King County

Metropolitan King County Council
Budget and Fiscal Management Committee

Staff Report

Agenda item No.:	4	Date:	June 5, 2012
Proposed No.:	2012-0202	Prepared by:	Wendy Soo Hoo Mark Melroy John Resha

SUBJECT

Proposed Ordinance 2012-0202 would authorize the King County Executive to execute agreements related to a sports and entertainment arena in the SoDo neighborhood in Seattle. The agreements include a memorandum of understanding (MOU) with the City of Seattle and ArenaCo, and an interlocal agreement (ILA) with the City.

Today's briefing includes some follow up to last week's questions as well as presentations by Executive staff and Carl Hirsch of Stafford Sports. Mr. Hirsch is a consultant with expertise in the development of sports and entertainment arenas, who has been retained by the City.

BACKGROUND

The Seattle Supersonics (Sonics) played in Seattle from 1967 to 2008. In 2006, the team was purchased by an Oklahoma-based ownership group, which moved the team to Oklahoma City before the 2008-2009 National Basketball Association (NBA) season.

On February 16, 2012, the Seattle Mayor and King County Executive announced that they were working with Chris Hansen, a private investor, (ArenaCo) on a proposal to develop an arena south of Safeco Field and Century Link Field. The proposed arena would have the ability to host a NBA and National Hockey League (NHL) team. According to transmittal documents, the 700,000 square foot arena would accommodate approximately 19,000 attendees for concerts, 18,500 for NBA games, and 17,500 for NHL games.

Key Actual and Projected Dates for the Project

- **May 22nd:** Executive transmitted Proposed Ordinance 2012-0202
    - **MOU** – agreement between the City and County and ArenaCo

  - **Interlocal Agreement** – agreement between the City and County that identifies the debt split and establishes the governance structure and process

- **May 23rd:** Transportation study released

- **To Be Determined – 2012:** Legislative action on the proposed agreements

- **Mid-2012 through Mid-2014:** ArenaCo works to get the site ready for construction (permitting, SEPA, etc.) and the City, County and ArenaCo would negotiate the final Transaction Documents, including an Umbrella Agreement, that will further define the details of the transaction. ArenaCo would concurrently work to acquire the NBA team.

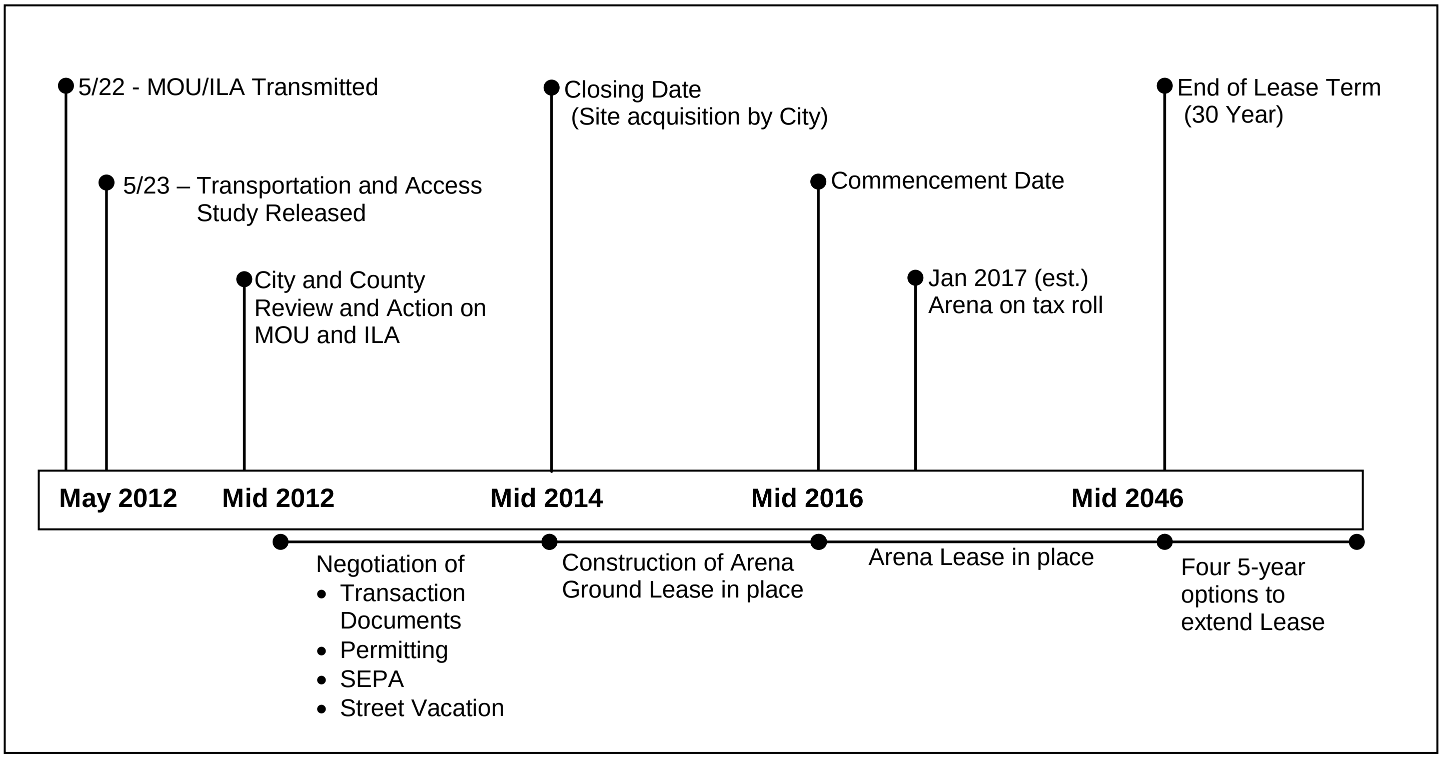
- **Mid-2014:** Following approval of the Transaction Documents and acquisition of the NBA team, the City would acquire the site (on the "Closing Date"), making the first installment of public financing. The City would then ground lease the site to ArenaCo to begin construction.

