SODO area, including the area within which the Project Site is located, but will not be utilized to fund any Project-specific transportation infrastructure mitigation required through the permitting and SEPA process for the Project. Further details related to the partnerships, funding contributions, oversight and governance structure of the SODO Transportation Infrastructure Fund shall be delineated by future City and County ordinances.

b. Funding. Before the Transfer Date, all Ground Lease rent payments and all Base Rent payments will be deposited into the Arena Revenue Account and used to make debt service payments on the Public Financing for the First Installment or when required by Section 13.c to make payments of the Annual Reimbursement Amount. During this period, Arena Tax Revenues collected will be deposited into the SODO Transportation Infrastructure Fund, until such time, together with amounts deposited in the SODO Transportation Infrastructure Fund pursuant to Section 17.b, a total of \$40 million has been deposited into the SODO Transportation Infrastructure Fund. If the total of all sums deposited from Arena Tax



Revenues or Key Arena Taxes into the SODO Transportation Infrastructure Fund plus the amount deposited into the SODO Transportation Infrastructure Fund from the proceeds of the Second Installment do not result in the total amount deposited into the SODO Transportation Infrastructure Fund being equal to \$40 million, then following funding and payment of the Second Installment, ArenaCo will deposit into the SODO Transportation Infrastructure Fund any additional amount required to bring the total of the amounts from these four sources deposited into the SODO Infrastructure Fund to \$40 million in the aggregate. If the aggregate total amount of all sums actually deposited or that would otherwise be required to be deposited into the SODO Transportation Infrastructure Fund from Arena Tax Revenues or Key Arena Taxes as provided herein ever exceeds \$40 million, then any excess of any such amounts will be held in the SODO Transportation Infrastructure Fund until the Transfer Date and will be paid to ArenaCo on the Transfer Date as part of the principal component of lease payments due under the Lease-Purchase Agreement described in Section 9 and reduce the amount of the Second Installment.

12. Ownership of Arena Facility and Improvements. ArenaCo will install all tenant improvements and furnishings, including without limitation the seating, suite furnishings, offices, locker rooms, press areas, basketball floor, ice-making systems and equipment, dasher board systems, sound systems, scoreboards, ribbons, concession equipment, training equipment, and other items ("Arena Tenant Improvements"). For federal income tax purposes, ArenaCo will own all or a portion of those Arena Tenant Improvements, to be set forth in the Transaction Documents or in a schedule included in the Lease-Purchase Agreement or Arena Use Agreement, as applicable, which schedule may be amended from time to time by the mutual written agreement of the Parties. The initial Arena Tenant Improvements will be commensurate with the construction of a first-class arena as set forth in the Design Standards and Operating Standards. The Arena Tenant Improvements (but not any NBA Team- or NHL Team-owned equipment or fixtures) will become the property of the City and County upon the termination of the Arena Use Agreement without any further obligation on the part of the City or County. Upon termination of the Arena Use Agreement, ArenaCo will be obligated to surrender the Arena Facility and Arena Tenant Improvements to the City and County in a condition consistent with the program of capital repairs, replacements and improvements required pursuant to Section 14 and in a state of repair comparable to facilities of a similar age and suitable for continued uninterrupted use by NBA and NHL teams and as a major entertainment facility. Unless either the Put or Call Rights provided for in Section 13.j or the "put" right provided for in Section 13.g(ii).b are exercised and the sale and purchase of the Arena Facility, the Project Site and all of the Tenant Improvements are completed pursuant thereto as provided in either Section 13.j(i), 13.j(ii) or 13.g(ii).b, the Arena Tenant Improvements will be surrendered by ArenaCo upon expiration of the term of the Arena Use Agreement, including any extensions thereof, and shall at the time of such surrender be unencumbered by liens or third party obligations.

13. Arena Use Agreement. The Arena Use Agreement will provide for the following terms:

a. Term. The initial term of the Arena Use Agreement will be at least thirty (30) years, but in no event shall the initial term be less than the maturity of any Public Financing obligations. The Arena Use Agreement will provide for four options of five (5) years each for ArenaCo to extend the term of the Arena Use Agreement. Subject to applicable law, the annual rental rate will be \$4 million during the first extension term. Beginning with the second



extension term, rent will increase by the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (Seattle-Tacoma-Bremerton Local Area) ("CPI") between the first and last years of the preceding extension period, if any. During each of the extension terms that are exercised by ArenaCo, the City and County will deposit 100% of all annual rent payments under the Arena Use Agreement into the City-County Capital Account defined in Section 13.k.(iv). Terms regarding Arena Tax Revenues will be negotiated by the Parties for any extension agreement. ArenaCo cannot exercise the option to extend the term of the Arena Use Agreement, unless the obligations of the NBA Team and (if applicable) the NHL Team to play at the Arena, including non-relocation agreements, are similarly extended.

b. ArenaCo Revenues. For the initial term of the Arena Use Agreement, ArenaCo will be entitled to all cash and in-kind revenues associated with the operation, use and enjoyment of the Arena (other than for any City-County Events, as hereinafter defined) (the "Arena Revenues"), subject to the payments and reserves required as described in this Section 13, and not including any taxes, fees or charges ArenaCo may be obligated to collect and submit to a taxing or other government authority on behalf of others. Subject to the foregoing, Arena Revenues means all revenues, determined on a cash basis, of whatever kind or nature received or obtained by ArenaCo or a third-party, within the scope of ArenaCo's authority or responsibility under the Umbrella Agreement or the Transaction Documents for the management, operation or maintenance of the Arena, in all cases subject to all revenues reserved to the NBA Team or the NHL Team pursuant to applicable license agreements as required by the NBA and NHL. Arena Revenues include, but are not limited to, box office fees (excluding ticket revenue for the NBA Team and NHL Team), facility fees, parking revenues, revenues from consumable and non-consumable concessions, all other licensing and rent revenues, forfeited security deposits, ticket commission and convenience fees, and other fees actually received by ArenaCo, for or from the following: (1) the use or operation of, or admission to, the Arena or any portion thereof, (2) all rents, royalties, and concession payments from tenants, concessionaires and licensees, (3) interest on or proceeds of investment of any accounts (except the Reserve Account and Capital Account, as described in Sections 13.f(ii) and 14.a respectively), (4) rental or use of Arena equipment, (5) services rendered at or related to the Arena, (6) the amounts received from seat use charges and parking use fees, (7) the amounts generated from the use and operation of any Arena internet website and other similar media, (8) the right to sell, or the sale of permanent and ArenaCo temporary signage (but not temporary signage that is reserved or provided to the NBA Team and the NHL Team under their respective license agreements) and Arena sponsorships (including, without limitation, naming rights and founding partner sponsorships), (9) the non-ticket amounts generated from the sale or license of luxury suites and premium seating, and (10) club membership fees, but expressly excluding (notwithstanding the provisions above), in all events, sums received or collected by ArenaCo for and on behalf of and actually paid to a user of the Arena.

c. Rent Payments. Each year during the term of the Arena Use Agreement, ArenaCo will pay annual rent to the City and County in the amount of \$1 million ("Base Rent") at least thirty (30) days prior to the date of the City's first designated semi-annual debt service payment for the Public Financing. In addition, at least thirty (30) days prior to the City's Initial Principal Payment Date (as defined below) and during each year of the Arena Use Agreement, ArenaCo will pay the City and County the amount (the "Additional Rent") that is sufficient,



THIS VERSION IS NOT ADOPTED

when combined with Base Rent and Arena Tax Revenues (described below) received by the City and County for use in that year, to equal the Annual Reimbursement Amount. "Annual Reimbursement Amount" means the total annual debt service obligations of the City and County for the Public Financing. The City's Initial Principal Payment Date is the earlier of (i) the first subsequent date after the Transfer Date on which principal and interest is to be paid, or (ii) the first scheduled debt service payment date on which both principal and interest are due after the fourth anniversary of the First Installment. A schedule of the estimated Annual Reimbursement Amount will be prepared as an attachment to the Transaction Documents and will be updated and delivered to ArenaCo on the Closing Date and further updated on the Transfer Date.

d. Arena Tax Revenues. "Arena Tax Revenues" means the dollar amount of: (i) all sales tax (including all construction sales tax), incremental property tax, all leasehold excise tax, and all admission tax revenues attributable to the Arena and Arena Tenant Improvements, as well as other tax revenues attributable to the Arena and Arena Tenant Improvements that have been received by the City or the County on and from the Project Site and Arena, and from all uses and activities conducted thereon, except for City utility taxes and those tax revenues that are subject to legal restrictions that preclude their use either for payment of Arena-related debt or expenses hereunder (other than parking taxes attributable by contract to the Arena) plus (ii) City business tax revenues imposed under Chapter 5.45 SMC or any successor provision that the City has reasonably determined it received from ArenaCo and from other business activities engaged in, at, or from the Arena (including without limitation revenues from the business activities that have a substantial nexus with the City). In the event the City or the County issue tax-exempt bonds in connection with the Public Financing, then the underlying tax stream identified by the City or County as the source for paying debt service on such bonds shall be excluded from the definition of "Arena Tax Revenues."

e. [Intentionally Left Blank].

f. Security for Rent. ArenaCo will secure payment of Base Rent and Additional Rent as described in Sections 13.f through 13h.

(i) Coverage Ratio. ArenaCo will be required to certify annually whether the Net Arena Revenues for the preceding fiscal year at fiscal yearend are equal to at least two times (2.0x) the Annual Reimbursement Amount for the following year in which debt service is paid (the "Coverage Ratio"). ArenaCo's annual certification must be accompanied by certification from an independent certified public accountant as to the accuracy of the financial information underlying the Coverage Ratio or alternative evidence from ArenaCo reasonably acceptable to the City and County as to the reliability of ArenaCo's certification. ArenaCo will pay the cost of acquiring such a certification and the City and County will be entitled to approve the selection of any third party involved in the certification, which approval will not be unreasonably withheld. "Net Arena Revenues" means the Arena Revenues less Arena Operating Expenses. ArenaCo will, on a date set forth in the Transaction Documents to be no later than 90 days after the end of the prior fiscal year, provide the City and County with an annual accounting to support certification and any reasonably requested documentation to confirm the Coverage Ratio. If Net Arena Revenues are insufficient and fail to meet the Coverage Ratio (a "shortfall"), ArenaCo shall promptly (and in no event later than 30 days after the certification is provided to the City and County or 30 days after an annual accounting is provided and the City and County

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determine a shortfall exists based on the annual accounting) increase the Reserve Account balance by an amount such that (A) the balance of the Reserve Account equals at least 2.0x the following fiscal year's Annual Reimbursement Amount, and (B) the increased Reserve Account balance plus Net Arena Revenues equals at least three times (3.0x) the following year's Annual Reimbursement Amount. If (X) for 24 consecutive months after such increase in the Reserve Account is made by ArenaCo, no funds are withdrawn from the Reserve Account to make any other payments, then the balance required to be maintained in the Reserve Account will be reduced to an amount that, together with Net Arena Revenues for the prior fiscal year, will equal the three times (3.0x) the following fiscal year's Annual Reimbursement Amount, or (Y) for 12 consecutive months after such increase in the Reserve Account is made by ArenaCo no funds are withdrawn from the Reserve Account and the balance maintained in the Reserve Account together with Net Arena Revenues for the prior fiscal year equals at least four times (4.0x) the following fiscal year's Annual Reimbursement Amount, then the balance required to be maintained in the Reserve Account will be reduced to 1.0x the following year's Annual Reimbursement Amount. In no event will the amount held in the Reserve Account in any fiscal year be less than the Annual Reimbursement Amount for the following fiscal year.

