

17395

S2

7/27/2012
7/30/12 Meeting

wsh

Sponsor: McDermott

Proposed No.: 2012-0202

*Be moved
PASSED 9-0 AS Amended*

- 1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2012-0202, VERSION**
- 2 **1**
- 3 Delete Attachment A and insert Attachment A, Interlocal Agreement Arena
- 4 Development, Financing, Acquisition and Operation, dated July 27, 2012
- 5
- 6 Delete Attachment B and insert Attachment B, Memorandum of Understanding Seattle
- 7 Sports and Entertainment Facility, dated July 27, 2012
- 8
- 9 Delete the line numbers in the attachments
- 10
- 11 **EFFECT: Replaces Attachment A (interlocal agreement) and Attachment B**
- 12 **(memorandum of understanding) with new attachments, dated July 27, 2012.**

Attachment A

July 27, 2012

INTERLOCAL AGREEMENT
ARENA DEVELOPMENT, FINANCING, ACQUISITION AND OPERATION

THE CITY OF SEATTLE and KING COUNTY

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

1. Recitals.

A. A private entity known as "ArenaCo" has approached the Parties with a proposal for a new multi-purpose sports and entertainment facility (the "Arena") to be located on 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."

42 D. The Parties have determined to enter into the MOU, and the purpose of this
43 Interlocal Agreement is to establish their respective rights and responsibilities in the event the
44 Arena is developed.

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

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

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

51 A. The City will make a call for bids for the Project consistent with RCW
52 35.42.080. Subject to the conditions described in the Arena Facility Agreements, the City will
53 acquire the title to the Project Site by paying the first installment of the Public Financing
54 (“Installment One”) and then ground lease the Project Site to ArenaCo. Concurrent with the
55 Ground Lease, the Parties will enter into a Lease-Purchase Agreement with ArenaCo under
56 which ArenaCo will have an obligation to build the entire Arena and the Parties will have the
57 obligation to lease the Arena building structure (“Arena Facility”) with an option to purchase.
58 On the Commencement Date, the Parties will become co-tenants in the leasehold estate in the
59 Arena Facility with the City holding a 60% interest and the County holding a 40% interest,
60 subject to amendment to conform to their actual shares in the Public Financing as of the
61 Transfer Date, as provided in Paragraph 4.C below.

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

66 C. If the Parties exercise the option to purchase the Arena Facility, as described in
67 Paragraph 4.(B)(i) above, the Second Installment of the Public Financing may be structured as
68 bonds issued by the City and the County. In that event the Ground Lease will terminate and the
69 City and County will thereafter hold title to the Arena Facility as tenants in common (with
70 ownership percentages in proportion to their respective actual shares of the Public Financing).
71 If the Parties cause a trustee to prepay the principal component of all remaining lease payments
72 required under the Lease-Purchase Agreement, as described in Paragraph 4.(B)(ii) above, the
73 Public Financing will be structured as certificates of participation in a stream of lease revenues.
74 In either case, the City will convey to the County an interest in the Project Site so that the
75 Parties will be tenants in common in the Project Site (with ownership percentages in proportion
76 to their respective actual shares of the Public Financing).

77 D. Notwithstanding the foregoing, if on the Transfer Date the total principal amount
78 of the County’s participation in the Public Financing does not exceed \$5 million, the County
79 may at its option determine not to hold any ownership or leasehold interest in the Arena Facility
80 or the Project Site and may assign its rights to acquire ownership and leasehold interests to the
81 City. In that case, all of the rights and obligations of the Parties under this Interlocal Agreement

82 will remain in place, except that the County will not own an interest in either the Arena Facility
83 or the Project Site.

84 E. If the County holds an ownership or leasehold interest in the Arena Facility or
85 the Project Site, (i) neither Party may transfer its common interest without the express written
86 consent of the other Party and (ii) on and after the end of the initial 30-year term of the Arena
87 Lease, the County may, upon two years' notice to the City, assign and transfer to the City all of
88 the County's ownership or leasehold interests at no cost to the City, in which case this Interlocal
89 Agreement will terminate.

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

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

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

109 5. Financing.

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

113 B. The City will finance the public acquisition of the Project Site (*i.e.*, Installment
114 One), the cost of which is not known as of the date of this Agreement but which will be the fair
115 market value of the Project Site, based on an independent appraisal. The amount expended by
116 the City in connection with the acquisition of the Project Site will not exceed \$100 million.
117 Between the Commencement Date and the Transfer Date, the City will be responsible for
118 paying (nominal) rent to ArenaCo under the terms of the Lease-Purchase Agreement, and upon
119 the Transfer Date those payments will be treated as a credit to the City's share of the Second
120 Installment, consistent with RCW 35.42.040.

121 C. On the date of Installment Two, and in connection with the lease and/or purchase
122 of the Arena on or after the Transfer Date, each Party will incur a share of Public Financing
123 obligations, part of which is expected to be tax-exempt obligations representing amounts of
124 obligations the Parties determine can be prudently retired from each Party's anticipated property
125 taxes attributable to the Arena and the Arena Tenant Improvements during the term of the Arena
126 Lease. The total amount of Public Financing will not exceed a cumulative amount (*i.e.*,
127 including Installment One), totaling \$200 million of City and County obligations, of which up
128 to \$120,000,000 will be City obligations and of which up to \$80,000,000 will be County
129 obligations; provided, however, that if, as set forth in Paragraph 10.ii of the MOU, all of the
130 conditions related to an NHL Team have not been satisfied by the Transfer Date, the principal
131 amount of the County's participation in the Public Financing will not exceed \$5,000,000 and
132 will be limited to an amount that the County reasonably determines can be prudently retired
133 from its anticipated property taxes attributable to the Arena and the Arena Tenant
134 Improvements.

135 D. City and County obligations are expected to have the same basic structure,
136 payment dates and final maturity dates, with appropriate differences for taxable and tax-exempt
137 debt (if any). Neither Party may refinance its respective Arena obligations to change payment
138 dates, extend the term or increase annual debt service, without the consent of the other Party.
139 Each Party will be solely responsible for its obligations incurred in connection with the Arena
140 Project, and neither the City nor the County will guarantee or be responsible in any way for the
141 payment of the other Party's obligations.

142 6. Application of Arena Tax Revenue.

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

153 B. The City and the County will each dedicate to the Project all Arena Tax
154 Revenues and Rent Revenues that each derives from the Arena and the Arena Tenant
155 Improvements during the term of the Arena Lease, except for taxes that are subject to legal
156 restrictions that preclude their use either for payment of Arena-related debt or expenses (other
157 than City parking taxes attributable by contract to the Arena).

158 C. Except for an amount equal to property taxes derived from the Arena and Arena
159 Tenant Improvements that each Party will apply to the payment of tax-exempt general
160 obligation bonds (or general obligation lease payments allocable to tax exempt certificates of
161 participation), each Party will deposit in the Arena Revenue Account, as received, all Arena Tax
162 Revenues received by that Party and dedicated to the Project.

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

168 E. The City and County will each, in proportion to their respective debt issuances,
169 be entitled to transfers from the Arena Revenue Account in amounts necessary to pay or provide
170 for the payment of debt service (or lease payments in the case of certificates of participation) on
171 the taxable portion of the Public Financing that Party incurs in connection with the Arena. If
172 amounts in the Arena Fund exceed the amounts necessary to provide for each Party's current
173 debt service, then unless the Parties mutually determine otherwise, the excess amounts in the
174 Arena Fund will be applied to the retirement or defeasance of outstanding Public Financing on a
175 pro rata basis (*i.e.*, based on the City's and County's pro rata shares of the outstanding Public
176 Financing).

177 F. In the event of a Payment Default by ArenaCo, and so long as that Payment
178 Default continues: (a) Arena Tax Revenues and Base Rent (if any) received from ArenaCo will
179 be divided between the Parties based on each Party's proportionate share of the outstanding
180 taxable Public Financing, except that after year 15 of the Arena Lease, to the extent necessary to
181 provide for the County's current debt service on its Public Financing, up to 50% of Arena Tax
182 Revenues will be allocated first to the County, with the balance allocated to the City, and (b)
183 Additional Rent payments and withdrawals of balances in the Reserve Account, the Capital
184 Account and the City-County Capital Account, will be allocated first to current debt service on
185 the County's taxable Public Financing (to the extent not provided for by Arena Tax Revenues
186 and Base Rent), and next to current debt service on the City's taxable Public Financing. Further
187 amounts received by the Parties from or in respect of obligations to the Parties from ArenaCo,
188 its affiliates, or others (*e.g.*, amounts received from the Parties' security interest (as described in
189 Paragraph 12.f of the MOU and any corresponding terms in the Arena Facilities Agreements))
190 will be allocated to the Parties in proportion to their respective shares of outstanding taxable
191 Public Financing.

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

196 7. Governance.

197 A. The City will serve as administrator of the joint and cooperative undertaking
198 established in this Interlocal Agreement and will be responsible for day-to-day decision-making
199 with respect to the Arena and for supervising the City-County Representative. The City will
200 appoint the City-County Representative after consultation with the County. The City may also
201 remove and/or replace the City-County Representative after consultation with the County. The
202 County Executive will designate a County employee to serve as a liaison with the City-County
203 Representative. The City-County Representative will regularly report to and consult with that

204 liaison concerning day-to-day decision-making and other matters and decisions concerning the
205 Arena Facility Agreements, the Arena and the Arena Fund.