- **Mid-2016:** Once construction is complete and the arena is ready for occupancy ("Commencement Date"), the City and County would carry out a lease-purchase and lease the arena back to ArenaCo. This marks the second installment of public financing. Total public financing is capped at $200 million.
  - **No County bonds would be issued until the construction is complete.** *Council action would be required to authorize the sale of bonds.*
  - **Public financing is reduced to a maximum of $120 million if the NHL team is not secured**. The County's involvement would be limited to the amount that the County reasonably determines can be supported by its anticipated share of property taxes attributed to the arena, with a maximum of $5 million.

- **Mid-2046:** End of arena lease term, which would be no earlier than the term for any public financing. MOU includes five-year options to extend the arena lease.

This timeline is also shown below in Exhibit 1.

Exhibit 1
Key Actual & Projected Dates for SODO Arena Project



ANALYSIS

One question that has been asked is how this proposal compares to other stadium deals. Exhibit 2 below shows how other stadiums in this area have been financed.

As shown below, this proposal varies from the Safeco Field, Century Link Field, and the Key Arena renovation in several key ways. First, a lower percentage of the cost is proposed to be contributed by the public entities. In the ArenaCo proposal, 40 percent of the development cost would be funded by public debt, with about 40 percent of that amount being repaid through private rent from the arena operator over the term of the lease. In contrast, the public funded 72 percent of Safeco Field, 70 percent of Century Link Field, and nearly 100 percent of the Key Arena renovations. Second, unlike the Safeco and Century Link deals, no new, dedicated taxes are proposed. Tax revenues assumed to pay off the bonds would be generated solely through existing taxes and only through taxes actually generated at the arena. Third, in contrast to the agreement with the Sonics related to the Key Arena renovations, the team's lease would be required to be at least as long as the term of public financing.

Exhibit 2
Seattle/King County Stadium Financing

	Public Contribution	Private Contribution	Revenues Supporting Public Contribution	Security for the Public
ArenaCo Proposal	Capped at $200M; estimated that over 40% of this repaid through private rent from the arena operator. Public contribution does not begin until NBA team is committed – the City will purchase the land once the site is ready for construction and the NBA team is secured. County involvement does not begin until after the arena is completed. If there is no NHL team, the County's responsibility is limited to $5 million.	~$290M in up front costs. Also payment of rent to support debt service. Private contribution includes costs to prepare the site for construction and any construction overruns ArenaCo required to fund any needed capital improvements	Proposal relies on incremental increase in existing taxes generated at the arena and by teams (e.g., B&O tax revenue) Annual base rent paid by the teams Additional rent if the incremental taxes and base rent do not cover the required annual payment	Reserve account for rent payment Certification that Net Arena revenues are 2x the annual reimbursement amount Public ownership of the land and arena shell Paid first on ArenaCo revenues – rent paid before private lenders and parent company. Right to receive rent payments would be secured by a lien, with the lien position to be negotiated between the City, County and private lenders. Guarantee of Parent Company 30-year non-relocation agreement Construction cost overruns covered by owners No operational financial risk – ArenaCo operates facility Capital maintenance funded by ArenaCo through dedicated annual set-aside
Safeco Field	$336M in King County bonds	$126M	0.5% stadium sales tax on restaurants, bars and taverns in King County 2% stadium sales tax on rental cars in King County	Dedicated sales tax A portion of the tax revenue, including the sales tax on food and beverages and on rental cars, is not dependent on event attendance, diversifying the revenue risk.

			0.017% existing State sales tax generated in King County credited to repay ballpark construction bonds 5% Safeco Field admissions tax (up to 10% authorized) Sports theme lottery revenues Commemorative ballpark license plates	All cost overruns assumed by team (although this was a point of considerable debate) No specific non-relocation clause but lease requires 90% of regular-season home games and 100% of home playoff games to be played at Safeco Field.
Century Link Field	Capped at $300M Sales tax credits and deferrals totaling $25M	$130M	0.016% existing State sales tax generated in King County credited to repay ballpark construction bonds New sports related lottery games 3% taxes on admissions and parking Extension to 2020 of the 2% tax on hotel rooms in King County (some of this revenue also went to retire Kingdome roof repair bonds)	Dedicated sales tax A portion of the tax revenue, including the sales tax on food and beverages and on rental cars, is not dependent on event attendance, diversifying the revenue risk. All cost overruns assumed by team
Key Arena Renovation *1994*	$74.5M	Minor amounts for some equipment and fixtures	Facility revenues	15-year lease (Note: 15-year lease term was shorter than 20-year term of bonds) No non relocation agreement City operated the venue and retained operating risk City responsible for capital maintenance and repairs

Another question that has come up recently is why the County would be financing a smaller contribution than the City. The vast majority (95 percent) of the tax revenues generated at the arena would flow to the City (without an agreement to share the revenues based on the City and County proportions of the total public contribution). If the City had the ability to incur the full amount of debt service, the County's participation would not be necessary. The only reason the County would be involved is because of its ability to provide additional debt service. The County has $2.8 billion in debt capacity and its potential $80 million contribution would represent only 2.9 percent of its overall capacity.

Follow-up From Last Week

Last week, the committee asked a number of questions about the market viability for existing teams with the addition of NBA and NHL teams, as well as about the proposal's impact on jobs. Carl Hirsch will be speaking to some of these issues. We will ask the BFM Chair's Arena Proposal Expert Review Panel to consider these questions as well.

Several questions were asked about protections in the event of a "worst-case scenario" and staff is working with the Prosecuting Attorney's Office to draft responses.

A question was asked about whether the County has any guidelines, policies or criteria for issuing debt or otherwise contributing to public-private partnerships. The County does not have any policies in place at this time, but past examples of County support for similar projects include issuing $336 million in debt for Safeco Field and making much smaller contributions towards McCaw Hall and Benaroya Hall.