(ii) Reserve Account. As collateral, ArenaCo will fund an account at a financial institution reasonably acceptable to the City and County (the "Reserve Account"). The Reserve Account shall be held in trust for the benefit of the City and County as provided in this MOU, the Umbrella Agreement and the applicable Transaction Documents, and will be governed/managed in accordance with an "account control agreement" to be included among the Transaction Documents, the terms of which control agreement -- which will include a grant to the City and County of a first lien and first priority security interest in the Reserve Account -- and all moneys or securities held in the Reserve Account. The terms of the account control agreement or other security agreement will be consistent with this MOU and mutually agreed upon in good faith by ArenaCo, and the City and County. The initial deposit into the Reserve Account will be due on the Closing Date and will equal the Annual Reimbursement Amount for the following fiscal year for the City and County. Thereafter, ArenaCo will make annual deposits into the Reserve Account by June 1 of each year during the term of the Arena Use Agreement that will cause the balance to equal the then next year's actual Annual Reimbursement Amount. All money held in the Reserve Account shall only be invested pursuant to the terms of the account control agreement and such money shall only be invested in investments reasonably acceptable to the City and County. To the extent that the Annual Reimbursement Amount declines due to a restructuring, principal pay-down, or other reduction of the debt service for the Public Financing, then the amount to be held in the Reserve Account will be similarly reduced (provided that the Coverage Ratio is still maintained).

(iii) Withdrawals and Replenishing Deposit. If the City or County draws on the Reserve Account or if the value of securities held in the Reserve Account decreases and the balance in the Reserve Account is less than the Annual Reimbursement Amount for the following year, ArenaCo will replenish the Reserve Account within 30 days.

g. Payment Default; First Priority Payment Position; Lien; Parent Guaranty

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(i) Payment Default; First Priority Payment; Lien. If ArenaCo fails to pay all or any portion of the Base Rent or Additional Rent when due or to make any required deposit into the Reserve Account or the Capital Account when required, then the City and County may draw on the Reserve Account. The City's and County's right to receive required payments of Base Rent and Additional Rent and ArenaCo's obligation to fund the Reserve Account and the Capital Account will have a first-priority payment position on all revenue and receivables of ArenaCo. As the payment obligations of ArenaCo to the City and County hereunder constitute operating expenses, (e.g., including but not limited to rent) such payment obligations will be senior to all debt service payments on any Arena-related financing and intercompany debt. The City's and County's right to receive the required payments of Base Rent and Additional Rent as well as the amounts in the Reserve Account and the Capital Account will be secured by a lien on and security interest in revenues and receivables of ArenaCo. Such lien and its priority shall be agreed upon by lenders to ArenaCo, the City and County and shall be set forth in the, Transaction Documents and the Intercreditor Agreement described in Section 13.i below, and further secured as provided in Section 13.g.(ii) and (iii) below. In the event of a "Payment Default", which for the purposes of this MOU will be defined as ArenaCo's failure to replenish the Reserve Account or to increase the deposits therein to the required amount within thirty (30) days of receipt of notice from the City and County of any draw on the Reserve Account or confirmation of insufficient coverage amount, the City and County may exercise any and all remedies at law or equity or under or pursuant to this MOU, the Umbrella Agreement and the Transaction Documents.

(ii) Guarantees.

(a) Parent Guaranty. Except as provided below in this Section, ArenaCo hereby agrees that the direct equity owner of ArenaCo ("ArenaCo Parent") will also be the direct equity owner of the entity that owns and operates the NBA Team unless there is a sale, transfer or assignment in accordance with Section 23(iii)c. In addition to the security provided for in Section 13.f(i) above, ArenaCo shall deliver, on the Transfer Date, an unsecured and unconditional guaranty of ArenaCo Parent (the form of which shall be included in the Transaction Documents) unconditionally guaranteeing ArenaCo's obligations under the Arena Use Agreement, as well as the obligations of the NBA Team under the NBA Team's non-relocation agreement defined in Section 18 of this MOU (each such guaranty a "Parent Guaranty"). If any other entity is an equity owner of more than a ten percent (10%) equity interest in ArenaCo as of the date of the Transaction Documents or later acquires such an ownership interest in ArenaCo (individually an "Other ArenaCo Parent Entity" or collectively "Other ArenaCo Parent Entities"), then such Other ArenaCo Parent Entity shall be deemed an ArenaCo Parent for purpose of this Section 13.g.(ii) and shall be required to provide a Parent Guaranty; provided, however, that in such event the Parent Guaranty provided by ArenaCo Parent and the Parent Guaranty provided by any such Other ArenaCo Parent Entities shall provide that the obligations guaranteed by each such entity under their respective Parent Guaranty will be pro rata, based upon each of their respective equity interests in ArenaCo, rather than joint and several. In addition, if such Other ArenaCo Parent Entity is also the owner of the NHL Team, then such Other ArenaCo Parent Guaranty shall also guarantee the obligations of the NHL Team under the NHL Team's non-relocation agreement defined in Section 18 of this MOU.

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(b) **Personal Guaranty.** In addition to delivery of the Parent Guaranty, on the Closing Date ArenaCo shall also deliver or cause to be delivered an unsecured, personal guaranty ("Personal Guaranty") of Chris Hansen ("Personal Guarantor") guaranteeing the obligations that are to be personally guaranteed as expressly provided for in this Section 13.g.(ii).(b). The Personal Guaranty will provide that the Personal Guarantor will guaranty the following obligations ("Personal Guaranty Obligations"):

(1) the Repayment Obligation set forth in Section 1.a(ii); and

(2) until the first to occur of (a) the termination or release of ArenaCo Parent's obligation under the Parent Guaranty to guaranty the payment obligations of ArenaCo to make the payments of the Annual Reimbursement Amount to the City and County pursuant to the Use Agreement, or (b) the Public Financing has been fully repaid or defeased, or (c) expiration of the "Remedy Period" of the Personal Guaranty as hereinafter defined, if and to the extent a Payment Default exists as set forth in Section 13.g.(i) and (x) if ArenaCo fails to make any required payment of the Annual Reimbursement Amount as and when due and payable as provided herein and in the Use Agreement and subsequently fails to replenish the Reserve Account as required herein and in the Use Agreement, and (y) Parent Guarantor fails to satisfy its obligations to make the required payment of the Annual Reimbursement Amount and to replenish the Reserve Account under the Personal Guaranty, then Personal Guarantor (or, if applicable, Successor Personal Guarantor(s), as hereinafter defined) shall personally guarantee and make payment as and when the payments become due of the difference between any such Annual Reimbursement Amounts and any sums paid to or received by the City and County in payment of any such Annual Reimbursement Amounts from any sources, including from any amounts remaining in the Reserve Account or sums or amounts thereafter deposited into the Reserve Account by ArenaCo or any Parent Guarantor.

In connection with the Personal Guaranty, the Personal Guarantor or any Successor Personal Guarantor(s) shall provide certification from an independent certified public accountant that Personal Guarantor's or such Successor Personal Guarantor(s)' net worth is no less than \$300 million ("Minimum Net Worth"). Such certification shall be made upon the reasonable request of the City and County, but in no event shall such certification be required to be made more frequently than annually. Any such certification shall be paid for as an operating expense of ArenaCo. If any such certification shows that the Personal Guarantor's or any Successor Personal Guarantor(s)' net worth is less than the Minimum Net Worth, then the Personal Guarantor or such Successor Personal Guarantor(s) shall be required to provide a nonrecourse letter of credit for the benefit of the City and County in an amount equal to 2.0x the then current year's Annual Reimbursement Amount until such time as such a certification is provided that shows that such Personal Guarantor's or successor owner(s)' Minimum Net Worth is no less than \$300 Million. In approving any future sale, assignment or transfer of interest as provided in Section 23(c) of this MOU, the City and County must be reasonably satisfied with a comparable Personal Guaranty from any successor majority or plurality owner(s) of any purchaser, assignee or transferee ("Successor Personal Guarantor(s)").

Notwithstanding anything to the contrary contained herein, the obligations of Personal Guarantor or any Successor Personal Guarantor under the Personal Guaranty will only require Personal Guarantor or any Successor Personal Guarantor to guaranty and make payment

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of any shortfall in any payments of Annual Reimbursement Amounts during the Remedy Period as provided above as and when such Annual Reimbursement Amounts would otherwise have become due absent a Payment Default as provided in this MOU. The obligations of Personal Guarantor or any Successor Personal Guarantor(s) under the Personal Guaranty will continue only for a period of up to five (5) years (the "Remedy Period") from the date on which Personal Guarantor makes the first payment of the shortfall in any Annual Reimbursement Amount required under the Personal Guaranty, and will apply only to any shortfall in any Annual Reimbursement Amounts as and when the same would otherwise have become due during the Remedy Period as provided herein. During the Remedy Period, the City and County may, but shall not be obligated to, continue to pursue their remedies against ArenaCo and Parent Guarantor (and, if applicable, any Other ArenaCo Parent Entities) resulting from such Payment Default and default by any Parent Guarantor under the Parent Guaranty as provided for herein, and in the Use Agreement, the Parent Guaranty, and in any of the other Transaction Documents.

Any payments made by Personal Guarantor or any Successor Personal Guarantor(s) under the Personal Guaranty provided for in this Section 13.g.(ii).(b) will be considered to be and will be treated as recoupable advances by Personal Guarantor or Successor Personal Guarantor(s), and will be added to and included in any claims made or remedies that may be sought by the City and County against or from ArenaCo, Parent Guarantor and, if applicable any Other ArenaCo Parent Entities. In the event the City and County recoup, receive or collect amounts, whether from ArenaCo, Parent Guarantor, any Other ArenaCo Parent Entity, the NBA Team, NHL Team, or their respective successors, transferees, assigns, bankruptcy estates or trustees or administrators, sufficient to satisfy all damages incurred by the City and County as the result of the payment defaults plus all amounts necessary to satisfy all the obligations of the City and County under the Public Financing (the "Recoupment Amounts"), then, to the extent the City and County recoup amounts in excess of the Recoupment Amounts, the City and will repay and reimburse to Personal Guarantor or Successor Personal Guarantor(s), as applicable, any amounts so collected and received by the City and County, until such time as Personal Guarantor or any such Successor Personal Guarantor(s) have been reimbursed and repaid in full for any amounts previously paid and advanced to the City and County under the Personal Guaranty as provided for in this Section 13.g.(ii).(b), less all reasonable expenses incurred by the City and County in the recoupment of the Recoupment Amounts (including reasonable attorney's fees). Notwithstanding the foregoing, it is expressly understood and agreed that any amounts paid and advanced to the City and County under the Personal Guaranty are recoupable by Personal Guarantor or any Successor Personal Guarantor(s) only if and to the extent that the City and/or County collect or receive payment or reimbursement of such amounts as provided herein, and the City and County will otherwise have no obligation to repay or reimburse any such payments or advances to Personal Guarantor or any Successor Personal Guarantor(s).