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

212 o The Mayor of the City (and if the Mayor fails to appoint someone, the
213 City’s Budget Director)

214 o The County Executive (and if the Executive fails to appoint someone, the
215 County’s Budget Director)

216 o The City Council (and if the Council fails to appoint someone, the chair
217 of the City Council’s primary budget and finance committee, currently
218 the Government Performance and Finance Committee)

219 o The County Council (and if the Council fails to appoint someone, the
220 chair of the County Council’s primary budget and finance committee,
221 currently the Budget and Fiscal Management Committee).

222 C. Notwithstanding the foregoing, if the principal amount of the County’s
223 participation in the Public Financing does not exceed \$5,000,000, the only County
224 representative on the Advisory Board will be the appointee of the County Council (as described
225 above).

226 D. The Advisory Board will make recommendations to City and County officials on
227 Milestone Decisions (defined in Section 7.H(iii) below) or other significant decisions the
228 Advisory Board may identify concerning the Arena Facility Agreements, the Arena and the
229 Arena Fund. The Advisory Board will attempt to reach consensus agreement on any issue
230 before it. If consensus is not reached, members of the Advisory Board may make separate
231 recommendations on an issue.

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

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

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

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

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

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

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

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

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

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

277 (vii) The Parties intend to act primarily through the City-County
278 Representative and the County Liaison. Either Party may, however, designate a different person
279 within that Party's organization to act on behalf of that Party. The Parties also acknowledge and
280 agree that the collaborative decision-making required herein will require each to provide the
281 other with reasonable advance notice of matters requiring decisions and reasonably prompt

282 resolution of such matters in order to assure effective, efficient and timely interactions with
283 ArenaCo.

284 8. Dispute Resolution.

285 A. Whenever any dispute arises between the Parties under this Agreement which is
286 not resolved by routine meetings or communications, the Parties agree to seek resolution of
287 such dispute by the process described in this Section 8 (“Dispute Resolution”).

288 B. The Parties will seek in good faith to resolve any such dispute or concern by
289 arranging a meeting between City and County officials with authority to resolve the matter
290 (including without limitation a meeting between the Mayor and the County Executive) within
291 five business days after either Party receives notice of a dispute. If the Parties are unable to
292 resolve the dispute informally within 10 working days, either Party may request the assistance
293 of a mediator.

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

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

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

308 10. Risk Provisions.

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

318 B. The foregoing indemnity is specifically and expressly intended to constitute a
319 waiver of each party’s immunity under industrial insurance, Title 51 RCW, as respects the other
320 party only, and only to the extent necessary to provide the indemnified party with a full and

321 complete indemnity of claims made by the indemnitor's employees. This waiver has been
322 mutually negotiated.

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

332 D. The City shall defend, indemnify and hold harmless the County, and all of its
333 officials and employees, from any and all claims, demands, suits, actions, fines, penalties, and
334 liability of any kind (collectively "Claims"), which arise out of or are related to any claim that the
335 Arena Facility Agreements or the transactions contemplated thereunder do not comply with City of
336 Seattle Initiative 91.

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

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

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

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

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

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

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

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

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

368 City:

369

370

371 Copies to:

372

373 County:

374

375

376 Copies to:

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

378

379

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

383

KING COUNTY, WASHINGTON

CITY OF SEATTLE

By: _____
County Executive

By: _____
Mayor

Date: _____

Date: _____

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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)

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1 July 27, 2012
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4 **MEMORANDUM OF UNDERSTANDING**
5 **SEATTLE SPORTS AND ENTERTAINMENT FACILITY**
6

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

12 **RECITALS**

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

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

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

27 D. This MOU is intended to be a binding and enforceable agreement of the Parties
28 setting forth the primary business terms that will be included in Transaction Documents (as
29 defined below) and the process to be followed by the Parties, subject to the fulfillment and
30 occurrence of the conditions precedent set forth herein. It reflects the mutual understandings of
31 the Parties regarding those actions, permits, approvals and/or agreements lawful and necessary to
32 accomplish the location, financing, acquisition, design, development, construction, lease,
33 management, operation, use and occupancy of the Arena (collectively, the “Project”). The
34 Parties intend to actively participate and to work together collaboratively, in good faith and with
35 due diligence, to carry out the process described herein and to negotiate the terms of the
36 Transaction Documents consistent with this MOU. These undertakings are personal to the
37 Parties and this MOU shall not be assigned to any other person or entity unless all Parties agree.

38 **UNDERSTANDINGS**

39 **1. Purpose and Term of Agreement.** This MOU sets forth the basic terms of
40 proposed agreements among the Parties with respect to the Project, which terms will be

41 memorialized in future agreements and other documents (“Transaction Documents”). The Arena
42 will be designed to host an NBA Team and an NHL Team, and is expected to host other sporting
43 events, family shows, concerts, graduations, and civic and other events. This Agreement will
44 terminate upon the earlier of the effective date of the Umbrella Agreement (defined in paragraph
45 7) or five (5) years from the Effective Date of this MOU.

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

48 **3. Description; Cost Reimbursement.**

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

61 **b. Cost Reimbursement.** “Development Costs” means
62 reasonable and documented out-of-pocket expenses actually incurred by the City
63 and County directly in connection with development, execution and performance
64 of this MOU, the interlocal agreement between the City and the County, the
65 Umbrella Agreement and Transaction Documents, and the transactions
66 contemplated herein through the Commencement Date (defined in paragraph 9)
67 including, but not limited to, all reasonable and documented expenses of engineers
68 and legal, financial and other required consultants paid by the City or County (but
69 excluding the expenses described in paragraph 4 and any financing or other costs
70 paid out of bond proceeds). ArenaCo shall reimburse the City and County for all
71 reasonable and documented Development Costs up to a maximum amount of \$5
72 million, with each payment being due within thirty (30) days following ArenaCo’s
73 receipt of an invoice from the City and County as provided herein, with the first
74 payment of any such reimbursable Development Costs to be billed by the City and
75 County at least thirty (30) days prior to the Closing Date, and becoming due and
76 payable on the Closing Date (defined in paragraph 8). Following the Closing Date,
77 any reimbursable Development Costs that become due and payable as provided in
78 this paragraph 3.b through the Commencement Date will be billed by the City and

79 County on a monthly basis and paid by ArenaCo within thirty (30) days following
80 receipt by ArenaCo of any invoice from the City and County. The reimbursement
81 of Development Costs is in addition to expenses payable by ArenaCo in
82 connection with paragraph 4 below.

83 **4. Initial Site Acquisition and Permitting.** ArenaCo has acquired or will acquire
84 the property that comprises the Project Site. At its sole cost and expense, ArenaCo will seek a
85 master use permit and all other permits or approvals required for the Project. At ArenaCo's
86 expense, the City will provide dedicated planning staff to facilitate the review and processing of
87 permit applications relating to the Project, with planning staff time to be billed at the then
88 applicable rate schedules of the City.

89 **5. SEPA.** The Parties acknowledge that the Project is subject to review and
90 potential mitigation under various laws, including the State Environmental Policy Act, Chapter
91 43.21C of the Revised Code of Washington ("RCW"), and the state and local implementing rules
92 promulgated thereunder (collectively, "SEPA"). The City or County may not take any "action"
93 within the meaning of SEPA except as authorized by law, and nothing in this MOU is intended
94 to limit the City's or County's exercise of substantive SEPA authority.

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

98 **7. Umbrella Agreement.** If ArenaCo is the successful bidder for the Project, or if
99 no bid is received on the call and the City and County determine to proceed with the Project
100 without any further call for bids, then as soon as reasonably practicable the Parties intend to enter
101 into a comprehensive agreement that will include the Transaction Documents in substantially
102 final form as exhibits thereto (the "Umbrella Agreement"). The Umbrella Agreement will
103 incorporate conditions precedent substantially in the form set forth in paragraphs 21 and 22
104 below, except to the extent that such conditions precedent shall have been met or waived at the
105 time of the execution of the Umbrella Agreement.

106 **8. Site Conveyance.** Following execution of the Umbrella Agreement and
107 satisfaction of the applicable conditions precedent, the City will fund the First Installment of the
108 initial Public Financing, as defined and provided in paragraph 10, to purchase the Project Site
109 from ArenaCo, and ArenaCo will sell and convey a fee simple interest in the Project Site to the
110 City by statutory warranty deed, free and clear of all liens and encumbrances other than
111 "permitted exceptions" (as hereinafter defined) contained in title reports for the Project Site as of
112 the Closing Date that are reasonably approved by the City. The date on which the City acquires
113 the Project Site from ArenaCo is referred to in this MOU as the "Closing Date." Permitted
114 exceptions will be agreed to by the Parties no later than the end of the due diligence period under
115 paragraph 21.c below, subject to updating to account for the time period between the end of the
116 due diligence period and the Closing Date. The purchase price for the Project Site will be paid
117 by the City to ArenaCo in cash on the Closing Date. The purchase price will be the then fair
118 market value of the Project Site, as permitted for construction of a facility for use as a
119 multipurpose sports and entertainment arena, based on an appraisal by a mutually agreed-upon

120 MAI- (Member of the Appraisal Institute) certified independent appraiser as of the date the
121 master use permit is issued.

122 **9. Ground Lease, Lease-Purchase Agreement and Arena Lease.** The City will
123 ground lease the Project Site to ArenaCo for a period of at least 30 years (the “Ground Lease”),
124 commencing on the Closing Date. The Ground Lease will require ArenaCo to pay ground rent in
125 the amount of \$1 million annually, which annual rent will be paid by ArenaCo in equal semi-
126 annual installments, and will be pro-rated for any partial year on a monthly basis. This annual
127 Ground Lease rent obligation will terminate on the Commencement Date as defined below. Also
128 on the Closing Date, the City and County will enter into an agreement (“Lease-Purchase
129 Agreement”) pursuant to which ArenaCo will construct the Arena building structure (“Arena
130 Facility”) in accordance with the Design Standards as defined in paragraph 15, for lease (with an
131 option to purchase as described in this MOU) to the City and County. The term of the Lease-
132 Purchase Agreement will be co-extensive with the original term of the Ground Lease and the
133 payments to be made by the City and County under the Lease-Purchase Agreement will not
134 exceed the prevailing rates for comparable space.