Finally, a question was asked about the City's Inclusion Plan, which ArenaCo would commit to using in developing the arena. For all projects above $300,000, bidders are required to submit women- and minority-owned business (WMBE) Inclusion Plans. Bidders must demonstrate that they have conducted sufficient outreach to appropriately qualified WMBE firms. The City also requires bidders to identify WMBE goals as a percentage of the total bid amount, and as part of their performance evaluation the City compares the original percentage goals to the actual project WMBE utilization. For projects with an estimated cost above $2 million, bidders are also required to identify a WMBE Expert in the bid. The WMBE expert works with the City and the bidder to develop and implement the Inclusion Plan.

June 19th Briefing

Please note that Chris Hansen will be speaking to the Budget and Fiscal Management Committee at its June 19th meeting. We also expect to introduce the members of the Arena Proposal Expert Review Panel at that meeting.

ATTACHMENTS

1. Proposed Ordinance 2012-0202

2. Fiscal Note
3. Transmittal Letter
4. Executive-transmitted Summary and Key Terms

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1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

June 4, 2012

Ordinance

Proposed No. 2012-0202.1 **Sponsors** McDermott

AN ORDINANCE related to a new multi-purpose sports and entertainment facility authorizing the King County executive to execute a memorandum of understanding with the city of Seattle and ArenaCo and to execute an interlocal agreement with the city.

STATEMENT OF FACTS:

1. WSA Properties III, a Delaware limited liability company, ("ArenaCo") approached the city and the county with a proposal for the two governments to participate in the development and ownership of a multipurpose sports and entertainment facility ("arena") located in Seattle.

2. The city and the county formed an advisory panel to review the proposal.

3. Having considered the recommendations of the advisory panel, the city and the county have collaborated and negotiated with ArenaCo to develop a structure for eventual public ownership of a new arena.

4. The structure includes the addition of National Basketball Association and National Hockey League teams to Seattle to play in the arena.

5. The addition of professional basketball and hockey will contribute to the social and economic environment of Seattle and King County by,

among other things, creating jobs, and by supporting a wide variety of businesses that generate annual earnings and sales, property and business and occupation tax revenues.

6. The agreement described in the Memorandum of Understanding - Seattle Sports and Entertainment Facility provides the city and the county with satisfactory security for the public investment.

7. The city and the county will not be responsible for costs or any cost overruns for construction of the arena.

8. City and county investment will only occur once certain conditions precedent are met, including environmental review and permitting, financing and team acquisition for the arena.

9. The city and the county have negotiated an interlocal agreement that describes and defines the mutual endeavor of pursuing public ownership of the arena.

10. Through the interlocal agreement, the city and county aim to establish investment, management, ownership, communication, oversight and accountability mechanisms and principles for the governments to cooperatively participate in the arena development and ownership.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized to execute and implement the interlocal agreement in substantially the form of the agreement attached to this ordinance as Attachment A.

SECTION 2. The King County executive is hereby authorized to execute and implement the memorandum of understanding in substantially the form of the memorandum attached to this ordinance as Attachment B.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

____

Larry Gossett, Chair

ATTEST:

____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _______________, ______.

____

Dow Constantine, County Executive

Attachments: A. Interlocal Agreement, B. Memorandum of Understanding

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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 land currently owned by ArenaCo or its affiliates south of downtown Seattle (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 Lease." The general provisions of the contemplated transaction between the Parties and ArenaCo are outlined in a Memorandum of Understanding—Seattle Sports and Entertainment Facility dated _________, 2012 (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. 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 Facility, including all construction costs and overruns. Public financial investment in the Arena project (as further defined in the MOU, the "Public Financing") 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."

D. 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.

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

3. <u>Duration</u>. Subject to Paragraph 4.E(ii), this Interlocal Agreement will terminate upon the later of (a) the date when all Public Financing is retired or defeased, and (b) the termination of the Arena Lease and any extensions thereto.

4. <u>Acquisition of Property; Development and Acquisition of Arena</u>.

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 paying the first installment of the Public Financing ("Installment One") and 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 entire 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 ownership percentages in proportion to their anticipated respective shares of the Public Financing.

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 ("Installment Two").

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

5. D. Notwithstanding the foregoing, if on the Transfer Date the total principal amount of the County's participation in the Public Financing 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.

6. 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 Lease, the County may, upon two years' notice to the City, 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.

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 Lease 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 lease or other third-party obligation to the City or County that replaces the Arena Lease shall be applied as provided in Section 6 of this Interlocal Agreement.

7. <u>Financing</u>.

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 will not exceed $200 million.

8. B. The City will finance the public acquisition of the Project Site (*i.e.*, Installment One), the cost of which is not known as of the date of this Agreement but which will be the fair market value of the Project Site, based on an independent appraisal. The amount expended 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.

9. C. On the date of Installment Two, 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, part of which is expected to be tax-exempt obligations representing amounts of obligations the Parties determine can be prudently retired from each Party's anticipated property taxes attributable to the Arena and the Arena Tenant Improvements during

the term of the Arena Lease. The total amount of Public Financing will not exceed a cumulative amount (*i.e.*, including Installment One), totaling $200 million of City and County obligations, of which up to $120,000,000 will be City obligations and of which up to $80,000,000 will be County obligations; provided, however, that if, as set forth in Paragraph 10.ii of the MOU, all of the conditions related to an NHL Team have not been satisfied by the Transfer Date, the principal amount of the County's participation in the Public Financing will not exceed $5,000,000 and will be limited to an amount that the County reasonably determines can be prudently retired from its anticipated property taxes attributable to the Arena and the Arena Tenant Improvements.

10. D. City and County obligations are expected to have the same basic structure, payment dates and final maturity dates, with appropriate differences for taxable and tax-exempt debt (if any). Neither Party may refinance its respective 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.

11. <u>Application of Arena Tax Revenue</u>.