In addition to and without limiting the foregoing, in the event of a sale of the NBA Team following a Payment Default by ArenaCo and the receipt by City and County of any proceeds from any such sale of the NBA Team as provided in Section 13.g.(ii) below, if all of the obligations due to the City and County under the Public Financing have not been previously fully repaid or fully defeased, or are not fully repaid or fully defeased from any such proceeds received by the City and County, then until either 120 days following receipt by the City and County of the proceeds from the sale of the NBA Team as provided in Section 13.g.(iii) below,

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or if the NBA Team is sold as provided in Section 13.g.(iii) below but the City and County are not entitled to receive any proceeds from such sale, then 180 days following the date on which such sale of the NBA Team is completed, the City and County will have the right, but not the obligation, under the Use Agreement to "put" the Arena Facility, all the City's and County's rights in or to the Arena Tenant Improvements, the Project Site and all of the City's and County's rights under the Arena Use Agreement to Personal Guarantor or, if applicable, any Successor Personal Guarantor(s), and Personal Guarantor or such Successor Personal Guarantor(s) will have the obligation to purchase and acquire all of the same from the City and County, for a purchase price equal to (a) any then remaining unpaid or undefeased obligations of the Public Financing that have not been previously paid or defeased from all sources, including by application of any proceeds received or to be received by the City and County from or in connection with the exercise of any of their rights and remedies, including, but not limited to, such a sale of the NBA Team, plus (b) any legal fees and costs and City and County staff billable hours and costs actually paid or incurred by the City and County directly in connection with collecting any amounts due from Personal Guarantor or any Successor Personal Guarantor(s) under the Personal Guaranty. In the event that the City and County do not exercise this put right within the applicable time period provided for above, then this put right and all obligations of Personal Guarantor and any Successor Personal Guarantor(s) relating to this put right under the Personal Guaranty will terminate and be of no further force or effect.

(iii) **First Right to Distributions.** Further, to satisfy any default in (A) ArenaCo's obligations under the Arena Use Agreement and (B) the NBA Team's obligations under the non-relocation agreement required by Section 18, the City and County will also be entitled to receive the first distributions of any proceeds from any sale of the NBA Team, subject only to repayment of any obligations of the NBA Team related to any debt of the NBA Team to the NBA or other lenders approved by the NBA that are secured by the NBA franchise and other assets of the NBA Team up to the \$125 million cap plus the amount of Public Financing used to fund the SODO Transportation Infrastructure Fund in the Second Installment up to an additional \$25 million on such debt currently allowed under applicable NBA rules ("NBA Team Secured Debt Obligations"). The total NBA Team Secured Debt Obligations shall not exceed \$150 million. ArenaCo Parent shall covenant not to enter into any agreement that would interfere with City's and County's rights to receive distributions of the proceeds of sale of the NBA Team payable to City and County as and when provided for in this MOU, and the NBA Team shall covenant not to enter into any agreement granting any lien, security interest or other encumbrance on the NBA Team's assets in excess of the NBA Team Secured Obligations. The Parties also agree to explore further ways to secure the obligations of ArenaCo, ArenaCo Parent and the NBA Team subject to NBA requirements, rules, regulations and agreements. Notwithstanding the foregoing, however, if the NBA revises its rules to allow NBA teams to borrow in excess of the current limit of \$150 million that may be secured by the NBA franchise and other assets of NBA teams, then the NBA Team will be entitled to increase the amount of the NBA Team Secured Debt Obligations; provided, however, that the NBA Team will limit the amount of the NBA Team Secured Debt Obligations that will be senior to the right of the City and County to receive distributions of any proceeds from any sale of the NBA Team to the lesser of: (A) the maximum amount of NBA Team Secured Debt Obligations that is then allowed under NBA rules, or (B) 40% of the then "fair market value" ("FMV") of the NBA Team. The FMV of the NBA Team will be as mutually agreed upon in good faith by the Parties at that time; provided, however that if the Parties are unable to agree upon the FMV of the NBA Team at that



time, then the FMV of the NBA Team will be determined by a sports industry recognized appraiser with experience in valuing NBA teams selected by the mutual agreement of the Parties pursuant to a customary valuation process to be specified in the Umbrella Agreement; but provided further, however, that if the NBA Team Secured Debt increase of the NBA Team is being sought in connection with the acquisition of the NBA Team on an arm's-length basis by an unrelated party, then the FMV will be equal to the actual all-in acquisition price of the NBA Team.

h. Special Purpose Entity; Insolvency. ArenaCo and ArenaCo Parent shall be established as bankruptcy remote special purpose entities, with one or more independent managers or directors (as applicable) that would have to approve any bankruptcy filing. ArenaCo shall contribute a minimum of \$100 million in equity towards construction of the Arena. If ArenaCo is determined to be bankrupt or insolvent as defined in the Umbrella Agreement or the Transaction Documents; if any receiver, trustee or other similar official of all or any part of the business of ArenaCo is appointed and is not discharged within 60 days after appointment; if ArenaCo makes any general assignment of its property for the benefit of creditors; if ArenaCo files a voluntary petition in bankruptcy or a state court receivership proceeding, or applies for reorganization or arrangement with its creditors, under federal, state or other laws now in force or hereafter enacted; if an involuntary petition of bankruptcy or insolvency is filed against ArenaCo and is not dismissed within 60 days after the filing; and if ArenaCo is in Payment Default then the City and County, at their election and unless prohibited by law may (i) first - draw on the Reserve Account, and (ii) then - foreclose on their security interests in the revenues and receivables from ArenaCo or the Arena, and/or (iii) replace ArenaCo as operator of the Arena, and/or (iv) terminate the Umbrella Agreement and the Arena Use Agreement. These remedies are not exclusive and will be in addition to all other remedies available to the City and County. The provisions of this Section are in addition to and not instead of or dependent upon the remedies set forth in Section 13.g or elsewhere in this MOU.

i. Intercreditor Agreement. The Parties acknowledge that the Transaction Documents shall include an intercreditor agreement between the City and County and ArenaCo's lenders ("Intercreditor Agreement") which shall be in the form and substance reasonably satisfactory to the City and County and ArenaCo's lenders. For the avoidance of doubt and without limitation, the Intercreditor Agreement shall include provisions addressing removal of Arena Tenant Improvements as a remedy, identifying which party to the Intercreditor Agreement will be the controlling party or parties to direct remedies upon the occurrence of any Payment Default, other limitations and timing of remedies for all parties.

j. Put and Call Options.

(i) Put Option. Upon expiration of the Arena Use Agreement term (including any extensions exercised by ArenaCo or its designees or approved successors and assigns), the City and County will have the right (the "Put Option") to require ArenaCo or its designees or approved successors and assigns under the Arena Use Agreement to purchase from the City and County all of the City and County's right, title and interest in or to the Arena Facility, the Project Site and all of the Arena Tenant Improvements for a purchase price in the amount of \$200 Million; provided, however, that in order to exercise such right, the City and

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County must provide ArenaCo or its designees or approved successors and assigns with written notice of such election within 180 days following the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns).

(ii) Call Option. In addition to the Put Option, at the end of the Arena Use Agreement term (including any extensions exercised by ArenaCo or its designees or approved successors and assigns), ArenaCo or its designees or approved successors and assigns under the Arena Use Agreement will have the right (the "Call Option") to require the City and County to sell to ArenaCo or its designees, approved successors and assigns, all of the City's and County's right, title and interest in or to the Arena Facility, the Project Site and all of the Arena Tenant Improvements for a purchase price equal to the greater of (a) the amount of the First Installment, as increased on an annual basis by CPI, or (b) \$200 Million; provided, however, that in order to exercise such right, ArenaCo must provide the City and County or their designees or approved successors and assigns with written notice of such election within 180 days following the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns). If ArenaCo or its designees or approved successors and assigns under the Arena Use Agreement exercises the foregoing Call Option, such purchasing party shall be obligated to build a substantially similar new arena on the Project Site, in the sole discretion of the City and County.

(iii) Demolition and Removal. If ArenaCo does not exercise the foregoing call option and the City and County do not exercise the foregoing put option, then at the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns), if neither the NBA Team nor NHL Team agree to continue to play at the Arena, then at the sole determination and election by the City and County, ArenaCo or its designees or approved successor or assigns shall be obligated to pay for the reasonable and actual direct costs of demolition and removal of the Arena Facility; provided, however, that in order to elect to exercise such right, the City and County must provide ArenaCo or its designees or approved successors and assigns with written notice of such election within 180 days following the end of the term of the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors and assigns).

(iv) All decisions provided for in this Section 13.j that are to be made by the City and County will be made jointly by the City and County. If there is a dispute regarding any such decision, the decision will be resolved by the dispute resolution process set forth in Section 8.E. of the Interlocal Agreement between the City and County. If neither party has submitted the dispute to binding arbitration by the deadline set under that process, then the decision will be made by the majority owner.

k. Flow of Arena Tax Revenues.

(i) Tax Benefits. The Parties acknowledge that transactions provided for in and authorized by this MOU may be structured in the Umbrella Agreement and Transaction Documents in a manner that results in more positive tax benefits to the Parties, including the ability of the City and County to issue tax-exempt debt.

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(ii) **Arena Tax Revenues.** Arena Tax Revenues will be deposited in the Arena Revenue Account, except for those Arena Tax Revenues that are required to be deposited into the SODO Transportation Infrastructure Fund prior to the Transfer Date. The City and the County will provide ArenaCo with a monthly accounting detailing Arena Tax Revenues collected and distributed.

(iii) **Arena Revenue Account.** The City will create an "Arena Fund" (and accounts and subaccounts associated therewith) (collectively, "Arena Revenue Account") into which the City and County will deposit any Arena Tax Revenues (except those Arena Tax Revenues that are required to be deposited in the SODO Transportation Infrastructure Fund prior to the Transfer Date) plus Base Rent and Additional Rent payments received by the City and County.

(iv) **City-County Capital Account.** On an annual basis, after payment of the Annual Reimbursement Amount has been made and only to the extent of any excess Arena Tax Revenue, the City and County will deposit the first \$2 million of such excess into a separate account ("City-County Capital Account") to be used for Major Capital Projects, as defined in Section 14. The City-County Capital Account shall at all times be the property of the City and County, subject to use and application thereof as provided in this MOU and the applicable Transaction Documents. Any Arena Tax Revenues received annually in excess of such first \$2 million will either be used by the City and County to redeem or defease outstanding principal of the Public Financing, or will be deposited by the City and County into the City-County Capital Account; provided however, if, at any time during the first ten (10) years of the Arena Lease, the City-County Capital Account has a balance of \$10 million, no additional deposits will be made into the City-County Capital Account. After the tenth (10th) year of the Arena Lease, the allowed balance of the City-County Capital Account will increase by \$2 million annually, until the fifteenth (15th) year, and thereafter the maximum balance of the City-County Capital Account will be \$20 million. At such time as all outstanding principal of the Public Financing has been fully retired or defeased, the above caps will no longer apply and, until the end of the initial term of the Arena Use Agreement, any excess Arena Tax Revenues will thereafter be deposited into the City-County Capital Account, which will be used and applied in the manner provided for in this MOU and the applicable Transaction Documents. Upon expiration of the initial term of the Arena Use Agreement (not including any extensions that may be exercised by ArenaCo), any funds remaining in the City-County Capital Account will be retained by the City and County to be used for any purpose of their choice. The deposits described in this Section will not in any way limit ArenaCo's obligation to make its annual payment into the Capital Account and to make all capital repairs, replacements and improvements to the Arena as required in this MOU.