135 When the Arena Facility is ready for occupancy (“Commencement Date”), the City and
136 County will commence paying rent, initially for a nominal amount, under the Lease-Purchase
137 Agreement. The City and County will have the right to prepay or cause a trustee to prepay all or
138 a portion of the principal component of all remaining lease payments required under the Lease-
139 Purchase Agreement and will also have the right to exercise the option to purchase the Arena
140 Facility at a price equal to the principal component of all remaining lease payments required
141 under the Lease-Purchase Agreement, as those lease payments may be adjusted consistent with
142 paragraph 10 below. The date that title to the Arena Facility transfers to the City and County is
143 referred to as the “Transfer Date.” The Transfer Date will occur on the day following the date
144 when the Arena Facility is added to the property tax rolls or such later date, not to exceed 180
145 days thereafter, that ArenaCo may request. ArenaCo will lease the Arena Facility from the City
146 and County or sublease from the City and County or trustee, as the case may be (“Arena Lease”),
147 on the Commencement Date.

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

157 **10. City-County Public Financing.** The total amount to be paid to ArenaCo by the
158 City and County for acquisition of the Project Site and the lease-purchase of the Arena Facility
159 will be \$200 million; provided, however that the actual amount to be paid to ArenaCo will be
160 subject to reduction as provided below. The structure of the Public Financing (as hereinafter

161 defined) will be determined through a collaborative process among the City, the County and
162 ArenaCo, recognizing that the Public Financing will be consistent with the City's and County's
163 debt management policies, including policies related to debt capacity and risk profile. The
164 Public Financing will include two installments of approximately thirty (30) year bonds or
165 certificates of participation that have an effective cost of capital similar to general obligation
166 bonds with debt service payments escalating at a rate of 1% per annum for the first ten (10) years
167 of each installment (the "Public Financing"), and each installment will include consideration of:
168 (i) financing obligations at market rates, including only usual and customary financing charges;
169 (ii) utilizing tax-exempt debt; and (iii) utilizing various structuring techniques, including, but not
170 limited to, non-callable bonds, premium bonds and discount bonds, as deemed appropriate by the
171 City and County. The City and the County, in their discretion, may later refinance such
172 obligations to improve borrowing terms. Further, at ArenaCo's request, the City and County will
173 consider refinancing such obligations if market conditions allow for improved borrowing terms,
174 provided that ArenaCo reimburses the City and County for the reasonable and necessary costs of
175 such refinancing. Any refinancing of the Public Financing will endeavor to lower debt service
176 costs each year as opposed to redeeming bonds only in late maturity years.

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

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

187 (ii) Second Installment: On the Transfer Date (a) if all of the
188 conditions related to an NHL Team set forth in (b) of this subparagraph (ii) have not been
189 satisfied by the Transfer Date, an additional amount supported by the Base Rent and a stabilized
190 level of Arena Tax Revenues that will be based on projections of future tax revenue that take into
191 account long term variables such as team performance and economic conditions in a manner that
192 will be provided in the Umbrella Agreement and Transaction Documents, up to \$120 million
193 (paid to ArenaCo as provided in paragraph 9) less the amount paid to ArenaCo in the First
194 Installment, or (b) if by the Transfer Date an NHL Team license agreement committing the NHL
195 Team to play its home games in the Arena has been executed, together with a non-relocation
196 agreement as described in paragraph 17 and any other necessary agreements with the City and
197 the County related to the NHL Team, and the NHL has acknowledged the Arena Lease and the
198 non-relocation agreement and has approved locating the NHL Team in Seattle, an amount equal
199 to \$200 million, paid to ArenaCo as provided in paragraph 9, less the amount paid to ArenaCo in
200 the First Installment.

201 **11. Ownership of Arena Facility and Improvements.** ArenaCo will install all
202 tenant improvements and furnishings, including without limitation the seating, suite furnishings,
203 offices, locker rooms, press areas, basketball floor, ice-making systems and equipment, dasher

204 board systems, sound systems, scoreboards, ribbons, concession equipment, training equipment,
205 and other items (“Arena Tenant Improvements”). For federal income tax purposes, ArenaCo will
206 own all or a portion of those Arena Tenant Improvements, to be set forth in the Transaction
207 Documents or in a schedule included in the Lease-Purchase Agreement or Arena Lease, as
208 applicable, which schedule may be amended from time to time by the mutual written agreement
209 of the Parties. The initial Arena Tenant Improvements will be commensurate with the
210 construction of a first-class arena as set forth in the Design Standards and Operating Standards.
211 The Arena Tenant Improvements (but not any NBA Team- or NHL Team-owned equipment or
212 fixtures) will become the property of the City and County upon the termination of the Arena
213 Lease without any further obligation on the part of the City or County. Upon termination of the
214 Arena Lease, ArenaCo will be obligated to surrender the Arena Facility and Arena Tenant
215 Improvements to the City and County in a condition consistent with the program of capital
216 repairs, replacements and improvements required pursuant to paragraph 13 and in a state of
217 repair comparable to facilities of a similar age and suitable for continued uninterrupted use by
218 NBA and NHL teams and as a major entertainment facility.

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

220 **a. Term.** The initial term of the Arena Lease will be at least thirty
221 (30) years, but in no event shall the initial term be less than the maturity of any
222 Public Financing obligations. The Arena Lease will provide for four options of
223 five (5) years each for ArenaCo to extend the term of the Arena Lease. Subject to
224 applicable law, the annual rental rate will be \$4 million during the first extension
225 term. Beginning with the second extension term, rent will increase by the change
226 in the United States Department of Labor, Bureau of Labor Statistics Consumer
227 Price Index for all Urban Consumers (Seattle-Tacoma-Bremerton Local Area)
228 between the first and last years of the preceding extension period, if any. During
229 each of the extension terms that are exercised by ArenaCo, the City and County
230 will deposit 100% of all annual rent payments under the Arena Lease into the City-
231 County Capital Account defined in paragraph 12.h(iv). If ArenaCo exercises the
232 option to extend the term of the Arena Lease, the obligations of the NBA Team
233 and (if applicable) the NHL Team to play at the Arena will be similarly extended.

234 **b. ArenaCo Revenues.** For the initial term of the Arena Lease,
235 ArenaCo will be entitled to all cash and in-kind revenues associated with the
236 operation, use and enjoyment of the Arena (other than for any City-County Events,
237 as hereinafter defined) (the “Arena Revenues”), subject to the payments and
238 reserves required as described in this paragraph 12, and not including any taxes,
239 fees or charges ArenaCo may be obligated to collect and submit to a taxing or
240 other government authority on behalf of others. Subject to the foregoing, Arena
241 Revenues means all revenues, determined on a cash basis, of whatever kind or
242 nature received or obtained by ArenaCo or a third-party, within the scope of
243 ArenaCo’s authority or responsibility under the Umbrella Agreement or the

244 Transaction Documents for the management, operation or maintenance of the
245 Arena, in all cases subject to all revenues reserved to the NBA Team or the NHL
246 Team pursuant to applicable license agreements as required by the NBA and NHL.
247 Arena Revenues include, but are not limited to, box office fees (excluding ticket
248 revenue for the NBA Team and NHL Team), facility fees, parking revenues,
249 revenues from consumable and non-consumable concessions, all other licensing
250 and rent revenues, forfeited security deposits, ticket commission and convenience
251 fees, and other fees actually received by ArenaCo, for or from the following: (1)
252 the use or operation of, or admission to, the Arena or any portion thereof, (2) all
253 rents, royalties, and concession payments from tenants, concessionaires and
254 licensees, (3) interest on or proceeds of investment of any accounts (except the
255 Reserve Account and Capital Account, as described in paragraphs 12.e(ii) and 13.a
256 respectively), (4) rental or use of Arena equipment, (5) services rendered at or
257 related to the Arena, (6) the amounts received from seat use charges and parking
258 use fees, (7) the amounts generated from the use and operation of any Arena
259 internet website and other similar media, (8) the right to sell, or the sale of
260 permanent and ArenaCo temporary signage (but not temporary signage that is
261 reserved or provided to the NBA Team and the NHL Team under their respective
262 license agreements) and Arena sponsorships (including, without limitation, naming
263 rights and founding partner sponsorships), (9) the non-ticket amounts generated
264 from the sale or license of luxury suites and premium seating, and (10) club
265 membership fees, but expressly excluding (notwithstanding the provisions above),
266 in all events, sums received or collected by ArenaCo for and on behalf of and
267 actually paid to a user of the Arena.

268 c. **Rent Payments.** Each year during the term of the Arena Lease,
269 ArenaCo will pay annual rent to the City and County in the amount of \$2 million
270 (“Base Rent”) at least thirty (30) days prior to the date of the City’s first designated
271 semi-annual debt service payment for the Public Financing. In addition, at least
272 thirty (30) days prior to the date of the City’s second designated semi-annual debt-
273 service payment for the Public Financing during each year of the Arena Lease,
274 ArenaCo will pay the City and County the amount (the "Additional Rent") that is
275 sufficient, when combined with Base Rent and Arena Tax Revenues (described
276 below) received by the City and County for use in that year, to equal the total
277 annual debt service obligations of the City and the County for the Public
278 Financing. “Annual Reimbursement Amount” means the total annual debt-service
279 obligations of the City and County for the Public Financing. A schedule of the
280 estimated Annual Reimbursement Amount will be prepared as an attachment to the
281 Transaction Documents and will be updated and delivered to ArenaCo on the
282 Closing Date and further updated on the Transfer Date.