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 Rent Revenues that each derives from the Arena and the Arena Tenant Improvements during the term of the Arena Lease, except for taxes that are subject to legal restrictions that preclude their use either for payment of Arena-related debt or expenses (other than City parking taxes attributable by contract to the Arena).

C. Except for an amount equal to property taxes derived from the Arena and Arena Tenant Improvements that each Party will apply to the payment of tax-exempt general obligation bonds (or general obligation lease payments allocable to tax exempt certificates of participation), 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 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 debt issuances, be entitled to transfers from the Arena Revenue Account in amounts necessary to pay or provide for the payment of debt service (or lease payments in the case of certificates of participation) on the taxable portion of the Public Financing that Party incurs in connection with the Arena. If amounts in the Arena Fund exceed the amounts necessary to provide for each Party's current debt service, then unless the Parties mutually determine otherwise, the excess amounts in the Arena Fund will be applied to the retirement or defeasance of outstanding Public Financing on a pro rata basis (*i.e.*, based on the City's and County's pro rata shares of the outstanding Public Financing).

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 based on each Party's proportionate share of the outstanding taxable Public Financing, except that after year 15 of the Arena Lease, to the extent necessary to provide for the County's current debt service on its Public Financing, 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 allocated first to current debt service on the County's taxable Public Financing (to the extent not provided for by Arena Tax Revenues and Base Rent), and next to current debt service on the City's taxable Public Financing. 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 Paragraph 12.f of the MOU and any corresponding terms in the Arena Facilities Agreements)) will be allocated to the Parties in proportion to their respective shares of outstanding taxable Public Financing.

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.

12. 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.

13. 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 $5,000,000, the only County representative on the Advisory Board will be the appointee of the County Executive (as described above).

D. The Advisory Board will make recommendations to City and County officials on Milestone Decisions (defined in Section 12.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 Paragraph 12.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 12.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 12.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 12. 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.

14. 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”).

15. 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.

16. 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 14, that Party may seek a temporary restraining order, preliminary injunction or other equitable relief from any court of competent jurisdiction.

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

10. 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 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.

18. 11. 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.

19. 12. 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.

20. 13. 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.

21. 14. 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.

22. 15. 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.

23. 16. 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.

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

25. 18. 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.

26. 19. 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:

27. 20. 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 Date: ______________________	By:________________________ Mayor Date:______________________

EXHIBIT A

Material and Milestone Decisions
(***** Denotes Milestone Decisions)

Pre-Development and Planning Phase

Agreement on terms of Umbrella Agreement and Transaction Documents (MOU ¶ 7)
Agreement on allocation of reimbursable development costs (MOU ¶ 3.b)

Design and Construction Phase

Agreement on three NBA/NHL arenas for Design Standards (MOU ¶ 15.b)
Agreement on Schematic Design Package (MOU ¶ 15.f)
Agreement on approval of material deviations from Design Standards (MOU ¶ 15.h)
Agreement on approval of material deviations from Schematic Design (MOU ¶ 15.h)
Agreement to intervene and join as a party in action between ArenaCo and specified construction and design-related entities (MOU ¶ 15.l)
Agreement on naming rights (MOU ¶ 20.a)

Conditions Precedent/Public Financing

*****Agreement that all City-County conditions precedent have been satisfied prior to Public Financing (MOU ¶ 21)*****
Agreement on structure of Public Financing for First Installment (MOU ¶ 10)
Agreement on exercising option or causing lease prepayment on Transfer Date (MOU ¶ 9)
Agreement on structure of Public Financing for Second Installment (MOU ¶ 10)
Agreement on use of excess Tax Revenue to apply excess amounts to pay down Public Financing or to deposit in City-County Capital Account (MOU ¶ 12.h.(iv))
Agreement to refinance, redeem or defease outstanding Public Financing principal (MOU ¶¶ 10 and 12.h.(iv))

Operations Phase

Agreement on three NBA/NHL arenas for Operating Standards (MOU ¶ 14.a)
Agreement on approval of material changes to Operating Standards (MOU ¶ 14.b)
Agreement on approval of investment of Reserve Account money (MOU ¶ 12.e(ii))
Agreement to draw on Reserve Account (MOU ¶ 12.e.(iii))
Agreement on responses to default, enforcement of security interests/guarantees, and draws on Capital Account and City-County Capital Account (MOU ¶¶ 12.f, 12.d and 12.e)
Agreement on Five-Year CIP (MOU ¶ 13.c)
Agreement on repairs, replacements or maintenance for Arena (MOU ¶ 13.c)
Agreement on use funds in City-County Capital Account (MOU ¶ 12.e)
Agreement on use of the Arena for City-County Events (MOU ¶ 14.c)
*****Agreement on sale of ArenaCo or assignment of Arena contracts (MOU ¶ 20.c.)*****
Agreement on Dispute Resolution decisions (MOU ¶ 25)

Day-to-Day Decisions

Pre-Development and Planning Phase

Issue call for bids for the Project (MOU ¶ 6)
Agreement on Fair Market Value of Project Site (MOU ¶ 8)

Design and Construction Phase

Attend meetings with and provide input to ArenaCo on development, design and construction (MOU ¶ 15)
Object to material deviations from approved Schematic Design (MOU ¶ 15.f)
Review ArenaCo selection of and contracts with construction/design entities (MOU ¶ 15.i)
Review construction and design contracts for compliance with Other Provisions, Insurance, Indemnification, and Labor Peace Agreement requirements (MOU ¶¶ 15.j, 15.k and 15.n)

Conditions Precedent/Public Financing

Prepare and update schedule of estimated Annual Reimbursement Amount (MOU ¶ 12.c)

Operations Phase

Monitor Rent and Additional Rent Payments (MOU ¶ 12.c)
Monitor Coverage Ratio and Reserve Account Requirements (MOU ¶ 12.e)
Make/maintain filings to perfect security interests (MOU ¶ 12.f)
Prepare monthly accounting on Arena Tax Revenues (MOU ¶ 12.h)
Inspect Arena and retain professional to assist with development of schedule of major maintenance (MOU ¶ 13.c)
Monitor marketing efforts (MOU ¶14.d)

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, subject to the fulfillment and occurrence of the conditions precedent set forth herein. 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 negotiate the terms of the Transaction Documents (as defined below) and undertake the Project. 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 paragraph 7) or five (5) years from the Effective Date of this MOU.