(v) **Termination.** Following the defeasance or redemption of all bonds or certificates of participation issued as part of the Public Financing, the City and County will notify ArenaCo that it may withdraw all amounts remaining in the Reserve Account not otherwise required to satisfy ArenaCo's obligations under the Arena Use Agreement. From and after the date the Arena Use Agreement (including any extensions exercised by ArenaCo or its designees or approved successors or assigns) is terminated, the City and County may withdraw all amounts remaining in the City-County Capital Account.



14. Capital Improvements.

a. Capital Account. ArenaCo will be required to make two equal semi-annual cash deposits of \$1 Million each (for a total of \$2 Million in annual deposits) into an account ("Capital Account") in an amount equal to \$2 million annually ("Capital Account Requirement"). Funds in the Capital Account shall be used to make capital repairs, replacements or improvements to the Arena in accordance with this Section 14. The initial Capital Account deposit will be made on the first anniversary of the Commencement Date and payments will be made semi-annually thereafter on the dates that Base Rent and Additional Rent are due.

b. Capital Improvements. Except as set forth herein, ArenaCo will, at its sole cost and expense, make all Capital Expenditures relating to the Arena or its use. "Capital Expenditures" means the purchase, installation, improvement, repair or replacement of items or systems in the Arena Facility and Arena Tenant Improvements with a life expectancy of at least three years, at a cost of five thousand dollars (\$5,000.00) per item or system, including labor costs, and that are necessary or appropriate to maintain the Arena throughout the term of the Arena Use Agreement in good repair in accordance with the Schematic Design Package, Design Standards and Operating Standards (as defined below) or which may be required by applicable law, including but not limited to, all capital improvements necessary to maintain the structural integrity of the Arena.

c. Procedure for Making and Approving Capital Improvements and Maintenance Inspections. ArenaCo will, on an annual basis, prepare a proposed five-year capital budget ("Five-Year CIP") for anticipated Capital Expenditures and Major Capital Projects, as defined below, to be funded by the Capital Account and the City-County Capital Account; provided, however, that nothing herein shall relieve ArenaCo of its obligations set forth in Section 14.b above, regardless of whether a Capital Expenditure is contemplated by the Five-Year CIP. Within sixty (60) days of the submission, the City and County will either accept the Five-Year CIP in totality, or provide ArenaCo with written notice of any line-items it reasonably believes are not prudent or do not meet the definition of Capital Expenditures or Major Capital Projects, with the undisputed line-items becoming the prevailing Five-Year CIP while any such disputed line-items are being resolved by the Parties as hereinafter provided. The Parties will undertake best efforts to come to a mutually acceptable agreement on the Five-Year CIP within sixty (60) days thereafter, and if the Parties are unable to reach an agreement within said 60-day period, then the issue will be submitted to the dispute resolution provisions of this MOU. In addition, the Parties will develop a procedure for periodic joint inspections and a schedule of major maintenance activities which shall be prepared or reviewed by professionals knowledgeable about life-cycle cost analysis for comparable public facilities. This procedure will include (i) the right of the City-County Representative to receive material non-privileged information regarding major capital improvements during the progress of any major capital improvement projects, and (ii) the right of the City and County to enter upon the Arena for the purposes of performing inspections of the Arena and Tenant Improvements. An ArenaCo representative will, at the request of the City and County, accompany the City and County Representative on the inspections. Within 30 days after such inspection, the City and County may provide ArenaCo with a list of Capital Expenditures, including Major Capital Projects that the City-County Representative reasonably determines are necessary to maintain the Arena and Tenant Improvements in accordance with the Operating Standards: provided that any such Major

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Capital Projects undertaken by ArenaCo pursuant to the request of the City-County Representative, may be funded from the City-County Capital Account notwithstanding any other provisions of this MOU. If ArenaCo disputes the City-County Representative's determination, the ArenaCo representative and the City-County Representative will promptly meet to attempt to resolve the dispute. If they fail to resolve the dispute, the parties will attempt to mediate the dispute. If the parties fail to resolve the dispute through mediation, the Parties will submit their dispute the dispute resolution provisions of this MOU.

d. Capital Account Availability. Upon Payment Default, the Capital Account will be available as additional security to the City and County to meet the payment obligations under the Public Financing. ArenaCo may draw on the Capital Account to make any Capital Expenditures including Major Capital Projects consistent with the Five-Year CIP and to fund any other Capital Expenditures. Subject to the rights of ArenaCo under the Arena Use Agreement, all such Capital Expenditures and Major Capital Projects will become the property of the City and County upon completion unless such repairs, replacements or improvements are Tenant Improvements and owned by ArenaCo or the NBA Team or the NHL Team.

e. City-County Capital Account Availability. Provided there is no Payment Default, and subject to any other mutually agreed-upon expenditures to be paid from funds in the City-County Capital Account that are covered in any Five-Year CIP, the first \$2 million in any funds deposited on an annual basis in the City-County Capital Account may be utilized by ArenaCo for the purposes specifically provided for in this MOU, including for routine and any other maintenance and repairs performed by ArenaCo to the Arena Facility or to the City and County owned Arena Tenant Improvements and for other capital repairs, replacements and improvements to the Arena and the Tenant Improvements. If ArenaCo uses the City-County Capital Account for routine and other maintenance and repairs, ArenaCo will make a deposit of an equal amount into the Capital Account, with such funds to be used periodically by ArenaCo only for Major Capital Projects. Other funds deposited in the City-County Capital Account on an annual basis shall only be utilized for major repairs to base systems and other major improvements (e.g., major repairs to the (i) roof, (ii) HVAC system, (iii) primary sound system, (iv) primary lighting system, (v) ice sheet refrigeration system, (vi) primary scoreboards, (vii) plumbing improvements and replacements, and (viii) primary electrical systems) ("Major Capital Projects"). Any City and County-owned Capital Expenditures and Major Capital Projects are subject to the rights of ArenaCo under the Arena Use Agreement. Notwithstanding the foregoing and in the event of a Payment Default, the City and County may, at their discretion, use any money in the City-County Capital Account for the payment, redemption or defeasance of the Public Financing.

15. Management, Operations and Use.

a. Operating Expenses. ArenaCo will control and will be solely responsible for all day-to-day operations, expenses, and costs for routine maintenance of and repairs to the Arena ("Arena Operating Expenses") to maintain it to a standard comparable to three mutually agreed upon professional basketball and ice hockey arenas suitable for NBA and NHL teams and recently constructed, serving as the home facility for NHL and NBA Teams or under construction ("Operating Standards"). The City and County will have no responsibility for any Arena Operating Expenses (except for incremental out-of-pocket expenses associated with City-



County Events). ArenaCo shall at all times maintain at least three times (3.0x) the average monthly Arena Operating Expenses in an Operations and Maintenance Fund to be maintained by ArenaCo and its lenders.

(i) Arena Operating Expenses. Arena Operating Expenses means all expenses or obligations, as determined on a cash basis, of whatever kind or nature made or incurred by ArenaCo or any third-party management company that may be engaged by ArenaCo, within the scope of ArenaCo's authority or responsibility under this MOU or the Transaction Documents for the management, operation or maintenance of the Arena, including, but not limited to, all reasonable costs of the City and County related to the City-County Representative and ArenaCo's expenses (to the extent not duplicative of other expenses enumerated herein); all payments to be made by ArenaCo or its affiliates under the terms of this MOU, the Umbrella Agreement or the Transaction Documents, including but not limited to: rent payments; Impositions (as defined below); expenses related to parking areas (if applicable); box office expenses for third-party events; all expenses incurred to obtain Arena Revenues (pro-rated where appropriate to reflect an appropriate allocation of revenues between ArenaCo and either the NBA Team or NHL Team); salaries, wages and benefits of personnel working at the Arena including personnel employed by ArenaCo or through its affiliates or service contractors; human resource support services and training and development expenses; contract labor expenses; maintenance and repairs; utilities; deposits for utilities; telephone expenses; management fees paid to any third-party management company; expenses incurred under use or license agreements with licensees or other users of the Arena; telescreen, video and/or scoreboard operation expenses, dues, memberships and subscriptions; security expenses; police, fire, emergency services and other public safety expenses related to the Arena (the estimate and pro ration of which in the event of multiple venue events shall be set forth in the Transaction Documents or as otherwise mutually agreed upon by the Parties); other event-handling activities at the Arena; all expenses payable by ArenaCo under any license agreements with the NBA and NHL teams; audit fees; legal fees; other professional fees; fees payable to concessionaires or other subcontractors; refuse removal expenses; cleaning expenses; taxes (but excluding any taxes, fees or charges ArenaCo may be obligated to collect and submit to a taxing or other government authority on behalf of others); building maintenance supplies; ticket commissions for third-party events; insurance premiums; data processing expenses; advertising expenses relating to Arena advertising and sponsorships; maintenance of advertising and signage relating to all permanent advertising, sponsorships and naming rights; marketing; public relations expenses; expenses and losses (to the extent not duplicative of other expenses enumerated herein) incurred in the production and promotion of events at the Arena; pest control; office supplies; employment fees; freight and delivery expenses; expenses for leasing of equipment; credit and debit facilities and telecheck fees and expenses; Arena-related travel, lodging and related out-of-pocket expenses for officers and directors of ArenaCo or an affiliate; and all damages, losses or expenses incurred by the ArenaCo, its affiliates or any third-party management company as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys' fees incurred in litigation or otherwise, assessed, incurred or sustained by or against any of them (to the extent not covered by insurance proceeds actually received). Operating Expenses do not include any payments to third party lenders.

(ii) Impositions. As used herein, the term "Impositions" means (without duplication of any expense set forth above) all governmental assessments, franchise

fees, excises, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever which at any time may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (a) all or any part of the Arena; (b) any payments received by ArenaCo or its affiliates from any holders of a leasehold interest or license in or to the Arena, from ticketholders (including, without limitation, suite licensees and premium seat ticketholders) attending events at the Arena; or (c) the transactions contemplated hereby or any agreement or document to which ArenaCo or its affiliates are a party which creates or transfers rights with respect to all or part of the Arena.

b. Operations. ArenaCo will operate and manage the Arena in accordance with the Operating Standards, as they may change from time to time by the mutual agreement of the Parties. ArenaCo will not enter into any multi-year contracts or grant any rights with respect to the operation of the Arena that would extend beyond ArenaCo's occupancy under the Arena Use Agreement unless such agreements contain provisions reasonably acceptable to the City and County regarding assignment or termination to be set forth in the Transaction Documents. ArenaCo will provide the City and County with a copy of any such contract. Failure of ArenaCo to operate and manage the Arena in accordance with the Operating Standards or to pay Arena Operating Expenses shall be a default under the Arena Use Agreement and, in addition to other remedies, and subject to reasonable notice and cure provisions mutually agreed upon by the parties, shall entitle the City and County to replace ArenaCo as the operator and manager of the Arena; provided, however, that in the event that ArenaCo disagrees with the City and County that such a default under the Arena Use Agreement has occurred, then such dispute will be submitted and resolved by the parties in accordance with the dispute resolution provisions specified in this MOU. Inspections relating to maintenance of the Arena are permitted as provided in Section 1414.c.

c. City-County Events. The City and County will be permitted to use the Arena or portions thereof to host no fewer than 12 events per year that do not conflict with previously scheduled events or hold dates ("City-County Events"). The City and County will have the right to schedule City-County Events in advance based on Arena availability. For City-County Events, the City and/or County will (i) pay no rent or use or license fees, and (ii) be required to pay only the incremental operating costs incurred by ArenaCo with respect to such City-County Events and any applicable taxes. Incremental costs shall not include the costs of foregoing alternative events or attributed overhead operational costs.

d. Marketing. ArenaCo will use commercially reasonable efforts to market the Arena in a manner that promotes and encourages economic development in the area.

e. Team License and Related Agreements. ArenaCo shall enter into license agreements, or other similar agreements, regarding the use of the Arena with the NBA Team and the NHL Team (the "Team License Agreements."). The Team License Agreements shall be subject to the approval of the City and County as being consistent with the terms of this MOU and the Transaction Documents, and shall recognize the City and the County as third-party beneficiaries. In connection with such approval right, each Team License Agreement shall provide (i) that the team shall play its preseason, regular season and playoff home games at the Arena in accordance with Section 18; (ii) that the team shall acknowledge and accept, in a

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separate agreement in the form that will be one of the Transaction Documents, that the Team agrees to the non-relocation provisions in accordance with Section 18; (iii) that there is scheduling priority for the team (but if there is both an NBA Team and an NHL Team then playing in the Arena, subject to reasonable accommodation for any scheduling priority granted to either such team); (iv) for a term of at least 30 years; (v) for payment of rent; (vi) for allocation of the payment of game day expenses; (vii) for allocation of other expenses including maintenance; (viii) for an acknowledgment that ArenaCo shall retain all revenues related to naming rights, Arena founding partner sponsorships and other primary sponsorships related to the Arena; (ix) that ArenaCo shall retain all revenues related to suite sales; (x) that ArenaCo shall retain all revenues not retained by or payable to the teams or leagues for other premium and club seats; (xi) for allocation of revenues from parking, concessions, merchandise, and ticket surcharges (if any); (xii) for marketing of the Arena and the teams; (xiii) for insurance; and (xiv) for indemnification, including indemnification of the City and the County.