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

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

302 **(i) Coverage Ratio.** ArenaCo will be required to certify
303 annually whether the Net Arena Revenues for the preceding fiscal year at fiscal year end
304 are equal to at least two times (2.0x) the Annual Reimbursement Amount for the
305 following year in which debt service is paid (the “Coverage Ratio”). ArenaCo’s annual
306 certification must be accompanied by certification from an independent certified public
307 accountant as to the accuracy of the financial information underlying the Coverage Ratio
308 or alternative evidence from ArenaCo reasonably acceptable to the City and County as to
309 the reliability of ArenaCo’s certification. “Net Arena Revenues” means the Arena
310 Revenues less Arena Operating Expenses. ArenaCo will, on a date set forth in the
311 Transaction Documents, provide the City and County with an annual accounting and any
312 reasonably requested documentation to confirm the Coverage Ratio. If Net Arena
313 Revenues are insufficient and fail to meet the Coverage Ratio, ArenaCo promptly (and in
314 no event later than 30 days after the annual accounting is provided to the City and
315 County) will increase the Reserve Account by an amount such that the balance of the
316 Reserve Account plus Net Arena Revenues equal three times (3.0x) the Annual
317 Reimbursement Amount for the following year. To the extent the amount held in the
318 Reserve Account ever exceeds the Annual Reimbursement Amount for the following
319 year, any amount over the Coverage Ratio in future years will be used to reduce the
320 Reserve Account requirement back to the applicable ratio, provided that in no event will
321 the amount held in the Reserve Account be less than the Annual Reimbursement Amount
322 for the following year.

323 (ii) **Reserve Account.** As collateral, ArenaCo will fund an
324 account at a financial institution reasonably acceptable to the City and County (the
325 “Reserve Account”). The Reserve Account shall be held in trust for the benefit of the
326 City and County as provided in this MOU, the Umbrella Agreement and the applicable
327 Transaction Documents, and will be governed/managed in accordance with an “account
328 control agreement” to be included among the Transaction Documents, the terms of which
329 control agreement – including a grant to the City and County of a first position security
330 interest in assets of the Reserve Account -- will be consistent with this MOU and
331 mutually agreed upon in good faith by ArenaCo, and the City and County. The initial
332 deposit into the Reserve Account will be due on the Closing Date and will equal the
333 Annual Reimbursement Amount for the following year for the City and County.
334 Thereafter, ArenaCo will make annual deposits into the Reserve Account by June 1 of
335 each year during the term of the Arena Lease that will cause the balance to equal the then
336 next year’s actual Annual Reimbursement Amount. All money held in the Reserve
337 Account shall only be invested pursuant to the terms of the account control agreement
338 and such money shall only be invested in investments reasonably acceptable to the City
339 and County. To the extent that the Annual Reimbursement Amount declines due to a
340 restructuring, principal pay-down, or other reduction of the debt service for the Public
341 Financing, then the amount to be held in the Reserve Account will be similarly reduced
342 (provided that the Coverage Ratio is still maintained).

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

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

350 (i) **Payment Default; First Priority Payment and Lien.** If
351 ArenaCo fails to pay all or any portion of the Base Rent or Additional Rent when due or
352 to make any required deposit into the Reserve Account or the Capital Account when
353 required, then the City and County may draw on the Reserve Account. The City’s and
354 County’s right to receive required payments of Base Rent and Additional Rent and
355 ArenaCo’s obligation to fund the Reserve Account and the Capital Account will have a
356 first-priority payment position on all revenue and receivables of ArenaCo. As the
357 payment obligations of ArenaCo to the City and County hereunder constitute operating
358 expenses, (e.g., including but not limited to rent) such payment obligations will be senior
359 to all debt service payments on any Arena-related financing and intercompany debt. The
360 City’s and County’s right to receive the required payments of Base Rent and Additional
361 Rent as well as the amounts in the Reserve Account and the Capital Account will be
362 secured by a lien on revenues and receivables of ArenaCo with such lien and its priority

363 to be agreed upon by lenders to ArenaCo, the City and County and to be separately
364 agreed to by the Parties in the Umbrella Agreement and Transaction Documents and
365 further secured as provided in subsection 12.f(ii) below. In the event of a "Payment
366 Default", which for the purposes of this MOU will be defined as ArenaCo's failure to
367 replenish the Reserve Account to the required amount within thirty (30) days of receipt of
368 notice from the City and County of any draw on the Reserve Account, the City and
369 County may exercise any and all remedies at law or equity or under or pursuant to this
370 MOU, the Umbrella Agreement and the Transaction Documents.

(ii) Parent Guaranty.

371 equity owner of ArenaCo (the "ArenaCo Parent") will also be the direct equity owner of
372 the entity that owns and operates the NBA Team unless there is a sale, transfer or
373 assignment in accordance with paragraph 20.c(ii). In addition to the security provided for
374 in paragraph 12.f(i) above, ArenaCo shall deliver, on the Transfer Date, an unsecured
375 and unconditional guaranty of ArenaCo Parent (the form of which shall be included in the
376 Transaction Documents) guarantying ArenaCo's obligations under the Arena Lease and
377 Further, to satisfy any default in (A) ArenaCo's obligations under the Arena Lease and
378 (B) the NBA Team's obligations under the non-relocation agreement required by
379 paragraph 21.d, the City and County will also be entitled to receive the first distributions
380 of any proceeds from any sale of the NBA Team, subject only to repayment of any
381 obligations of the NBA Team related to any debt of the NBA Team to the NBA or other
382 lenders approved by the NBA that are secured by the NBA franchise and other assets of
383 the NBA Team up to the \$125 million cap on such debt currently allowed under
384 applicable NBA rules ("NBA Team Secured Debt Obligations"). ArenaCo Parent shall
385 covenant not to enter into any agreement that would interfere with City's and County's
386 rights to receive distributions of the proceeds of sale of the NBA Team payable to City
387 and County as and when provided for in this MOU, and the NBA Team shall covenant
388 not to enter into any agreement granting any lien, security interest or other encumbrance
389 on the NBA Team's assets in excess of the NBA Team Secured Obligations. The Parties
390 also agree to explore further ways to secure the obligations of ArenaCo, ArenaCo Parent
391 and the NBA Team subject to NBA requirements, rules, regulations and agreements.
392 Notwithstanding the foregoing, however, if the NBA revises its rules to allow NBA
393 teams to borrow in excess of the current limit of \$125 million that may be secured by the
394 NBA franchise and other assets of NBA teams, then the NBA Team will be entitled to
395 increase the amount of the NBA Team Secured Debt Obligations; provided, however,
396 that the NBA Team will limit the amount of the NBA Team Secured Debt Obligations
397 that will be senior to the right of the City and County to receive distributions of any
398 proceeds from any sale of the NBA Team to the lesser of: (A) the maximum amount of
399 NBA Team Secured Debt Obligations that is then allowed under NBA rules, or (B) 40%
400 of the then "fair market value" ("FMV") of the NBA Team. The FMV of the NBA Team
401 will be as mutually agreed upon in good faith by the Parties at that time; provided,
402 however that if the Parties are unable to agree upon the FMV of the NBA Team at that
403 time, then the FMV of the NBA Team will be determined by a sports industry recognized
404

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

411 **g. [Special Purpose Entity; Insolvency.** ArenaCo and ArenaCo
412 Parent shall be established as bankruptcy remote special purpose entities, with one
413 or more independent managers or directors (as applicable) that would have to
414 approve any bankruptcy filing. If ArenaCo is determined to be bankrupt or
415 insolvent as defined in the Umbrella Agreement or the Transaction Documents; if
416 any receiver, trustee or other similar official of all or any part of the business of
417 ArenaCo is appointed and is not discharged within 60 days after appointment; if
418 ArenaCo makes any general assignment of its property for the benefit of creditors;
419 if ArenaCo files a voluntary petition in bankruptcy or a state court receivership
420 proceeding, or applies for reorganization or arrangement with its creditors, under
421 federal, state or other laws now in force or hereafter enacted; if an involuntary
422 petition of bankruptcy or insolvency is filed against ArenaCo and is not dismissed
423 within 60 days after the filing; and if ArenaCo is in Payment Default then the City
424 and County, at their election and unless prohibited by law may (i) first - draw on
425 the Reserve Account, and (ii) then - foreclose on their security interests in the
426 revenues and receivables from ArenaCo or the Arena, and/or (iii) replace ArenaCo
427 as operator of the Arena, and/or (iv) terminate the Umbrella Agreement and the
428 Arena Lease. These remedies are not exclusive and will be in addition to all other
429 remedies available to the City and County.

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

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

436 **(ii) Arena Tax Revenues.** Arena Tax Revenues will be
437 deposited in the Arena Revenue Account. The City and the County will provide
438 ArenaCo with a monthly accounting detailing Arena Tax Revenues collected and
439 distributed.

440 **(iii) Arena Revenue Account.** The City will create an "Arena
441 Fund" (and accounts and subaccounts associated therewith) (collectively, "Arena

442 Revenue Account”) into which the City and County will deposit any Arena Tax
443 Revenues plus Base Rent and Additional Rent payments received by the City and
444 County.