2. Location. The Arena will be located on the Project Site, which is south of downtown Seattle.

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 this MOU and the transactions contemplated herein through the Commencement Date (defined in paragraph 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 paragraph 4 and any financing or other costs paid out of bond proceeds). 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 paragraph 8). Following the Closing Date, any reimbursable Development Costs that become due and payable as provided in this paragraph 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 paragraph 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. 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”). 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.

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 paragraphs 21 and 22 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 paragraph 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 paragraph 21.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 Lease**. 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 paragraph 15, 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 paragraph 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, not to exceed 180 days thereafter, that ArenaCo may request. ArenaCo will lease the Arena Facility from the City and County or sublease from the City and County or trustee, as the case may be ("Arena Lease"), 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 at a rate of 1% per annum for the first ten (10) years of each installment (the "Public Financing"), and each installment 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 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 paragraph 8, but in no event to exceed $100 million) paid to ArenaCo.

(ii) Second Installment: On the Transfer Date (a) if all of the conditions related to an NHL Team set forth in (b) of this subparagraph (ii) have not been satisfied by the Transfer Date, an additional amount supported by the Base Rent and the stabilized level of Arena Tax Revenues to be determined as provided in the Umbrella Agreement and Transaction Documents, up to $120 million (paid to ArenaCo as provided in paragraph 9) less the amount paid to ArenaCo in the First Installment, 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 paragraph 17 and any other necessary agreements with the City and the County related to the NHL Team, and the NHL has acknowledged the Arena Lease and the non-relocation agreement and has approved locating the NHL Team in Seattle, an amount equal to $200 million, paid to ArenaCo as provided in paragraph 9, less the amount paid to ArenaCo in the First Installment.

11. 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. 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 Lease without any further obligation on the part of the City or County. Upon termination of the Arena Lease, 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 paragraph 13 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.

12. Arena Lease. The Arena Lease will provide for the following terms:

a. Term. The initial term of the Arena Lease 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 Lease will provide for four options of five (5) years each for ArenaCo to extend the term of the Arena Lease. 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 Consumer Price Index 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 Lease into the City-County Capital Account defined in paragraph 12.h(iv). If ArenaCo exercises the option to extend the term of the Arena Lease, the obligations of the NBA Team and (if applicable) the NHL Team to play at the Arena will be similarly extended.

b. ArenaCo Revenues. For the initial term of the Arena Lease, 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 paragraph 12, 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 paragraphs 12.e(ii) and 13.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 Lease, ArenaCo will pay annual rent to the City and County in the amount of $2 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 date of the City's second designated semi-annual debt-service payment for the Public Financing during each year of the Arena Lease, 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 total annual debt service obligations of the City and the County for the Public Financing. "Annual Reimbursement Amount" means the total annual debt-service obligations of the City and County for the Public Financing. 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, property tax, leasehold excise tax, and admission tax revenues, 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 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 utilized to pay the debt service on such bonds shall be excluded from the definition of “Arena Tax Revenues.”

e. Security for Rent. ArenaCo will secure payment of Base Rent and Additional Rent as described in subparagraphs 12.e through 12.g.

(i) Coverage Ratio. ArenaCo will be required to certify annually that the Net Arena Revenues for the preceding fiscal year at fiscal year end 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”). “Net Arena Revenues” means the Arena Revenues less Arena Operating Expenses. ArenaCo will, on a date set forth in the Transaction Documents, provide the City and County with an annual accounting and any reasonably requested documentation to confirm the Coverage Ratio. If Net Arena Revenues are insufficient and fail to meet the Coverage Ratio, ArenaCo promptly (and in no event later than 30 days after the annual accounting is provided to the City and County) will increase the Reserve Account by an amount such that the balance of the Reserve Account plus Net Arena Revenues equal three times (3.0x) the Annual Reimbursement Amount for the following year. To the extent the amount held in the Reserve Account ever exceeds the Annual Reimbursement Amount for the following year, any amount over the Coverage Ratio in future years will be used to reduce the Reserve Account requirement back to the applicable ratio, provided that in no event will the amount held in the Reserve Account be less than the Annual Reimbursement Amount for the following 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 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” the terms of which will be consistent with this MOU and that are 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 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 Lease 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.

f. Payment Default; First Priority Payment and Lien Position; Parent Guaranty

(i) Payment Default; First Priority Payment and 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 revenues and receivables of ArenaCo with such lien and its priority to be as agreed upon by lenders to ArenaCo, the City and the County and further secured as provided in subsection 12f(ii) 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 to the required amount within thirty (30) days of receipt of notice from the City and County of any draw on the Reserve Account, 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) Parent Guaranty. ArenaCo hereby agrees that the direct equity owner of ArenaCo (the "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 paragraph 20.c(ii). In addition to the security provided for in paragraph 12.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) guarantying ArenaCo's obligations under the Arena Lease. Further, 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 on such debt currently allowed under applicable NBA rules ("NBA Team Secured Debt Obligations"). Notwithstanding the foregoing, however, if the NBA revises its rules to allow NBA teams to borrow in excess of the current limit of $125 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.

g. **Insolvency**. 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 Lease. These remedies are not exclusive and will be in addition to all other remedies available to the City and County.

h. **Flow of Arena Tax Revenues**.