16. Arena Design, Development and Construction. ArenaCo will develop, design and construct the Arena as a first-class arena as set forth in the agreed-upon Schematic Design Package and related Design Standards (all as defined below). The City and County will have reasonable ongoing input through a designated representative (the "City-County Representative") in addition to whatever regulatory design procedures and requirements apply. Within ten (10) business days after execution of the Umbrella Agreement, ArenaCo shall designate an individual who shall serve as the ArenaCo representative for the purposes of communicating with the City-County Representative and decision-making regarding any and all matters related to the construction of the Arena and its operation ("ArenaCo Representative"). The ArenaCo Representative shall have the authority to legally commit ArenaCo regarding any matter relating to Arena construction. ArenaCo will use all reasonable efforts to involve and keep the City-County Representative fully informed on a timely basis of all significant aspects and decisions for design and construction of the Arena. In order to enable the City-County Representative to attend, become informed about the status of the Project, participate in discussions and present the City's and the County's position with respect to matters being discussed, the ArenaCo Representative will schedule regular meetings of senior design and construction staff of ArenaCo and other design and construction principals to discuss major issues related to the development and construction of the Project. The City-County Representative will also be notified of weekly design meetings. The City-County Representative will be notified of the time and place of such meetings and of any special meetings held by senior ArenaCo development staff to address similar development issues. The ArenaCo Representative will also participate in such separate meetings with the City-County Representative as the City-County Representative may reasonably request with at least three (3) days' prior notice. The ArenaCo Representative will also timely provide the City-County Representative with copies of significant construction-related documents including schedule updates, meeting minutes, requests for information (RFIs), responses to the RFIs, change order proposals and design changes. The City-County Representative will be entitled to full disclosure of all material matters relating to the Project as more fully described in Section 16.1.m. below and will have the rights to specific prior review and approval as set forth in this Section 16.1.m including, without limitation, reasonable approval on the acceptability of the exterior design program. ArenaCo will fully and fairly review and make good faith efforts to address satisfactorily the City-County Representative's reasonable concerns prior to making a final decision in any matters concerning the Arena exterior design, so long as such input is timely received. However, the City-County Representative's review and recommendations, or other



actions performed by the City-County Representative as described herein, will not in any manner cause the City or the County to bear any responsibility for the design or construction of the Arena or any defects related thereto.

a. Cost Allocation and Arena Site Repurchase Obligation.

(i) As between ArenaCo, on the one hand, and the City and County, on the other hand, ArenaCo (a) will be solely responsible for the cost of design, permitting and construction of the Arena, including any cost overruns and any remediation of any hazardous materials on the Project Site (to the extent any such hazardous materials are required to be remediated by a state or federal agency with jurisdiction in connection with the construction of the Arena on the Project Site), and (b) will be solely responsible for any defects related thereto. Nothing herein shall create any obligations on the part of ArenaCo to any third parties. On the Closing Date, ArenaCo will furnish a payment and performance bond issued by a surety reasonably satisfactory to the City and the County naming the City and County as dual obligees in compliance with Chapter 35.42 RCW. As required by RCW 35.42.060, no part of the cost of the construction of the Arena Facility shall ever become an obligation of the City and the County under the Lease-Purchase Agreement.

(ii) In the event that the Arena Facility and the Arena Tenant Improvements are not completed as described in the Design Standards within five (5) years following funding of the First Installment to ArenaCo for a reason other than based upon the occurrence of a "Force Majeure" event (which will be defined by the Parties in the applicable Transaction Documents) or "Regulatory Changes" (as hereinafter defined), then at the written request of the City and County given to ArenaCo within 180 days following the expiration of such five (5) year period, ArenaCo and ArenaCo Parent or their designee shall repurchase and the City and County shall sell to ArenaCo and ArenaCo Parent or their designee ("Repurchase Obligation") the Project Site and any improvements thereon or thereto that have previously been made, at a purchase price equal to (a) the First Installment, plus (b) any capitalized unpaid interest or accreted value on the First Installment, less (c) any amounts previously received by the City and County that are applied to or that are required to be applied to redemption or defeasement of the principal amount of the First Installment (the "Repurchase Price"). For the purposes of this Section 16.a.(ii), Regulatory Change shall mean any new or modified law, rule, regulation, ordinance or requirement adopted and/or enforced by the City or County (or any party acting under the authority thereof) acting in its legislative, regulatory or administrative capacity, that prevents or materially impairs or restricts ArenaCo from completing the Arena Facility and the Arena Tenant Improvements within said five (5) year period. In the event of the occurrence of a "Force Majeure" event (as defined in the applicable Transaction Documents) during said five (5) year period that prevents or materially impairs or restricts the ability of ArenaCo to complete the Arena Facility and the Arena Tenant Improvements within said five (5) year period, then such five (5) year period within which ArenaCo is required to complete the Arena Facility and the Arena Tenant Improvements will be extended for an additional period of time during which such Force Majeure event continues to prevent or materially impair or restrict ArenaCo's ability to complete the Arena Facility and the Arena Tenant Improvements, and if the Arena Facility and the Arena Tenant Improvements are not completed by the end of such extended period of time, then the Repurchase Obligation will again be applicable for the 180 day period immediately following the end of such extended period of time. In the event of a



Regulatory Change within said five (5) year period, then the Repurchase Price will be adjusted downward by an amount equal to the diminution in value of the Project Site (in its then current condition) taking into consideration any negative impacts of any such Regulatory Change, as determined by an independent appraiser selected by the Parties. In the event that the Parties are unable to agree upon an independent appraiser to make such determination of such adjusted Repurchase Price, the selection of such independent appraiser will be submitted by the Parties to the dispute resolution procedures provided for in this MOU. This Repurchase Obligation shall be an obligation secured by the Personal Guaranty described in Section 13.g(ii).

b. Design Standards. The Arena will, among other things,

(i) conform to the size, configuration and description of the Project Site and conform to the Design Standards and Operating Standards;

(ii) enable ArenaCo to maximize returns generated within the Arena from sources including, without limitation, ticket sales, lease or license of suites and club seats, sales of food, beverages and merchandise, license of intellectual property and advertising, promotional activities and sponsorship;

(iii) be in compliance with the then applicable NBA and NHL requirement standards for arenas and be substantially similar in the quality of the design, construction and capabilities to three (3) mutually agreed upon arenas with the capability to accommodate both NBA and NHL teams, the construction or substantial remodel of which was completed after 1999; and

(iv) meet the requirements of all applicable federal and state laws and City and County codes and ordinances.

c. Sustainability. The Arena will be designed and constructed to comply with applicable City requirements for sustainable construction and will strive to utilize the most modern practices of sustainable design and construction available at the time of construction in accordance with ArenaCo's business interests.

d. NBA and NHL Approvals. ArenaCo will obtain advance acknowledgements from both the NBA and NHL indicating that the Arena has been designed in a manner sufficient to permit the NBA Team and NHL Team to play their home games at the Arena.

e. Design Process. ArenaCo, with ongoing input from the City-County Representative, will work with the architect to develop a "Schematic Design Package." The Schematic Design Package will conform to the Design Standards and will, at a minimum, consist of a master plan, drawings, plans and specifications and a development program in sufficient detail to describe all material design elements of the Arena. The Parties will continue this collaborative process through the preparation of design development plans and outline specifications. As part of the collaborative process, the Design Review Board and the Seattle Design Commission will coordinate their review of the Arena.

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f. City-County Design Approval. The City-County Representative will have the right to approve the Schematic Design Package for the Arena, which approval shall not be unreasonably withheld or delayed.

g. Construction. ArenaCo will cause the Arena to be constructed in all material respects in accordance with the Design Standards and Schematic Design Package.

h. Construction Decisions. It is the intent of the Parties to cause the Arena to be constructed and open for events as soon as reasonably practicable. Consistent with the foregoing, any material deviation from the approved Design Standards or the Schematic Design Package will require the approval of the City-County Representative, which approval shall not be unreasonably withheld or delayed. Nothing in the dispute resolution provisions of the Transaction Documents will limit the City's or County's right to seek injunctive or other relief if ArenaCo fails to comply with the provisions of this Section.

i. Contracting. Contracts for construction of the Arena ("Arena Contracts") will be put out for bid to a group of potential contractors who have had extensive experience constructing significant sports and entertainment facilities and are otherwise acceptable to ArenaCo. Arena Contracts will provide for substantial liquidated damages in case of late completion and require payment and performance bonds in favor of ArenaCo and the City and County consistent with industry standards. The Arena Contracts will also include contingency allowances and other appropriate cost overrun and completion protections as reasonably determined by ArenaCo, it being understood that, as between ArenaCo, on the one hand, and the City and County, on the other, any cost overruns will be the sole responsibility of ArenaCo. Arena Contracts will provide for the payment of prevailing wages at the rates specified by regulation for the specific categories of work performed. The selection of and contracts with principal subcontractors, principal engineers, architects, design and other consultants and significant suppliers will be subject to review by the City-County Representative, but ArenaCo will have the final decision-making authority with respect to such matters.

j. Other Provisions. The Project should promote and include the racial and ethnic communities of the City of Seattle and King County. Part of this Project's economic and community contribution is to engage local minority workers and businesses who are historically disenfranchised, as well as low-income workers and businesses. All Parties agree upon the importance of effective strategies and programs to include local minority and woman workers and firms in Project design and construction, with an ongoing commitment by ArenaCo to use reasonable efforts to use such local workers in the operations and maintenance aspects of the Arena. To that end, ArenaCo commits to using the City of Seattle's Inclusion Plan as guidance for use of Women and Minority Business Enterprises (WMBEs) on the Project. This includes using specific strategies such as the use of the "Worksheet of Possibilities" that helps bidders analyze what work or supply could be subcontracted to WMBE firms, the use of the "Contract Commitment Log" that documents (i) WMBE firms the prime contractor commits to subcontract with and (ii) contract amounts awarded to WMBE firms.

k. Insurance and Indemnification. All contracts for the design and construction of the Arena will include typical provisions for insurance covering, among other things, errors and omissions, general liability, workers' compensation, business interruption, and



builder's risk. Upon completion of construction of the Arena and during the term of the Arena Use Agreement, ArenaCo will continuously maintain general liability insurance, and property insurance for the full replacement value of the Arena, including casualty due to earthquakes and flood, and other insurance the City and County deem reasonable and applicable to the Arena. The City and County will be additional insureds or loss payees on all insurance policies and will approve the forms and limits of liability of all policies. ArenaCo will defend, hold harmless, and indemnify the City and the County for any costs, expenses or losses arising from the design, construction and operation of the Arena.

l. Disputes with Architects, General Contractors and Other Project Parties. The City and County may, at the sole discretion of each, intervene and join as a party in any action at law or equity or in any arbitration between ArenaCo any one or more of the architects, and any Arena contractor, subcontractor, consultants or suppliers relating to design or construction of the Arena.

m. Access to Information and Personnel. In addition to the access provided to the City-County Representative as set forth in this Section, all material non-privileged written and electronic communications from or to ArenaCo will include the City-County Representative on the distribution list and will promptly be furnished to the City-County Representative. All material non-privileged documents and other information in all media generated by any of the Key Project Personnel in connection with the Project will be made available to the City-County Representative on a timely basis upon the City-County Representative's request.

n. Labor Peace Agreement. Following the execution of the Umbrella Agreement, ArenaCo will enter into a "labor peace agreement" providing for the matters specified in the draft agreement set forth in Exhibit A attached hereto and incorporated herein.