445 (iv) **City-County Capital Account.** On an annual basis, after
446 payment of the Annual Reimbursement Amount has been made and only to the extent of
447 any excess Arena Tax Revenue, the City and County, at their option, but in consultation
448 with ArenaCo, and in the manner established in the Transaction Documents, will either
449 (a) use all or a part of the excess to redeem or defease other outstanding principal of the
450 Public Financing or, (b) deposit all or any remaining part of such excess not used as
451 provided in Section 12.h.(iv) (a) above into a separate account to be used for the below-
452 described capital improvements (“City-County Capital Account”). The City-County
453 Capital Account shall at all times be the property of the City and County. If, at any time
454 during the first ten (10) years of the Arena Lease, the City-County Capital Account has a
455 balance of \$10 million, no additional deposits will be made into the City-County Capital
456 Account. After the tenth (10th) year of the Arena Lease, the allowed balance of the City-
457 County Capital Account will increase by \$2 million annually, until the fifteenth (15th)
458 year, and thereafter the maximum balance of the City-County Capital Account will be
459 \$20 million. Any excess Arena Tax Revenues not deposited to the City-County Capital
460 Account as provided in this MOU shall be used only to redeem outstanding principal of
461 the Public Financing, in consultation with ArenaCo and for no other purpose until such
462 time as all outstanding principal of the Public Financing has been fully retired or
463 defeased. The deposits described in this paragraph will not in any way limit ArenaCo’s
464 obligation to make its annual payment into the Capital Account and to make all capital
465 repairs, replacements and improvements to the Arena as provided in this MOU.

466 (v) **Termination.** Following the defeasance or redemption of all
467 bonds or certificates of participation issued as part of the Public Financing, the City and
468 County will notify ArenaCo that it may withdraw all amounts remaining in the Reserve
469 Account not otherwise required to satisfy ArenaCo’s obligations under the Arena Lease.
470 From and after the date the Arena Lease is terminated, the City and County may
471 withdraw all amounts remaining in the City-County Capital Account.

472 **13. Capital Improvements.**

473 a. **Capital Account.** ArenaCo will be required to make (i) a
474 single cash deposit or (ii) two equal semi-annual cash deposits (at ArenaCo's
475 option) into an account (“Capital Account”) in an amount equal to \$2 million
476 annually (“Capital Account Requirement”). Funds in the Capital Account shall be
477 used to make capital repairs, replacements or improvements to the Arena in
478 accordance with this paragraph 13. The initial Capital Account deposit will be
479 made on the first anniversary of the Commencement Date and payments will be

480 made semi-annually thereafter on the dates that Base Rent and Additional Rent are
481 due.

482 **b. Capital Improvements.** ArenaCo will, at its sole cost and
483 expense, make all capital repairs, replacements and improvements relating to the
484 Arena or its use. Capital repairs, replacements and improvements means the
485 purchase, installation, repair or replacement of items with a life expectancy of at
486 least three years, at a cost of five thousand dollars (\$5,000.00) per item or system,
487 including labor costs, and that are necessary or appropriate to maintain the Arena
488 throughout the term of the Arena Lease in good repair in accordance with the
489 Schematic Design Package, Design Standards and Operating Standards (as defined
490 below) or which may be required by applicable law, including but not limited to,
491 all capital improvements necessary to maintain the structural integrity of the Arena
492 ("Capital Expenditures").

493 **c. Procedure for Making and Approving Capital**
494 **Improvements and Maintenance Inspections.** ArenaCo will, on an annual basis,
495 prepare a proposed five-year capital budget ("Five-Year CIP") for anticipated
496 Capital Expenditures to be funded by the Capital Account and the City-County
497 Capital Account; provided, however, that nothing herein shall relieve ArenaCo of
498 its obligations set forth in paragraph 13.b above, regardless of whether a Capital
499 Expenditure is contemplated by the Five-Year CIP. Within sixty (60) days of the
500 submission, the City and County will either accept the Five-Year CIP or provide
501 comments. The Parties will undertake best efforts to come to a mutually
502 acceptable agreement on the Five-Year CIP within sixty (60) days thereafter, and if
503 the Parties are unable to reach an agreement within said 60-day period, then the
504 issue will be submitted to the dispute resolution provisions of this MOU. In
505 addition, the Parties will develop a procedure for periodic joint inspections and a
506 schedule of major maintenance activities which shall be prepared or reviewed by
507 professionals knowledgeable about life-cycle cost analysis for comparable public
508 facilities. This procedure will include (i) the right of the City-County
509 Representative to receive material non-privileged information regarding major
510 capital improvements during the progress of any major capital improvement
511 projects, and (ii) the right of the City and County to enter upon the Arena for the
512 purposes of performing inspections of the Arena and Tenant Improvements. An
513 ArenaCo representative will, at the request of the City and County, accompany the
514 City and County Representative on the inspections. Within 30 days after such
515 inspection, the City and County may provide ArenaCo with a list of any capital
516 repairs, replacements, improvements or maintenance that the City-County
517 Representative reasonably determines are necessary to maintain the Arena and

518 Tenant Improvements in accordance with the Operating Standards. If ArenaCo
519 disputes the City-County Representative's determination, the ArenaCo
520 representative and the City-County Representative will promptly meet to attempt
521 to resolve the dispute. If they fail to resolve the dispute, the parties will attempt to
522 mediate the dispute. If the parties fail to resolve the dispute through mediation, the
523 Parties will submit their dispute the dispute resolution provisions of this MOU.

524 **d. Capital Account Availability.** Upon Payment Default, the
525 Capital Account will be available as additional security to the City and County to
526 meet their payment obligations under the Public Financing. ArenaCo may draw on
527 the Capital Account to make any Capital Expenditures consistent with the Five-
528 Year CIP and to fund any other obligations of ArenaCo to make any other capital
529 repairs, replacements and improvements relating to the Arena provided for in this
530 MOU. Subject to the rights of ArenaCo under the Arena Lease, all such capital
531 repairs, replacements and improvements will become the property of the City and
532 County upon completion unless such repairs, replacements or improvements are
533 Tenant Improvements and owned by ArenaCo or the NBA Team or the NHL
534 Team.

535 **e. City-County Capital Account Availability.** Provided there is
536 no Payment Default, and subject to any other mutually agreed-upon expenditures
537 to be paid from funds in the City-County Capital Account that are covered in any
538 Five-Year CIP, the funds in the City-County Capital Account shall be utilized only
539 for major repairs to components of the base systems of the Arena and other major
540 improvements (e.g., major repairs to the (i) roof, (ii) HVAC system, (iii) primary
541 sound system, (iv) primary lighting system, (v) ice sheet refrigeration system, (vi)
542 primary scoreboards, (vii) plumbing improvements and replacements, and (viii)
543 primary electrical systems). Any City and County-owned repairs, replacements or
544 improvements are subject to the rights of ArenaCo under the Arena Lease.
545 Notwithstanding the foregoing and in the event of a Payment Default, the City and
546 County may, at their discretion, use any money in the City-County Capital
547 Account for the payment, redemption or defeasance of the Public Financing.

548 **14. Management, Operations and Use.**

549 **a. Operating Expenses.** ArenaCo will control and will be solely
550 responsible for all day-to-day operations, expenses, and costs for routine
551 maintenance of and repairs to the Arena ("Arena Operating Expenses") to maintain
552 it to a standard comparable to three mutually agreed upon professional basketball
553 and ice hockey arenas suitable for NBA and NHL teams and recently constructed,
554 serving as the home facility for NHL and NBA Teams or under construction

555 (“Operating Standards”). The City and County will have no responsibility for any
556 Arena Operating Expenses (except for incremental out-of-pocket expenses
557 associated with City-County Events).

558 **(i) Arena Operating Expenses.** Arena Operating Expenses
559 means all expenses or obligations, as determined on a cash basis, of whatever kind or
560 nature made or incurred by ArenaCo or any third-party management company that may
561 be engaged by ArenaCo, within the scope of ArenaCo’s authority or responsibility under
562 this MOU or the Transaction Documents for the management, operation or maintenance
563 of the Arena, including, but not limited to, all reasonable costs of the City and County
564 related to the City-County Representative and ArenaCo’s expenses (to the extent not
565 duplicative of other expenses enumerated herein); all payments to be made by ArenaCo
566 or its affiliates under the terms of this MOU, the Umbrella Agreement or the Transaction
567 Documents, including but not limited to: rent payments; Impositions (as defined below);
568 expenses related to parking areas (if applicable); box office expenses for third-party
569 events; all expenses incurred to obtain Arena Revenues (pro-rated where appropriate to
570 reflect an appropriate allocation of revenues between ArenaCo and either the NBA Team
571 or NHL Team); salaries, wages and benefits of personnel working at the Arena including
572 personnel employed by ArenaCo or through its affiliates or service contractors; human
573 resource support services and training and development expenses; contract labor
574 expenses; maintenance and repairs; utilities; deposits for utilities; telephone expenses;
575 management fees paid to any third-party management company; expenses incurred under
576 use or license agreements with licensees or other users of the Arena; telescreen, video
577 and/or scoreboard operation expenses, dues, memberships and subscriptions; security
578 expenses; police, fire, emergency services and other public safety expenses related to the
579 Arena (the estimate and pro ration of which in the event of multiple venue events shall be
580 set forth in the Transaction Documents or as otherwise mutually agreed upon by the
581 Parties); other event-handling activities at the Arena; all expenses payable by ArenaCo
582 under any license agreements with the NBA and NHL teams; audit fees; legal fees; other
583 professional fees; fees payable to concessionaires or other subcontractors; refuse removal
584 expenses; cleaning expenses; taxes (but excluding any taxes, fees or charges ArenaCo
585 may be obligated to collect and submit to a taxing or other government authority on
586 behalf of others); building maintenance supplies; ticket commissions for third-party
587 events; insurance premiums; data processing expenses; advertising expenses relating to
588 Arena advertising and sponsorships; maintenance of advertising and signage relating to
589 all permanent advertising, sponsorships and naming rights; marketing; public relations
590 expenses; expenses and losses (to the extent not duplicative of other expenses enumerated
591 herein) incurred in the production and promotion of events at the Arena; pest control;
592 office supplies; employment fees; freight and delivery expenses; expenses for leasing of
593 equipment; credit and debit facilities and telecheck fees and expenses; Arena-related
594 travel, lodging and related out-of-pocket expenses for officers and directors of ArenaCo
595 or an affiliate; and all damages, losses or expenses incurred by the ArenaCo, its affiliates
596 or any third-party management company as the result of any and all claims, demands,

597 suits, causes of action, proceedings, judgments and liabilities, including reasonable
598 attorneys' fees incurred in litigation or otherwise, assessed, incurred or sustained by or
599 against any of them (to the extent not covered by insurance proceeds actually received).
600 Operating Expenses do not include any payments to third party lenders.