(i) **Tax-Exempt Debt**. The structure of the transactions may be modified in a manner that results in more positive financial effects 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. 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 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, at their option, but in consultation with ArenaCo, and in the manner established in the Transaction Documents, will either (a) reserve and apply the excess to redeem or defease other outstanding principal of the Public Financing or, (b) to deposit all or part of such excess into a separate account to be used for the below-described capital improvements ("City-County Capital Account"). The City-County Capital Account shall at all times be the property of the City and County. 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. Any excess Arena Tax Revenues not required to be deposited to the City-County Capital Account as provided in this MOU shall be used only to redeem outstanding principal of the Public Financing, in consultation with ArenaCo and for no other purpose until such time as all outstanding principal of the Public Financing has been fully retired or defeased. The deposits described in this paragraph 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 provided 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 Lease. From and after the date the Arena Lease is terminated, the City and County may withdraw all amounts remaining in the City-County Capital Account.

13. Capital Improvements.

a. Capital Account. ArenaCo will be required to make semi-annual cash 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 paragraph 13. 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. ArenaCo will, at its sole cost and expense, make all capital repairs, replacements and improvements relating to the Arena or its use. Capital repairs, replacements and improvements means the purchase, installation, repair or replacement of items 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 Lease 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 ("Capital Expenditures").

c. Procedure for Making and Approving Capital Improvements. ArenaCo will, on an annual basis, prepare a proposed five-year capital budget ("Five-Year CIP") for anticipated Capital Expenditures 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 paragraph 13.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 or provide comments. 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 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 any repairs, replacements or maintenance that the City-County Representative determines are necessary to maintain the Arena and Tenant Improvements in accordance with the Operating Standards. 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 their payment obligations under the Public Financing. ArenaCo may draw on the Capital Account to make any Capital Expenditures consistent with the Five-Year CIP and to fund any other obligations of ArenaCo to make any other capital repairs, replacements and improvements relating to the Arena provided for in this MOU. Subject to the rights of ArenaCo under the Arena Lease, all such capital repairs, replacements and improvements 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 funds in the City-County Capital Account shall be utilized only for major repairs to components of the base systems of the Arena 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). Any City and County-owned repairs, replacements or improvements are subject to the rights of ArenaCo under the Arena Lease. 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.

14. 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 agreeable 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"). For the avoidance of doubt, 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).

(i) Arena Operating Expenses. Arena Operating Expenses means all expenses or obligations, as determined on an 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 term of occupancy under the Arena Lease unless such agreements contain provisions acceptable to the City and County regarding termination and assignment. ArenaCo will provide the City and County with a copy of any such contract upon request. 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 Lease 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 Lease has occurred, then such dispute will be submitted and resolved by the parties in accordance with the dispute resolution provisions specified in this MOU.

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 paragraph 17; (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 paragraph 17; (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; (vii) 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; (viii) that ArenaCo shall retain all revenues related to suite sales; (ix) that ArenaCo shall retain all revenues not retained by or payable to the teams or leagues for other premium and club seats; (x) for allocation of revenues from parking, concessions, merchandise, and ticket surcharges (if any); (xi) for marketing of the Arena and the teams; (xii) for insurance; and (xiii) for indemnification, including indemnification of the City and the County.

15. 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 paragraph 15.m below and will have the rights to specific prior review and approval as set forth in this paragraph 15.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. As between ArenaCo, on the one hand, and the City and County, on the other hand, ArenaCo (i) 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 (ii) 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.

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 agreeable NBA/NHL arenas; and

(iv) meet the requirements of all applicable 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.

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. The City-County Representative shall have the right to object to any material deviations from the approved Schematic Design Package or to the extent there is a violation of federal or state law or validly enacted or existing local ordinance.

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 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 paragraph.

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. Arena Contracts will provide for the payment of prevailing wages in accordance with applicable laws and regulations, and 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. 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 WMBE firms the prime contractor commits to subcontract with, and the minimum guaranteed contract amount to be 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 Lease, 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 paragraph 15, 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.

16. KeyArena. 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 KeyArena. During the tenancy of any such NBA or NHL teams at KeyArena, ArenaCo will cause certain improvements to be made to KeyArena, 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. Any City taxes generated during the tenancy at KeyArena of either the

NBA team or the NHL team over the base amount of taxes that is currently received from activities at KeyArena will be used to benefit the Arena Project or KeyArena, as mutually agreed. Prior to execution of the Transaction Documents, ArenaCo will also provide to and discuss with the City multiple options for re-purposing of KeyArena once the Arena is completed and opens and a long-term operating plan for KeyArena.

17. 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 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 Lease. 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.

18. 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.

19. 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.

20. 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 and requirements of the NBA, and subject to the ability of ArenaCo or an affiliate of ArenaCo to obtain the rights to the name and trademarks under from the current owner thereof, 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, at no cost to ArenaCo or such affiliate, 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, at no cost to ArenaCo or such affiliate, and (iii) obtain a transfer of the trophies, banners, and retired jerseys and other related memorabilia from the current owner thereof, at no cost to ArenaCo or such affiliate. 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 paragraph 12.f.(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.

21. 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. ArenaCo has arranged for all financing or other funding necessary to fully finance or fund the Project; the City and County are satisfied that ArenaCo and its investors have the resources to meet their financial obligations under this MOU and the applicable Transaction Documents; and ArenaCo has arranged for delivery of the required initial deposit into the Reserve Account.

b. SEPA and Permitting. (i) SEPA review associated with any City or County actions as contemplated by paragraph 5 of this MOU has been completed; (ii) the master use permit and all other permits required for construction of the Project have been obtained; (iii) the City and County have considered the SEPA review in connection with their respective actions and have waived this condition precedent, which waiver may be withheld only on the basis of an exercise of SEPA substantive authority; 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 October 1, 2012, or such later date as may be mutually agreed upon by the Parties. The City-County Representative may give written notice on or prior to October 1, 2012 or such mutually agreed upon later 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 therefor, 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. If the City and County do not timely provide such written notice, then the due diligence condition of this paragraph 21.c shall be deemed to have been waived. Within ten days of 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 paragraph 21.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 paragraph 21.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 paragraph 21.c.

d. **NBA Team, Lease and Non-Relocation Agreement**. ArenaCo or a third party under contract with ArenaCo has secured ownership rights to an NBA franchise, the Parties have entered into a non-relocation agreement as described in paragraph 17, the NBA has acknowledged the Arena Lease, the NBA has approved locating the NBA Team in Seattle and the NBA has acknowledged the non-relocation agreement and ArenaCo has entered into a Team License Agreement with the NBA Team as required by and consistent with paragraph 14.e.

e. **Transaction Documents**. The Umbrella Agreement and the Transaction Documents have been negotiated and the City and County are authorized 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 paragraph 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 paragraph 10 or otherwise.