17. Key Arena.

a. Use of Key Arena. Prior to completion of the Arena, any NBA and NHL franchise owned by ArenaCo or by an affiliate of or major investor in ArenaCo, or that has committed to play its home games in the Arena, will have the option to play their home games in Key Arena. During the tenancy of any such NBA or NHL teams at Key Arena, ArenaCo will cause certain improvements to be made to Key Arena, and those improvements which are of a permanent nature, which may include modernization of the telephone, data and broadcast "backbones" of the arena, as well as refurbishment and minor renovation to the event-level locker rooms and other spaces, will remain behind after the Arena is completed and opens and will become the property of the City.

b. Key Arena Fund. The City will establish a separate fund or account ("Key Arena Fund") to be managed by the City and used for improvements to Key Arena or to fund improvements at the new Arena, which will be determined by the City in accordance with the provisions of this Section 17.b, considering input by ArenaCo. The first \$7 million of Key Arena Taxes, as defined below, will be deposited into the Key Arena Fund and will be used and applied as provided in Section 17.a, or to fund improvements at the new Arena, as follows: (i) if the City and the existing professional team anchor tenant of the Key Arena are, within 24 months of the Effective Date, able to reach agreement on mutually agreeable terms for a long-term lease



extension for such professional team anchor tenant to continue to play its home games at the Key Arena, then the City will direct the full \$7 million in the Key Arena Fund to be utilized for improvements to the Key Arena as provided for in Section 17.a above; (ii) if no such long-term lease extension for the professional team anchor tenant to continue playing its home games at Key Arena is agreed to, but in the event that by no later than the Commencement Date, ArenaCo and such professional team anchor tenant are able to reach agreement on mutually acceptable terms for a long term lease for such professional team anchor tenant to play its home games at the new Arena containing terms that are commercially viable for both ArenaCo and such tenant, then the City will direct that \$5 million of the monies in the Key Arena Fund be used to support investments and fund improvements of the new Arena as provided for in this MOU; and (iii) if neither of the above in 17.b.(i) or 17.b.(ii) occurs, then the full \$7 million in the Key Arena Fund will be directed by the City to fund the improvements to the Key Arena as provided for in Section 17.a of this MOU. To facilitate negotiations with Key Arena's existing professional team anchor, the City anticipates concluding a feasibility assessment of operating Key Arena in its current configuration, or a configuration that would effectively serve this tenant, within 18 months of the Effective Date. After a cumulative total \$7 million of Key Arena Taxes are deposited in the Key Arena Fund, any additional Key Arena Taxes collected prior to the Transfer Date will be deposited into the SODO Transportation Infrastructure Fund. Notwithstanding the fact that certain of the funds from the Key Arena Fund may be used and applied as provided in this Section 17, the creation of the Key Arena Fund does not relieve ArenaCo of its obligations provided for under this Section 17 of the MOU.

c. Key Arena Taxes. "Key Arena Taxes" means the dollar amount of incremental sales tax, leasehold excise tax, and admission tax attributable to Key Arena and generated while the NBA Team and/or NHL Team is playing at Key Arena, plus City business tax revenues imposed under Chapter 5.45 SMC or any successor provision that the City has reasonably determined it received from ArenaCo and from other business activities engaged in, at or from Key Arena (including and without limitation revenues from the business activities that have a substantial nexus with the City).

18. Non-Relocation. ArenaCo will cause the NBA and NHL franchises committed to play home games in the Arena to enter into binding and enforceable non-relocation agreements with the City and County that will include specific performance, liquidated damages that recognize the direct and indirect damages that would be incurred by the City and by the County, including loss of financial, social and civic benefits that are derived by the City and the County from the presence of an NBA Team or an NHL Team and the playing of their respective home games in the City, and injunctive relief provisions, pursuant to which the teams will irrevocably and unconditionally commit and guarantee to be domiciled in Seattle and to play at least two (2) pre-season and all their home regular season and post-season games at the Arena for a term of at least 30 years (subject to a limited number of league-approved neutral site games and other agreed upon customary exceptions). The non-relocation agreements will contain terms that require the NBA and NHL franchises to maintain their NBA or NHL membership in good standing during the term of the Arena Use Agreement. Under those non-relocation agreements, the NBA and NHL teams will not relocate from the City of Seattle, will not apply to the NBA or the NHL to transfer to another location outside of the City of Seattle, will not enter into or participate in any negotiations or discussions with, or apply for, or seek approval from, third-parties with respect to any agreement, legislation or financing that contemplates or would be



reasonably likely to result in any breach of the non-relocation agreement, and will have no right to terminate the non-relocation agreement during the term of the agreement, in each case except as provided in the definitive non-relocation agreement. The non-relocation agreements will expressly provide that specific performance requiring the NBA franchise and the NHL franchise to play pre-season, regular season and post-season games at the Arena is an appropriate remedy for breach.

19. Governing Law. This MOU is, and the Umbrella Agreement and the Transaction Documents will be, governed by the laws of the State of Washington. Venue for any action under the Transaction Documents, including any bankruptcy proceeding, will be in King County, Washington. The terms of this MOU are not intended to establish or to create any rights in any persons or entities other than the Parties and the respective approved successors or assigns of each of the Parties.

20. Tax Matters. The Parties will mutually endeavor to preserve and/or maximize, as applicable, the tax benefits accruing to each of them. Specifically, the federal tax benefits for ArenaCo and the state and local tax benefits to the City and the County will be maximized to the extent permitted by law. The structure of the transactions as set forth herein may be modified in a manner that results in more positive tax effects to the Parties.

21. Scheduling Coordination. ArenaCo will coordinate with the Seattle Mariners, the Seattle Sounders and the Seattle Seahawks, as well as the Washington State Public Stadium Authority (CenturyLink Field) and the Washington-King County Stadium Authority (Safeco Field), to minimize the number of conflicting and overlapping events held at the existing stadiums and the proposed Arena. The Transaction Documents will include specific provisions limiting the number and duration of such conflicts and providing for City oversight and enforcement of these provisions.

22. City Commitments.

a. **Key Arena.** During the 12 months following approval of the MOU, the City will lead a planning process to evaluate options for the future of Key Arena or the Key Arena site. The process will draw upon input from the Seattle Center Advisory Commission, professionals from the real estate and entertainment fields, local stakeholders, and others with relevant expertise and interest. The goal of this process will be to identify an option(s) that is financially sustainable and that significantly contributes to the vitality of Seattle Center. As part of this process, the City will consider the interests of Key Arena's current tenants and their role in ensuring the future success of Key Arena and the Key Arena site and the new Arena. As provided in Section 3.b of this MOU, the reasonable costs incurred by the City to assess the future of uses of Key Arena or the Key Arena site up to a maximum of \$150,000 will represent a reimbursable Development Cost. At least \$2 million of deposits in the Key Arena Fund will be reserved to implement the results of this study.

b. **Land-use protections for Port and Industrial Areas.** With participation of stakeholders in the Greater Duwamish Manufacturing and Industrial Center ("MIC")/SODO area, including representatives from all the sports facilities, Pioneer Square and the

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Chinatown/International District, the Port of Seattle, the County, the Manufacturing Industrial Council and other MIC manufacturing, industrial, freight and shipping businesses, the City will undertake the following planning and land use study intended to develop new land use mechanisms to maximize the economic viability of the MIC, and civic vitality of the Stadium Transition Area Overlay District. These efforts will be coordinated with the transportation planning efforts and investments related to the SODO Transportation Infrastructure Fund.

(i) **MIC Policy and Land Use Study.** Evaluate the necessary policies, land uses, and zoning mechanisms, such as a Port Overlay District, to protect maritime and industrial uses and reinforce the role of the MIC as a manufacturing and industrial sanctuary. Industrial zoned land is a vital economic asset and industrial businesses located there are critical to the city's and region's overall economic health and global competitiveness, and contribute significantly to Seattle's family-wage job base and the economy. The planning effort ("MIC Policy and Land Use Study") will build on the City's Comprehensive Plan policies and goals for the MIC and the Container Port Element, the MIC Neighborhood Plan, as well as the Port of Seattle's Century Agenda. The objectives of this planning effort are to strengthen the long-term viability of the MIC, protect industrial uses and Port operations, such as at Terminal 46, outside of the Stadium Transition Area Overlay District from encroachment and conversion to non-industrial uses, reinforce the MIC as an industrial sanctuary, and coordinate with the Seattle Industrial Areas Freight Access Project that is scheduled to begin in January 2013.

(ii) Reevaluate the effectiveness of the Stadium Transition Area Overlay District and the City's Comprehensive Plan policies and goals for this area, particularly in light of the removal of the Alaskan Way Viaduct and other recent transportation improvements, the Central Waterfront Plan, and the Stadium District Concept Plan. Consider policy and regulatory changes that would better orient the District to the needs and experience of stadium patrons, improve pedestrian connections to and from the stadiums, and produce a pedestrian-friendly streetscape compatible with Pioneer Square, while recognizing the importance of preserving industrial uses outside of the District.

(iii) The MIC Policy and Land Use Study shall include recommendations to the City Council and Mayor for new land use regulatory changes to implement the goals and purposes of this Section and shall be completed no later than December 31, 2014.