601 (ii) **Impositions.** As used herein, the term "Impositions" means
602 (without duplication of any expense set forth above) all governmental assessments,
603 franchise fees, excises, license and permit fees, levies, charges and taxes, general and
604 special, ordinary and extraordinary, of every kind and nature whatsoever which at any
605 time may be assessed, levied, confirmed, imposed upon, or grow or become due and
606 payable out of or in respect of, or become a lien on: (a) all or any part of the Arena; (b)
607 any payments received by ArenaCo or its affiliates from any holders of a leasehold
608 interest or license in or to the Arena, from ticketholders (including, without limitation,
609 suite licensees and premium seat ticketholders) attending events at the Arena; or (c) the
610 transactions contemplated hereby or any agreement or document to which ArenaCo or its
611 affiliates are a party which creates or transfers rights with respect to all or part of the
612 Arena.

613 b. **Operations.** ArenaCo will operate and manage the Arena in
614 accordance with the Operating Standards, as they may change from time to time by
615 the mutual agreement of the Parties. ArenaCo will not enter into any multi-year
616 contracts or grant any rights with respect to the operation of the Arena that would
617 extend beyond ArenaCo's occupancy under the Arena Lease unless such
618 agreements contain provisions reasonably acceptable to the City and County
619 regarding assignment or termination to be set forth in the Transaction Documents.
620 ArenaCo will provide the City and County with a copy of any such contract.
621 Failure of ArenaCo to operate and manage the Arena in accordance with the
622 Operating Standards or to pay Arena Operating Expenses shall be a default under
623 the Arena Lease and, in addition to other remedies, and subject to reasonable
624 notice and cure provisions mutually agreed upon by the parties, shall entitle the
625 City and County to replace ArenaCo as the operator and manager of the Arena;
626 provided, however, that in the event that ArenaCo disagrees with the City and
627 County that such a default under the Arena Lease has occurred, then such dispute
628 will be submitted and resolved by the parties in accordance with the dispute
629 resolution provisions specified in this MOU. Inspections relating to maintenance
630 of the Arena are permitted as provided in Section 13.c.

631 c. **City-County Events.** The City and County will be permitted
632 to use the Arena or portions thereof to host no fewer than 12 events per year that
633 do not conflict with previously scheduled events or hold dates ("City-County
634 Events"). The City and County will have the right to schedule City-County Events
635 in advance based on Arena availability. For City-County Events, the City and/or

636 County will (i) pay no rent or use or license fees, and (ii) be required to pay only
637 the incremental operating costs incurred by ArenaCo with respect to such City-
638 County Events and any applicable taxes. Incremental costs shall not include the
639 costs of foregoing alternative events or attributed overhead operational costs.

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

643 **e. Team License and Related Agreements.** ArenaCo shall enter
644 into license agreements, or other similar agreements, regarding the use of the
645 Arena with the NBA Team and the NHL Team (the “Team License Agreements.”).
646 The Team License Agreements shall be subject to the approval of the City and
647 County as being consistent with the terms of this MOU and the Transaction
648 Documents, and shall recognize the City and the County as third-party
649 beneficiaries. In connection with such approval right, each Team License
650 Agreement shall provide (i) that the team shall play its preseason, regular season
651 and playoff home games at the Arena in accordance with paragraph 17; (ii) that the
652 team shall acknowledge and accept, in a separate agreement in the form that will
653 be one of the Transaction Documents, that the Team agrees to the non-relocation
654 provisions in accordance with paragraph 17; (iii) that there is scheduling priority
655 for the team (but if there is both an NBA Team and an NHL Team then playing in
656 the Arena, subject to reasonable accommodation for any scheduling priority
657 granted to either such team); (iv) for a term of at least 30 years; (v) for payment of
658 rent; (vi) for allocation of the payment of game day expenses; (vii) for allocation of
659 other expenses including maintenance; (viii) for an acknowledgment that ArenaCo
660 shall retain all revenues related to naming rights, Arena founding partner
661 sponsorships and other primary sponsorships related to the Arena; (ix) that
662 ArenaCo shall retain all revenues related to suite sales; (x) that ArenaCo shall
663 retain all revenues not retained by or payable to the teams or leagues for other
664 premium and club seats; (xi) for allocation of revenues from parking, concessions,
665 merchandise, and ticket surcharges (if any); (xii) for marketing of the Arena and the
666 teams; (xiii) for insurance; and (xiv) for indemnification, including indemnification
667 of the City and the County.

668 **15. Arena Design, Development and Construction.** ArenaCo will develop, design
669 and construct the Arena as a first-class arena as set forth in the agreed-upon Schematic Design
670 Package and related Design Standards (all as defined below). The City and County will have
671 reasonable ongoing input through a designated representative (the “City-County
672 Representative”) in addition to whatever regulatory design procedures and requirements apply.
673 Within ten (10) business days after execution of the Umbrella Agreement, ArenaCo shall designate

674 an individual who shall serve as the ArenaCo representative for the purposes of communicating
675 with the City-County Representative and decision-making regarding any and all matters related to
676 the construction of the Arena and its operation (“ArenaCo Representative”). The ArenaCo
677 Representative shall have the authority to legally commit ArenaCo regarding any matter relating to
678 Arena construction. ArenaCo will use all reasonable efforts to involve and keep the City-County
679 Representative fully informed on a timely basis of all significant aspects and decisions for design
680 and construction of the Arena. In order to enable the City-County Representative to attend, become
681 informed about the status of the Project, participate in discussions and present the City’s and the
682 County’s position with respect to matters being discussed, the ArenaCo Representative will
683 schedule regular meetings of senior design and construction staff of ArenaCo and other design and
684 construction principals to discuss major issues related to the development and construction of the
685 Project. The City-County Representative will also be notified of weekly design meetings. The City-
686 County Representative will be notified of the time and place of such meetings and of any special
687 meetings held by senior ArenaCo development staff to address similar development issues. The
688 ArenaCo Representative will also participate in such separate meetings with the City-County
689 Representative as the City-County Representative may reasonably request with at least three (3)
690 days’ prior notice. The ArenaCo Representative will also timely provide the City-County
691 Representative with copies of significant construction-related documents including schedule
692 updates, meeting minutes, requests for information (RFIs), responses to the RFIs, change order
693 proposals and design changes. The City-County Representative will be entitled to full disclosure
694 of all material matters relating to the Project as more fully described in paragraph 15.m below
695 and will have the rights to specific prior review and approval as set forth in this paragraph 15.m
696 including, without limitation, reasonable approval on the acceptability of the exterior design
697 program. ArenaCo will fully and fairly review and make good faith efforts to address
698 satisfactorily the City-County Representative’s reasonable concerns prior to making a final
699 decision in any matters concerning the Arena exterior design, so long as such input is timely
700 received. However, the City-County Representative’s review and recommendations, or other
701 actions performed by the City-County Representative as described herein, will not in any manner
702 cause the City or the County to bear any responsibility for the design or construction of the
703 Arena or any defects related thereto.

704 **a. Cost Allocation.** As between ArenaCo, on the one hand, and
705 the City and County, on the other hand, ArenaCo (i) will be solely responsible for
706 the cost of design, permitting and construction of the Arena, including any cost
707 overruns and any remediation of any hazardous materials on the Project Site (to the
708 extent any such hazardous materials are required to be remediated by a state or
709 federal agency with jurisdiction in connection with the construction of the Arena
710 on the Project Site), and (ii) will be solely responsible for any defects related
711 thereto. Nothing herein shall create any obligations on the part of ArenaCo to any
712 third parties. On the Closing Date, ArenaCo will furnish a payment and
713 performance bond issued by a surety reasonably satisfactory to the City and the
714 County naming the City and County as dual obligees in compliance with Chapter
715 35.42 RCW. As required by RCW 35.42.060, no part of the cost of the

716 construction of the Arena Facility shall ever become an obligation of the City and
717 the County under the Lease-Purchase Agreement.

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

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

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

725 (iii) be in compliance with the then applicable NBA and NHL
726 requirement standards for arenas and be substantially similar in the quality of the design,
727 construction and capabilities to three (3) mutually agreed upon NBA/NHL arenas; and

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

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

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

739 **e. Design Process.** ArenaCo, with ongoing input from the City-
740 County Representative, will work with the architect to develop a "Schematic
741 Design Package." The Schematic Design Package will conform to the Design
742 Standards and will, at a minimum, consist of a master plan, drawings, plans and
743 specifications and a development program in sufficient detail to describe all
744 material design elements of the Arena. The Parties will continue this collaborative
745 process through the preparation of design development plans and outline
746 specifications.