22. **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 paragraph 15.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.

23. 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 KeyArena 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.

24. 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.

25. 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. 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 paragraph 25.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 paragraph 25.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.

26. 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.

27. 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: 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 the following labor organizations which represent workers in King County and have indicated or may indicate their intent to organize workers at the Arena as well as in restaurants and hotels that are part of the project:

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).

The labor peace agreements will include a promise by the labor organizations limiting their rights 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. The Developer has agreed to require the same labor peace guarantee from 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 Lease between ArenaCo and the City of Seattle and King County.

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 limits 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 and the above-referenced labor organizations.

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FISCAL NOTE

Ordinance/Motion No. 00-
Title: Memorandum of Understanding between King County, the City of Seattle and ArenaCo regarding the development of a multi-purpose arena
Affected Agency and/or Agencies:
Note Prepared By: Aaron Rubardt, Dave Reich
Note Reviewed By: Jonathan Swift, Dwight Dively

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund/Agency	Fund	Revenue	Current Year [1]	3rd Year	4th Year	5th Year
	Code	Source				
City/County Partnership Entity [2]	TBD	LTGO Bonds	0	80,000,000		
LTGO Fund [4]	8400	Partnership	0	5,200,000	5,300,000	5,300,000
TOTAL			**0**	**85,200,000**	**5,300,000**	**5,300,000**

Expenditures from:

Fund/Agency	Fund	Department	Current Year	3rd Year	4th Year	5th Year
	Code					
King County LTGO Bonds	8400	A46500	0	80,000,000		
King County Debt Service [3]	8400	A46500	0	5,200,000	5,300,000	5,300,000
TOTAL			**0**	**85,200,000**	**5,300,000**	**5,300,000**

Expenditures by Categories

	Current Year	3rd Year	4th Year	5th Year
Contribution to City/County Entity for Capital	0	80,000,000		
Debt Service [3]	0	5,200,000	5,300,000	5,300,000
TOTAL	**0**	**85,200,000**	**5,300,000**	**5,300,000**

Assumptions:

[1] There is no fiscal impact related to debt in the "Current Year". It is not anticipated there will be any fiscal impacts until the third year after construction begins, at which time the County will issue debt. Fiscal note assumes county bonds will be sold in the third year, with debt service also beginning in third year. In addition to the construction period, design and permitting will likely take one to two years, so the County's debt likely won't be issued until 2016 or 2017.

[2] City/County Partnership Entity will conduct financial transactions with ArenaCo on behalf of Seattle and King County. This includes disbursing bond proceeds and collecting revenue generated as a result of the arena.

[3] Debt service is based on the following assumptions: $80,000,000 in taxable bonds issued in 2016, 30-year term, 5.5% interest. Debt Service payments will escalate from $5,200,000 to $5,800,000 in the first 10 years and will be level thereafter.

[4] King County will transfer money from the pool to cover annual debt service payments. The revenue sources include property tax, sales tax, admissions tax, B&O tax, leasehold excise tax, and rental payments from ArenaCo. Average annual forecast collections from each revenue source for the entire pool are listed below.

City Property Tax	$900,000
City Sales Tax	$300,000
City Admission Tax	$5,800,000
City B&O Tax	$1,300,000
City Leasehold Tax	$200,000
County Property Tax	$250,000
County Sales Tax	$50,000
County Leasehold Tax	$100,000
ArenaCo Rent	$5,700,000

Debt service funding for County debt will be approximately $400,000 annually from County taxes and the rest from City taxes and rent payments from ArenaCo.

Additional Notes:

1. Per the Inter-local Agreement (ILA), King County's obligation will be $80 million if the conditions related to the NHL franchise are satisfied as of the transfer date of the property. If conditions are not satisfied, the County is limited to the lesser of an amount supported by the County's portion of anticipated property tax revenues related to the arena and arena improvements or $5 million.
2. Per the Memorandum of Agreement (MOU), debt service payments will be funded by base rent, arena tax revenues, and additional rent sufficient to pay county financing obligations.
3. Per the MOU, security provisions will be put in place to decrease the likelihood of default. These include a reserve account set at a minimum of one year's debt service obligation, annual certification 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, first priority payment position senior to any private debt service, and a guarantee of ArenaCo's obligations by the parent company that owns both ArenaCo and the teams. Agreements with the team(s) will include non-relocation provisions and rights to a portion of the revenues from the sale of the team if required.
4. The MOU provides up to $5M in reimbursement for costs associated with development of the MOU and other work. It is not known at this time how much, if any, of this amount will be available to the county.

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May 22, 2011

Honorable Larry Gossett
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Gossett:

I am pleased to submit for consideration by the County Council a Memorandum of Understanding ("MOU") between King County ("County"), the City of Seattle ("City"), and ArenaCo regarding the development of a state-of-the-art multi-purpose arena in the Stadium District of Seattle's SoDo neighborhood that could be home to National Basketball Association (NBA) and National Hockey League (NHL) franchise teams. Also attached is the Interlocal Agreement between the City and County that identifies the relative obligations between the City and County as they relate to the MOU with ArenaCo.

The same legislative package, under a similar cover letter jointly prepared by our offices, is also simultaneously being submitted by Mayor Mike McGinn for consideration by the Seattle City Council.

This proposal meets our commitment to protect existing resources in the County and City General Funds, substantially mitigate the risk for the County and City, and create a partnership that will result in a valuable investment into our community and region.