23. **Additional Provisions.**

a. **Naming Rights.** ArenaCo will have the right to designate the name of the Arena, subject to approval by the City-County Representative as hereinafter provided, and to name other areas of within the Arena. The City-County Representative will not withhold his or her approval of any name of the Arena, so long as it does not, in the City-County Representative's reasonable judgment, violate the standards of good taste existing in the Seattle-King County area and will not otherwise be an embarrassment to the City or County. Unless the City and County agree otherwise, which agreement will not be unreasonably withheld, the name given to the Arena will not include reference to any state, local or other municipality name unless such reference is to "Seattle" or "King County."



b. Team Name. Subject to NBA approval and applicable rules, regulations, requirements and agreements of the NBA, ArenaCo or an affiliate of ArenaCo shall use its best efforts to acquire from the current owner thereof the "Seattle Sonics / Supersonics" name, trademarks, memorabilia (banners, trophies and retired jerseys), and the right to use and refer to the history of the "Seattle Supersonics" (as those rights are more thoroughly described below), and any NBA Team domiciled in Seattle, Washington and operated by ArenaCo or an affiliate of ArenaCo that owns such NBA team will use the name "Seattle Supersonics." The City will use its best efforts to assist ArenaCo or an affiliate of ArenaCo that owns such NBA Team to: (i) acquire the unrestricted rights to use the name trademarks, any logos, symbols, designs, trade dress (including, but not limited to, team colors) or other indicia associated with the Seattle SuperSonics/Supersonics for purposes of identifying such NBA Team, and (ii) obtain the right to use and refer to the Seattle SuperSonics history (e.g., statistics, player histories and records) from prior NBA seasons during which the NBA Team formerly known as the Seattle SuperSonics played their NBA home games in Seattle, and (iii) obtain a transfer of the trophies, banners, and retired jerseys and other related memorabilia from the current owner thereof. Subject to NBA approval and applicable rules, regulations, requirements and agreements of the NBA, and subject to ArenaCo or an affiliate of ArenaCo having successfully obtained the rights to the "Seattle Sonics / Supersonics" name, trademarks, memorabilia (banners, trophies and retired jerseys), and the right to use and refer to the history of the "Seattle Supersonics" as provided above, and provided further that the City and County are not in breach of the Arena Use Agreement or any of their other material obligations to ArenaCo under the Transaction Documents, if the NBA team domiciled in Seattle and operated by ArenaCo or an affiliate of ArenaCo that owns such rights ever relocates to a City other than Seattle, then ArenaCo or such affiliate of ArenaCo that operates such NBA team shall transfer all rights to the name, trademarks, memorabilia and right to use and reference the history related to the "Seattle Supersonics" to the City, and further, subject to NBA approval and the applicable rules, regulations, requirements and agreements of the NBA this transfer requirement shall apply to any new name, trademarks, memorabilia or right to use and refer to the history of such NBA team if such NBA team domiciled in Seattle ever adopts a new name with the approval of the City and County or otherwise, and thereafter relocates to a City other than Seattle.. When appropriate, ArenaCo or an affiliate will prominently include "Seattle" as part of the team name in public references for marketing, advertising, promotional and other business purposes, subject to the requirements and restrictions of the NBA; provided, however, that it is understood and agreed that the names "SuperSonics" and "Sonics" may be used without the name "Seattle" to market, advertise and promote the team and for other business purposes when deemed appropriate by ArenaCo or an affiliate of ArenaCo that owns the NBA Team.

c. Arena Agreements. The Umbrella Agreement and the Transaction Documents associated with design, development, construction, operation, and maintenance of the Arena will contain such other provisions, representations, warranties, covenants and indemnities as the Parties may agree or as are customarily included in similar documents related to the lease, design, development, construction, operation, and maintenance of NBA and NHL arenas in the United States or of other major public facilities within the City of Seattle. The Umbrella Agreement and the Transaction Documents will not be assignable without the written consent of all Parties, which consent will not be unreasonably withheld, hindered or delayed; provided, however, that the City and County agree that ArenaCo may assign the Transaction Documents: (i) to an affiliate or subsidiary of ArenaCo that is owned or controlled by ArenaCo or ArenaCo's



majority or controlling owners, or (ii) in connection with a sale, transfer or assignment by ArenaCo or such affiliate or subsidiary of a controlling interest in ArenaCo or such an affiliate or subsidiary, or a transfer by ArenaCo or such an affiliate or subsidiary of substantially all of the assets of ArenaCo if (x) the purchaser, transferee or assignee assumes all obligations and liabilities of ArenaCo, or its assignee, under the Transaction Documents, including provision of a guaranty satisfying the requirements of Section 13.g(ii), (y) ArenaCo demonstrates to the reasonable satisfaction of the City and County that such purchaser, transferee or assignee has sufficient financial capability to meet all such obligations and liabilities of ArenaCo and its affiliates under the applicable Transaction Documents, and (z) the purchaser, transferee or assignee together with the individual persons that own, directly or indirectly, such purchaser, transferee or assignee, are of a moral character reasonably acceptable to the City and County.

d. Seattle Domicile. ArenaCo and any affiliate entity of ArenaCo that owns the NBA Team or the NHL Team will be domiciled in Seattle, Washington, and will maintain their headquarters, offices and substantially all of their employees in Seattle, Washington.

e. Review of ArenaCo Financial Information. In addition to the condition precedent set forth in Section 24.a and during the term of the Arena Use Agreement, the City and County will have the right to review all relevant financial records of ArenaCo relating to the ability of ArenaCo to carry out any of its financial obligations under this MOU, the Arena Use Agreement and the Transaction Documents, and of ArenaCo Parent relating to the ability of ArenaCo Parent to carry out any of its financial obligations under this MOU, the Arena Use Agreement and the Transaction Documents, provided that disclosure of such financial records is not otherwise prohibited or restricted by contractual obligations or applicable laws, or the rules, regulations or policies of the NBA or NHL, and only if a statutory exemption for such financial records is available under chap. 42.56 RCW (the Public Records Act), and if such an exemption under chap. 42.56 RCW (the Public Records Act) is not available or disclosure is prevented by contractual obligations or applicable laws, or the rules, regulations, or policies of the NBA or NHL, ArenaCo and ArenaCo Parent shall provide, to the satisfaction of the City and County, an alternative and reliable means by which the City and County can assess the ability of ArenaCo and ArenaCo Parent to carry out their financial obligations under the Arena Use Agreement, this MOU and the Transaction Documents. Any direct reasonable and necessary costs actually incurred by the City and County completing any such financial review will be reimbursed by ArenaCo.

f. Community Benefit Agreement. Prior to the Closing Date, ArenaCo shall enter into a Community Benefit Agreement ("CBA") with appropriate community organizations to foster equity and social justice and provide benefit to the communities that will be affected by the Arena, including for example Pioneer Square, and the Chinatown/International District. ArenaCo shall communicate with a variety of community organizations, community members and the City and County to identify the appropriate issues to be addressed by the CBA, which may include economic development, employment opportunities with living wages, job training and apprenticeships, transportation and parking, community amenities, and public safety, as they relate to the Arena and its operations. The CBA shall also provide the structure for meaningful ongoing community dialog and partnership with ArenaCo once the Arena is operational, including annual reporting on fulfillment of mitigating measures.

(i) **Community Involvement.** ArenaCo is committed to having the NBA franchise that will play home games in the Arena maintain a strong presence in the community, as professional sports franchises can have a positive impact on youth. As a regional asset, the NBA franchise will work to establish partnerships with organizations throughout King County that serve youth and underserved communities, particularly in areas where Public Health-Seattle & King County have identified health and education disparities. The NBA franchise will establish partnerships with the goal of contributing to the future success and health of youth with initiatives such as scholarship funds, afterschool programs, youth mentorship and improved basketball facilities in the region to increase opportunities to play and learn the game of basketball.

(ii) **Access and Affordability.** A successful NBA franchise is one that enables people from all communities and all income levels to attend games. ArenaCo is committed to making tickets to NBA games affordable to middle and low income individuals and families. To demonstrate this, the NBA franchise will go beyond the league standard for providing affordable tickets (current standard is an average of 500 tickets per game at \$10 or less), by offering an average of 500 tickets per game at \$10 or less plus an additional average of 1,000 tickets per game at \$20 or less for a total of 1,500 tickets at reduced prices and increased annually by CPI.

g. Economic Impact Analysis.

(i) ArenaCo shall reimburse the City and County for the cost (not to exceed \$200,000) to conduct an economic impacts analysis ("Analysis") that examines the net economic impacts of the construction and operation of the Arena. The Analysis shall study the net economic costs and benefits of the construction and operation of the Arena in the geographical areas that would be affected by the construction and operation of the Arena and shall consider all relevant segments of the economy that would be affected by the construction and operation of the Arena, including without limitation retail, commercial, industrial and freight transportation. The Analysis shall include, without limitation, study of (a) the net changes in employment, wages, economic activity and tax revenues; (b) the net effects on Port of Seattle economic activity; (c) the net effects on the overall regional economy and the Arena's compatibility with regional economic development plans; and (d) the net effects on women-owned and minority-owned businesses.

(ii) The Analysis shall be prepared by an independent consultant fully qualified to prepare the Analysis ("Consultant") selected by the City and County with the approval of ArenaCo, which approval shall not be unreasonably withheld, conditioned or delayed. The scope of the Analysis shall be determined by the City and County based on the reasonable recommendations of the Consultant consistent with the requirements of this Section 23.g and with the approval of ArenaCo, which approval shall not be unreasonably withheld, conditioned, or delayed. Upon selection of the Consultant, the City shall enter into a written contract with the Consultant ("Consultant Contract") with the County identified as a third party beneficiary regarding the preparation of the Analysis. The Consultant Contract shall require (a) that unless otherwise agreed to in writing by the City and County, the Consultant shall not act as an advocate for or otherwise be retained by ArenaCo or an ArenaCo affiliate until after the Closing Date and the Consultant shall not act as an advocate for or otherwise be retained by any



other entity (except City and County) with regard to any of the issues that are addressed in the Analysis until after the Closing Date, and (b) that any preliminary drafts of the Analysis be made available for review by ArenaCo at the same time as they are made available for review by the City and County. The City and County shall supervise the Analysis preparation process and will have sole authority to approve the final Analysis.

(iii) The Analysis shall be completed according to the following timeline: (a) The City and County will select the Consultant and inform ArenaCo of the selection within twenty-five (25) days of the Effective Date and ArenaCo shall respond within five (5) days thereafter (and if ArenaCo reasonably disapproves the selection the City and County will select a different Consultant consistent with the timeline and process set forth in this Section) and (b) the Analysis shall be completed within ninety (90) days following execution of the Consultant Contract. The Parties may agree to modify these timelines and a failure to meet these timelines shall not interfere with the ability of the City and County to exercise their rights under the condition precedent in Section 24.g of this MOU.

h. WNBA Team. The Parties hereby affirm the value and importance of maintaining the presence of a Women’s National Basketball Association (WNBA) team in the Seattle region. The current WNBA team is the Seattle Storm. The Parties shall use reasonable efforts to support the Seattle Storm or any successor WNBA team operating in Seattle at either the Arena or Key Arena.

24. City/County Conditions Precedent. The obligations of the City and County under this MOU to commit Public Financing are expressly conditioned on the following conditions precedent:

a. Financing and Delivery of Initial Deposit to Reserve Account. Before the Umbrella Agreement and Transaction Documents may be authorized as described in Section 24.e below, (i) ArenaCo has arranged for all financing or other funding necessary to fully finance or fund the Project; and (ii) the City and County and their respective councils reasonably determine they are satisfied that ArenaCo and its investors have the resources to meet their financial obligations under this MOU and the applicable Transaction Documents. Before the City and County commit Public Financing, ArenaCo shall have arranged for delivery of the required initial deposit into the Reserve Account. The City and County, or a third party selected by the City and County, will be provided with access to all relevant information and documentation provided to ArenaCo third party lenders to enable the City and County to make the determinations specified in Sections 24.a.(i) and 24.a.(ii) above, unless and to the extent that any such relevant information and documentation cannot be protected by a statutory exemption for such information and documentation under chap. 42.56 RCW (the Public Records Act), or unless and to the extent that the access to such information and documentation is otherwise prohibited or restricted by contractual obligations imposed by third parties, or by applicable laws, or the rules, regulations or policies of the NBA or NHL, in which case ArenaCo and ArenaCo Parent will provide, to the reasonable satisfaction of the City and County, alternative and reasonably reliable means by which the City and County can make the determinations specified in Sections 24.a.(i) and 24.a.(ii) above.