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

750 **g. Construction; Pedestrian Access.** ArenaCo will cause the
751 Arena to be constructed in all material respects in accordance with the Design
752 Standards and Schematic Design Package. In addition to any other infrastructure
753 improvements required by permits for the Arena or resulting from the SEPA
754 process, ArenaCo will participate in causing infrastructure associated with the
755 Arena to be built that will provide safe and convenient pedestrian access from the
756 Arena to the International District and Stadium light rail stations in a manner
757 reasonably acceptable to the City and County.

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

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

783 **j. Other Provisions.** The Project should promote and include the
784 racial and ethnic communities of the City of Seattle and King County. Part of this
785 Project's economic and community contribution is to engage local minority
786 workers and businesses who are historically disenfranchised, as well as low-

787 income workers and businesses. All Parties agree upon the importance of effective
788 strategies and programs to include local minority and woman workers and firms in
789 Project design and construction, with an ongoing commitment by ArenaCo to use
790 reasonable efforts to use such local workers in the operations and maintenance
791 aspects of the Arena. To that end, ArenaCo commits to using the City of Seattle’s
792 Inclusion Plan as guidance for use of Women and Minority Business Enterprises
793 (WMBEs) on the Project. This includes using specific strategies such as the use of
794 the “Worksheet of Possibilities” that helps bidders analyze what work or supply
795 could be subcontracted to WMBE firms, the use of the “Contract Commitment
796 Log” that documents (i) WMBE firms the prime contractor commits to subcontract
797 with and (ii) contract amounts awarded to WMBE firms.

798 **k. Insurance and Indemnification.** All contracts for the design
799 and construction of the Arena will include typical provisions for insurance
800 covering, among other things, errors and omissions, general liability, workers’
801 compensation, business interruption, and builder’s risk. Upon completion of
802 construction of the Arena and during the term of the Arena Lease, ArenaCo will
803 continuously maintain general liability insurance, and property insurance for the
804 full replacement value of the Arena, including casualty due to earthquakes and
805 flood, and other insurance the City and County deem reasonable and applicable to
806 the Arena. The City and County will be additional insureds or loss payees on all
807 insurance policies and will approve the forms and limits of liability of all policies.
808 ArenaCo will defend, hold harmless, and indemnify the City and the County for
809 any costs, expenses or losses arising from the design, construction and operation of
810 the Arena.

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

817 **m. Access to Information and Personnel.** In addition to the
818 access provided to the City-County Representative as set forth in this paragraph 15,
819 all material non-privileged written and electronic communications from or to
820 ArenaCo will include the City-County Representative on the distribution list and
821 will promptly be furnished to the City-County Representative. All material non-
822 privileged documents and other information in all media generated by any of the
823 Key Project Personnel in connection with the Project will be made available to the

824 City-County Representative on a timely basis upon the City-County
825 Representative's request.

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

829 **16. KeyArena.** Prior to completion of the Arena, any NBA and NHL franchise
830 owned by ArenaCo or by an affiliate of or major investor in ArenaCo, or that has committed to
831 play its home games in the Arena, will have the option to play their home games in KeyArena.
832 During the tenancy of any such NBA or NHL teams at KeyArena, ArenaCo will cause certain
833 improvements to be made to KeyArena, and those improvements which are of a permanent
834 nature, which may include modernization of the telephone, data and broadcast "backbones" of
835 the arena, as well as refurbishment and minor renovation to the event-level locker rooms and
836 other spaces, will remain behind after the Arena is completed and opens and will become the
837 property of the City. Any City taxes generated during the tenancy at KeyArena of either the
838 NBA team or the NHL team over the base amount of taxes that is currently received from
839 activities at KeyArena will be used to benefit the Arena Project or KeyArena, as mutually
840 agreed. Prior to execution of the Transaction Documents, ArenaCo will also provide to and
841 discuss with the City multiple options for re-purposing of KeyArena once the Arena is completed
842 and opens and a long-term operating plan for KeyArena.

843 **17. Non-Relocation.** ArenaCo will cause the NBA and NHL franchises committed to
844 play home games in the Arena to enter into binding and enforceable non-relocation agreements
845 with the City and County that will include specific performance, liquidated damages and
846 injunctive relief provisions, pursuant to which the teams will irrevocably and unconditionally
847 commit and guarantee to be domiciled in Seattle and to play at least two (2) pre-season and all
848 their home regular season and post-season games at the Arena for a term of at least 30 years
849 (subject to a limited number of league-approved neutral site games and other agreed upon
850 customary exceptions). The non-relocation agreements will contain terms that require the NBA
851 and NHL franchises to maintain their NBA or NHL membership in good standing during the
852 term of the Arena Lease. Under those non-relocation agreements, the NBA and NHL teams will
853 not relocate from the City of Seattle, will not apply to the NBA or the NHL to transfer to another
854 location outside of the City of Seattle, will not enter into or participate in any negotiations or
855 discussions with, or apply for, or seek approval from, third-parties with respect to any agreement,
856 legislation or financing that contemplates or would be reasonably likely to result in any breach of
857 the non-relocation agreement, and will have no right to terminate the non-relocation agreement
858 during the term of the agreement, in each case except as provided in the definitive non-relocation
859 agreement. The non-relocation agreements will expressly provide that specific performance
860 requiring the NBA franchise and the NHL franchise to play pre-season, regular season and post-
861 season games at the Arena is an appropriate remedy for breach.

862 **18. Governing Law.** This MOU is, and the Umbrella Agreement and the Transaction
863 Documents will be, governed by the laws of the State of Washington. Venue for any action
864 under the Transaction Documents, including any bankruptcy proceeding, will be in King County,
865 Washington.

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

871 **20. Additional Provisions.**

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

882 **b. Team Name.** Subject to NBA approval and applicable rules,
883 regulations, requirements and agreements of the NBA, ArenaCo or an affiliate of
884 ArenaCo shall use its best efforts to acquire from the current owner thereof the
885 "Seattle Sonics / Supersonics" name, trademarks, memorabilia (banners, trophies
886 and retired jerseys), and the right to use and refer to the history of the "Seattle
887 Supersonics" (as those rights are more thoroughly described below), and any NBA
888 Team domiciled in Seattle, Washington and operated by ArenaCo or an affiliate of
889 ArenaCo that owns such NBA team will use the name "Seattle Supersonics." The
890 City will use its best efforts to assist ArenaCo or an affiliate of ArenaCo that owns
891 such NBA Team to: (i) acquire the unrestricted rights to use the name trademarks,
892 any logos, symbols, designs, trade dress (including, but not limited to, team colors)
893 or other indicia associated with the Seattle SuperSonics/Supersonics for purposes
894 of identifying such NBA Team, and (ii) obtain the right to use and refer to the
895 Seattle SuperSonics history (e.g., statistics, player histories and records) from prior
896 NBA seasons during which the NBA Team formerly known as the Seattle
897 SuperSonics played their NBA home games in Seattle, and (iii) obtain a transfer of
898 the trophies, banners, and retired jerseys and other related memorabilia from the
899 current owner thereof. When appropriate, ArenaCo or an affiliate will prominently
900 include "Seattle" as part of the team name in public references for marketing,
901 advertising, promotional and other business purposes, subject to the requirements
902 and restrictions of the NBA; provided, however, that it is understood and agreed
903 that the names "SuperSonics" and "Sonics" may be used without the name

904 “Seattle” to market, advertise and promote the team and for other business
905 purposes when deemed appropriate by ArenaCo or an affiliate of ArenaCo that
906 owns the NBA Team.

907 **c. Arena Agreements.** The Umbrella Agreement and the
908 Transaction Documents associated with design, development, construction,
909 operation, and maintenance of the Arena will contain such other provisions,
910 representations, warranties, covenants and indemnities as the Parties may agree or
911 as are customarily included in similar documents related to the lease, design,
912 development, construction, operation, and maintenance of NBA and NHL arenas in
913 the United States or of other major public facilities within the City of Seattle. The
914 Umbrella Agreement and the Transaction Documents will not be assignable
915 without the written consent of all Parties, which consent will not be unreasonably
916 withheld, hindered or delayed; provided, however, that the City and County agree
917 that ArenaCo may assign the Transaction Documents: (i) to an affiliate or
918 subsidiary of ArenaCo that is owned or controlled by ArenaCo or ArenaCo's
919 majority or controlling owners, or (ii) in connection with a sale, transfer or
920 assignment by ArenaCo or such affiliate or subsidiary of a controlling interest in
921 ArenaCo or such an affiliate or subsidiary, or a transfer by ArenaCo or such an
922 affiliate or subsidiary of substantially all of the assets of ArenaCo if (x) the
923 purchaser, transferee or assignee assumes all obligations and liabilities of
924 ArenaCo, or its assignee, under the Transaction Documents, including provision of
925 a guaranty satisfying the requirements of paragraph 12.f.(ii), (y) ArenaCo
926 demonstrates to the reasonable satisfaction of the City and County that such
927 purchaser, transferee or assignee has sufficient financial capability to meet all such
928 obligations and liabilities of ArenaCo and its affiliates under the applicable
929 Transaction Documents, and (z) the purchaser, transferee or assignee together with
930 the individual persons that own, directly or indirectly, such purchaser, transferee or
931 assignee, are of a moral character reasonably acceptable to the City and County.