The Memorandum of Understanding is the product of a great deal of hard work by the County, City, the Arena Review Panel, and Mr. Hansen's team. It includes many important taxpayer protections, such as:

- No new taxes are being sought for construction or operations;
- The project will be self-financed by using revenue that would not otherwise exist but for the operations of the arena;
- Binding non-relocation agreements for the NBA and NHL teams will be in place covering the full term of any public financing;

- A security reserve fund will be established to provide an additional layer of taxpayer protection for the duration of the public debt;
- Revenue sufficient to support annual debt service is guaranteed by the investors;
- The private investors will be solely responsible for any cost overruns and operating revenue shortfalls over the life of the facility, including funding a capitol improvement fund; and
- No public funds will be committed until franchise acquisition and all environmental review and permitting processes are completed.

The County and City will be in a first priority payment position from Arena revenues, and in the unlikely event of a financial default, will have a security guarantee in the equity of the parent company for the teams and the Arena operator.

The commitment to invest upward of $800 million of private capital in the arena and the purchase of two teams represents a strong vote of confidence in the future of our County and City, especially in this challenging economic climate. It is one of the largest commitments of private capital ever made for a project like this in North America.

This proposal also represents a unique opportunity in our region's history. The existing football and baseball stadiums in the Stadium District were developed as part of a community effort to keep our sports teams from relocating to a different region. With this proposal we have a positive opportunity to embrace new professional sports teams and a significant new private investment into our community.

Even though the proposed site is zoned for sports facilities, we know that with or without this private investment traffic challenges do and will persist. A transportation study currently underway, as well as future environmental review, will help us better understand the magnitude of those challenges and identify solutions that will enable local governments, as well as beneficiaries, to address future opportunities this area holds.

And while there are challenges in the SoDo neighborhood, including freight mobility issues, let us not forget that it is the largest transportation hub in the region. Link light rail, a Sounder train line, three bus rapid transit lines, 21 Metro bus lines, nine Sound Transit Express bus lines, four ferry routes, two interstate freeways and a future deep bore tunnel converge in this neighborhood. There is no other site in the region that possesses the transportation assets that are unique to this area, which is a major reason the existing sports facilities are located there.

This proposal also offers the City opportunity to proactively address challenges Key Arena will face whether a new arena is built in Seattle or elsewhere in the region. It includes a number of potential options to keep Key Arena a thriving and dynamic part of the Seattle Center for the City to consider. Because any sports franchises acquired after the Memorandum of Understanding is approved would play in Key Arena for two seasons as the new arena is being constructed, the City will have several years to fully explore these and other options by working with the Seattle Center Advisory Committee and other stakeholders.

Mr. Hansen and his investment group are committed to bringing an NBA franchise back to Seattle and attracting a new NHL franchise. This Memorandum of Understanding is the foundation upon which an exciting public-private relationship can be built that will make that possible.

I look forward to working with the County Council as you consider this unique opportunity.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Michael Woywod, Chief of Staff
Mark Melroy, Senior Principal Legislative Analyst, BFM Committee
Anne Noris, Clerk of the Council
Fred Jarrett, Deputy County Executive, King County Executive Office (KCEO)
Sung Yang, Chief of Staff, KCEO
Carrie S. Cihak, Chief Advisor, Policy and Strategic Initiatives, KCEO
Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)
Jonathan Swift, Deputy Budget Director, PSB

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Summary and Key Terms

Memorandum of Understanding (MOU)

Overview

- Parties to the Memorandum of Understanding (MOU) are the City of Seattle (City), King County (County), and ArenaCo. ArenaCo is the company that will construct, operate and maintain the arena.
- Binding agreement, except 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.

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 is 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 6 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.

<u>Key Terminology</u>

ArenaCo

Transaction Documents

Umbrella Agreement

Project

Lease-Purchase

Transfer Date

- 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.

First Installment of Public Financing

- Prior to any public financing occurring, ArenaCo must meet these requirements:
  - Acquisition of ownership rights to an National Basketball Association (NBA) franchise with NBA acknowledgment of the Arena Lease and a non-relocation agreement in place.
  - Satisfy the City and County as to the financial ability of ArenaCo and its investors to meet obligations under the MOU.
  - 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.
  - 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.

First Installment

Closing Date

Second Installment

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 a National Hockey League (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 the lesser of:
    - The amount of debt that could be supported by stabilized Arena Tax Revenues and base rent (the exact method of calculating stabilized revenue will be established in the Umbrella Agreement and will be based upon experience); or
    - $120 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 will be structured to accommodate limited revenue flows until operations begin.

- 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 $2 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

Ground Lease

Commencement Date

Arena Lease

Base Rent

Additional Rent

Annual Reimbursement Amount

Arena Tax Revenues

City-County Representative

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 such that the total amount of net arena revenues and the reserve account is three times debt service 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,

City/County Events

City/County Approval of Team Leases

Reserve Account

Coverage Ratio

First Priority Payment

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.

- 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 $125 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.
- 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 the City and County may either apply surplus revenues to redeem or defease outstanding principal amounts for the public financing, or may deposit the surplus revenues into the City-County Capital Account subject to the cap. 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.

Guaranty from Equity Parent Company

Non-Relocation Agreement

Surplus Revenues

Debt Prepaid

City/County Capital Account

Capital Account

Capital Account Contribution

- 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.
- 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. 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.

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.
- Any taxes generated during the tenancy at KeyArena by NBA or NHL franchise teams above current tax levels would be used to benefit the arena project.
- ArenaCo will provide and discuss multiple options for the future use of Key Arena.

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.

Interlocal 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".

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.

Proportional Ownership Interest

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 the lesser of:
      - An amount supported by the County's portion of anticipated property tax revenues related to the Arena and arena improvements; or
      - $5 million.
    - The City in an amount that, in combination with the First Installment and the County's contribution, satisfies the requirements of the MOU (the lesser of $120 million and the amount that can be supported by base rent and Arena Tax Revenues).
  - 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, 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.

County Financial Obligation

City Financial Obligation

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.

City-County Advisory Board

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.