THIS VERSION IS NOT ADOPTED



b. SEPA and Permitting. Before the Umbrella Agreement and Transaction Documents may be authorized as described in Section 24.e below, (i) SEPA review associated with any City or County actions as described in Section 5 of this MOU has been completed through issuance of a Final Environmental Impact Statement; (ii) the master use permit and all other permits required for construction of the Project have been obtained; (iii) the City and County and their respective councils have considered the SEPA review in connection with their respective actions and have determined whether it is appropriate to proceed with or without additional or revised conditions based on the SEPA review; and (iv) any challenges to the Project have been resolved in a manner reasonably acceptable to the Parties.

c. Due Diligence for Site Acquisition. The City and County shall have determined, in their reasonable discretion, that the condition of title to, and the environmental condition of, the Property is suitable for acquisition and subsequent development for the Arena Facility consistent with this MOU. The City and County shall complete their review and determination no later than 150 calendar days after the Effective Date, or such other date as may be mutually agreed upon by the Parties. The City-County Representative may give written notice on or prior to 150 calendar days after the Effective Date or such mutually agreed upon date that the condition of title to or the environmental condition of the Property are not suitable for acquisition and subsequent development for the Arena Facility consistent with this MOU, specifying the reasons therefore, in which case, unless the Parties otherwise mutually agree in good faith upon a reasonably satisfactory method for ArenaCo to resolve the City's and County's objections to the condition of title to and environmental condition of the Property, this MOU shall terminate. No later than ten days after the Effective Date, ArenaCo shall provide the City-County Representative with copies of all documents in the possession of ArenaCo that relate to the condition of the Property, including a preliminary commitment for title insurance and any documents relating to the environmental condition of the Property, but excluding any documents that are privileged or proprietary. Such documents shall be provided without warranty. ArenaCo shall also provide the City-County Representative, and other designated employees and consultants of City and County as may be reasonably requested by the City-County Representative, with access to the Property for purposes of conducting due diligence review provided for in this Section 24.c, subject to any required consents from current owners and occupants and subject to the City's and County's agreement to indemnify ArenaCo for any costs or damages arising in connection with or relating to such entry ("Right of Entry Agreement"). Such entry and such due diligence testing or investigations to be conducted as provided for in this Section 24.c, shall also be subject to the further terms and conditions of such Right of Entry Agreement. If any land is acquired or proposed to be acquired and added to the Project Site after the Effective Date for which ArenaCo has not previously provided the City and County with the documents and access described above for the purposes of enabling the City and County to determine that the condition of title to, and the environmental condition of such additional property is suitable for acquisition and subsequent development of the Arena Facility consistent with this MOU, then the City and County will have up to an additional one-hundred fifty (150) days after receiving written notice of such acquisition or proposed acquisition from ArenaCo and after receiving such documents and access to complete due diligence review of such additional land consistent with this Section.

d. NBA Team, Use Agreement, Non-Relocation Agreement and Community Benefits Agreement. ArenaCo or a third party under contract with ArenaCo has secured (i)

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ownership rights to an NBA franchise and (ii) subject to NBA approval and applicable rules, regulations, requirements and agreements of the NBA, the rights to the "Sonics" name, trademarks, memorabilia and right to use and refer to the history or has used its best efforts to do so, as provided for and described in Section 23.b of this MOU; and that NBA franchise and the Parties have entered into a non-relocation agreement as described in Section 18; and that the Parties and the appropriate community organizations have entered into the Community Benefit Agreement described in Section 23.f; and that the NBA has acknowledged the Arena Use Agreement, the NBA has approved locating the NBA Team in Seattle and the NBA has acknowledged the non-relocation agreement; and that ArenaCo has entered into a Team License Agreement with the NBA Team as required by and consistent with Section 1515.e.

e. Document Approval. The Umbrella Agreement and the Transaction Documents have been negotiated and the City and County are authorized by their councils to execute the documents.

f. Material Adverse Conditions. As of the date of this MOU, the Parties acknowledge that the City and County have sufficient debt capacity and access to financial markets to meet their obligations under this MOU. However, in the case of a natural disaster, a significant change in state or federal law, or a substantive change in financial markets or conditions such that the City and County are unable to issue debt on reasonable terms consistent with Section 10 and the Parties are unable to agree in good faith on viable alternatives, the Public Financing will not occur and the City and County will not be required to make any further financial investment or to provide for the payments to ArenaCo under Section 10 or otherwise.

g. Economic Impact Analysis Findings. The Analysis required by Section 23.g of this MOU has been completed and the City and County and their respective councils have considered the Analysis and have determined whether it is appropriate to proceed with or without additional or revised conditions based on the Analysis. The City and County councils shall make this determination by vote within forty-five (45) calendar days following the completion of the Analysis. Calculation of this forty-five (45) day period shall include weekends but shall exclude any City or County holidays and any City Council or County Council recesses.

25. ArenaCo Conditions Precedent. The obligations of ArenaCo under this MOU are expressly conditioned on the following conditions precedent:

a. Permitting. All permits necessary for construction, use and operation of the Arena, and all parking and other facilities accessory to the Arena, shall have been issued and shall be in form and substance satisfactory to ArenaCo in its sole discretion, and the costs and expenses required to remediate any hazardous materials or conditions in connection with the design and construction of the Arena Facility that ArenaCo is required to remediate as provided in Section 16.a are reasonably acceptable to ArenaCo.

b. Financing. ArenaCo shall have obtained financing in an amount adequate to construct the Arena and upon rates, terms and conditions satisfactory to ArenaCo in its sole discretion. In connection therewith the Parties understand that ArenaCo may be required by its lenders to request an amendment to the terms hereof in order to facilitate such financing. The City and County shall consider such request, but any amendments hereto shall be (i) in the sole



and absolute discretion of each of the City and the County and (ii) subject to all required approvals of each of the City and the County.

26. City and County Cooperation. The City and County may elect to apportion between themselves any of the rights or obligations described herein as rights or obligations of both the City and County, including that the City and the County may elect to apportion all of their rights and obligations to the City. At the option of the City and County, any right obtained by one of them in a contract with ArenaCo, under any of the Transaction Documents may be conferred on the other as a third-party beneficiary. As to any Key Arena issue addressed by the MOU, the Umbrella Agreement or the Transaction Documents, such agreement is only between ArenaCo and the City, and the County shall have no rights or obligations with regard to such agreement.

27. Counterparts. This MOU may be executed in one or more counterparts, each of which will be deemed an original, but all of which, when taken together, will constitute one and the same instrument.

28. Dispute Resolution.

a. In the event any dispute, disagreement, claim or controversy arises between the Parties concerning this Agreement or any of the provisions hereof (each, a "Disputed Matter"), the City-County Representative and the ArenaCo Representative will meet and attempt to resolve the Disputed Matter through negotiations, except as provided in Section 16.h. If the representatives are unable to reach agreement, the Disputed Matter shall be referred jointly to the City's Director of Finance and ArenaCo's chief executive officer. If such executives do not agree upon a decision, then the City's Mayor, the County Executive and ArenaCo's owners or managing members shall meet and attempt to resolve the matter. If such individuals are unable to resolve the Disputed Matter within ten (10) days, then either the City and County, collectively, or ArenaCo may, upon written notice, submit the matter to mediation.

b. Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the Disputed Matter and the relief requested. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Following compliance with the provisions of Section 28.a, the parties each covenant that they will participate in the mediation in good faith, and that they will share equally in the costs of such mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to any Disputed Matter submitted to mediation until after the completion of the initial mediation session provided for in this Section 28.b, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

29. Oral Agreements and Commitments. The Parties acknowledge that oral agreements or oral commitments to lend money, extend credit, or forbear from enforcing repayment of a debt are not enforceable under Washington law.

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30. Notice Provisions. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service or mailed in the United States mail postage prepaid and, if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a Party shall from time to time direct:

City:

Copies to:

County:

Copies to:

ArenaCo:

Copies to:

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Executed as of the date first written above

THE CITY OF SEATTLE
a Washington municipal corporation

By: _____
Its: _____

KING COUNTY, WASHINGTON
a political subdivision of the State of Washington

By: _____
Its: _____

WSA Properties III, LLC, a Delaware limited liability company:

By: Horton Street, LLC, a Delaware limited liability company
Its: Manager

By: _____
By: Christopher Hansen
Its: Manager

THIS VERSION IS NOT ADOPTED



EXHIBIT A

LABOR PEACE AGREEMENT

In order to protect the City of Seattle's, King County's, and the Developer's investment in the Arena from the financial risks of labor disputes, the Developer (ArenaCo) will enter into labor peace or project labor agreements with labor organizations which represent workers in King County and have indicated or may indicate their intent to organize workers at the Arena.

These organizations include but are not necessarily limited to the Seattle Building & Construction Trades Council (project construction), Unite Here Local 8 (food & beverage concessions, restaurant, and hotel employees), Teamsters Local 117 (operations employees), SEIU Local 6 (janitorial employees), and IATSE Local 15 (staging and audiovisual employees).

For construction, the project labor agreements will include a promise by the labor organizations limiting their rights during construction of the Arena to engage in concerted economic action at the Arena aimed at bringing economic pressure to bear against the Developer, including such activities as striking, picketing and boycotting.

For Arena operations, the labor peace agreements shall provide the same guarantee after opening of the facility, and shall extend to any successor or replacement contractor, sub-contractor, operator, or developer acquiring the right to develop or operate business opportunities covered by this agreement during the term of the Arena Use Agreement between ArenaCo and the City of Seattle and King County. This requirement is severable from the obligations to have such a guarantee for the construction phase.

The Developer shall maintain such labor peace or project labor agreements with such labor organizations for the duration of the proprietary interest of the City and County or other public agencies in uninterrupted revenues from the operation of the Arena which agreements will limit the rights of such union and its members to engage in economic activity against the operation.

Copies of the labor peace and project labor agreements will be submitted to the City and County promptly following the execution and delivery thereof by Developer.

THIS VERSION IS NOT ADOPTED



STATE OF WASHINGTON – KING COUNTY

--SS.

289897
CITY OF SEATTLE, CLERKS OFFICE

No. 124020, 124019

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

CT: TITLE ONLY ORDINANCE

was published on

10/26/12

The amount of the fee charged for the foregoing publication is the sum of \$41.85 which amount has been paid in full.



Affidavit of Publication

Paula C. Lester

Subscribed and sworn to before me on
10/26/2012 *Jennifer Borrero*

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle Title Only Ordinances

The full text of the following legislation, passed by the City Council on October 15, 2012, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>.

Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 124020

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 124019

AN ORDINANCE related to a new multi-purpose sports and entertainment facility; authorizing the Mayor to execute a memorandum of understanding with King County and ArenaCo; to execute an interlocal agreement with the County; and superseding the authority provided by ordinance 123979.

Date of publication in the Seattle Daily Journal of Commerce, October 26, 2012.

10/26(269897)