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

936 **e. Review of ArenaCo Financial Information.** During the term
937 of the Arena Lease, the City and County will have the right to review all relevant
938 financial records of ArenaCo relating to the ability of ArenaCo to carry out any of
939 its financial obligations under this MOU, the Arena Lease and the Transaction
940 Documents, and of ArenaCo Parent relating to the ability of ArenaCo Parent to

941 carry out any of its financial obligations under this MOU, the Arena Lease and the
942 Transaction Documents, but only if a statutory exemption for such financial
943 records is available under chap. 42.56 RCW (the Public Records Act). If such an
944 exemption is not available, ArenaCo and ArenaCo Parent shall provide an
945 alternative and reliable means by which the City and County can assess the ability
946 of ArenaCo and ArenaCo Parent to carry out their financial obligations under the
947 Arena Lease, this MOU and the Transaction Documents.

948 **f. Community Benefit Agreement.** ArenaCo shall enter into a Community Benefit
949 Agreement with appropriate community organizations and the City and County to provide
950 benefits to the communities that will be affected by the Arena. ArenaCo shall communicate with
951 a variety of community organizations, community members and the City and County to identify
952 the appropriate issues to be addressed by the Community Benefit Agreement.

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

956 **a. Financing and Delivery of Initial Deposit to Reserve**
957 **Account.** (i) ArenaCo has arranged for all financing or other funding necessary to
958 fully finance or fund the Project; (ii) the City and County and their respective
959 councils reasonably determine that they are satisfied that ArenaCo and its investors
960 have the resources to meet their financial obligations under this MOU and the
961 applicable Transaction Documents; and (iii) ArenaCo has arranged for delivery of
962 the required initial deposit into the Reserve Account.

963 **b. SEPA and Permitting.** (i) SEPA review associated with any
964 City or County actions as contemplated by paragraph 5 of this MOU has been
965 completed, including consideration of reasonable alternatives; (ii) the master use
966 permit and all other permits required for construction of the Project have been
967 obtained; (iii) the City and County and their respective councils have considered
968 the SEPA review in connection with their respective actions and have determined
969 whether it is appropriate to proceed with or without additional or revised
970 conditions based on the SEPA review; and (iv) any challenges to the Project have
971 been resolved in a manner reasonably acceptable to the Parties.

972 **c. Due Diligence for Site Acquisition.** The City and County
973 shall have determined, in their reasonable discretion, that the condition of title to,
974 and the environmental condition of, the Property is suitable for acquisition and
975 subsequent development for the Arena Facility consistent with this MOU. The
976 City and County shall complete their review and determination no later than
977 October 1, 2012, or such later date as may be mutually agreed upon by the Parties.

978 The City-County Representative may give written notice on or prior to October 1,
979 2012 or such mutually agreed upon later date that the condition of title to or the
980 environmental condition of the Property are not suitable for acquisition and
981 subsequent development for the Arena Facility consistent with this MOU,
982 specifying the reasons therefor, in which case, unless the Parties otherwise
983 mutually agree in good faith upon a reasonably satisfactory method for ArenaCo to
984 resolve the City's and County's objections to the condition of title to and
985 environmental condition of the Property, this MOU shall terminate. If the City and
986 County do not timely provide such written notice, then the due diligence condition
987 of this paragraph 21.c shall be deemed to have been waived. Within ten days of
988 the Effective Date, ArenaCo shall provide the City-County Representative with
989 copies of all documents in the possession of ArenaCo that relate to the condition of
990 the Property, including a preliminary commitment for title insurance and any
991 documents relating to the environmental condition of the Property, but excluding
992 any documents that are privileged or proprietary. Such documents shall be
993 provided without warranty. ArenaCo shall also provide the City-County
994 Representative, and other designated employees and consultants of City and
995 County as may be reasonably requested by the City-County Representative, with
996 access to the Property for purposes of conducting due diligence review provided
997 for in this paragraph 21.c, subject to any required consents from current owners
998 and occupants and subject to the City's and County's agreement to indemnify
999 ArenaCo for any costs or damages arising in connection with or relating to such
1000 entry ("Right of Entry Agreement". Such entry, and such due diligence testing or
1001 investigations to be conducted as provided for in this paragraph 21.c, shall also be
1002 subject to the further terms and conditions of such Right of Entry Agreement. If
1003 any land is acquired or proposed to be acquired and added to the Project Site after
1004 the Effective Date for which ArenaCo has not previously provided the City and
1005 County with the documents and access described above for the purposes of
1006 enabling the City and County to determine that the condition of title to, and the
1007 environmental condition of such additional property is suitable for acquisition and
1008 subsequent development of the Arena Facility consistent with this MOU, then the
1009 City and County will have up to an additional one-hundred fifty (150) days after
1010 receiving written notice of such acquisition or proposed acquisition from ArenaCo
1011 and after receiving such documents and access to complete due diligence review of
1012 such additional land consistent with this paragraph 21.c.

1013 **d. NBA Team, Lease, Non-Relocation Agreement and**
1014 **Community Benefits Agreement.** ArenaCo or a third party under contract with
1015 ArenaCo has secured (i) ownership rights to an NBA franchise and (ii) subject to
1016 NBA approval and applicable rules, regulations, requirements and agreements of

1017 the NBA, the rights to the “Sonics” name, trademarks, memorabilia and right to
1018 use and refer to the history or has used its best efforts to do so, as provided for and
1019 described in paragraph 20.b of this MOU; and that NBA franchise and the Parties
1020 have entered into a non-relocation agreement as described in paragraph 17; and
1021 that the Parties and the appropriate community organizations have entered into the
1022 Community Benefit Agreement described in paragraph 20.f; and that the NBA has
1023 acknowledged the Arena Lease, the NBA has approved locating the NBA Team in
1024 Seattle and the NBA has acknowledged the non-relocation agreement; and that
1025 ArenaCo has entered into a Team License Agreement with the NBA Team as
1026 required by and consistent with paragraph 14.e.

1027 **e. Transaction Documents.** The Umbrella Agreement and the
1028 Transaction Documents have been negotiated and the City and County are
1029 authorized by their councils to execute the documents.

1030 **f. Material Adverse Conditions.** As of the date of this MOU,
1031 the Parties acknowledge that the City and County have sufficient debt capacity and
1032 access to financial markets to meet their obligations under this MOU. However, in
1033 the case of a natural disaster, a significant change in state or federal law, or a
1034 substantive change in financial markets or conditions such that the City and
1035 County are unable to issue debt on reasonable terms consistent with paragraph 10
1036 and the Parties are unable to agree in good faith on viable alternatives, the Public
1037 Financing will not occur and the City and County will not be required to make any
1038 further financial investment or to provide for the payments to ArenaCo under
1039 paragraph 10 or otherwise.

1040 **22. ArenaCo Conditions Precedent.** The obligations of ArenaCo under this MOU
1041 are expressly conditioned on the following conditions precedent:

1042 **a. Permitting.** All permits necessary for construction, use and operation of
1043 the Arena, and all parking and other facilities accessory to the Arena, shall have been issued and
1044 shall be in form and substance satisfactory to ArenaCo in its sole discretion, and the costs and
1045 expenses required to remediate any hazardous materials or conditions in connection with the
1046 design and construction of the Arena Facility that ArenaCo is required to remediate as provided
1047 in paragraph 15.a are reasonably acceptable to ArenaCo.

1048 **b. Financing.** ArenaCo shall have obtained financing in an amount adequate
1049 to construct the Arena and upon rates, terms and conditions satisfactory to ArenaCo in its sole
1050 discretion. In connection therewith the Parties understand that ArenaCo may be required by its
1051 lenders to request an amendment to the terms hereof in order to facilitate such financing. The
1052 City and County shall consider such request, but any amendments hereto shall be (i) in the sole
1053 and absolute discretion of each of the City and the County and (ii) subject to all required
1054 approvals of each of the City and the County.
1055

1056
1057 **23. City and County Cooperation.** The City and County may elect to apportion
1058 between themselves any of the rights or obligations described herein as rights or obligations of
1059 both the City and County, including that the City and the County may elect to apportion all of
1060 their rights and obligations to the City. At the option of the City and County, any right obtained
1061 by one of them in a contract with ArenaCo, under any of the Transaction Documents may be
1062 conferred on the other as a third-party beneficiary. As to any KeyArena issue addressed by the
1063 MOU, the Umbrella Agreement or the Transaction Documents, such agreement is only between
1064 ArenaCo and the City, and the County shall have no rights or obligations with regard to such
1065 agreement.

1066 **24. Counterparts.** This MOU may be executed in one or more counterparts, each of
1067 which will be deemed an original, but all of which, when taken together, will constitute one and
1068 the same instrument.

1069 **25. Dispute Resolution.**

1070 **a.** In the event any dispute, disagreement, claim or controversy arises between
1071 the Parties concerning this Agreement or any of the provisions hereof (each, a "Disputed Matter"),
1072 the City-County Representative and the ArenaCo Representative will meet and attempt to resolve
1073 the Disputed Matter through negotiations, except as provided in Section 15.h. If the representatives
1074 are unable to reach agreement, the Disputed Matter shall be referred jointly to the City's Director of
1075 Finance and ArenaCo's chief executive officer. If such executives do not agree upon a decision,
1076 then the City's Mayor, the County Executive and ArenaCo's owners or managing members shall
1077 meet and attempt to resolve the matter. If such individuals are unable to resolve the Disputed
1078 Matter within ten (10) days, then either the City and County, collectively, or ArenaCo may, upon
1079 written notice, submit the matter to mediation.

1080
1081 **b.** Either party may commence mediation by providing to the other party a
1082 written request for mediation, setting forth the subject of the Disputed Matter and the relief
1083 requested. The parties will cooperate with one another in selecting a mediator and in scheduling
1084 the mediation proceedings. Following compliance with the provisions of paragraph 25.a, the
1085 parties each covenant that they will participate in the mediation in good faith, and that they will
1086 share equally in the costs of such mediation. Either party may seek equitable relief prior to the
1087 mediation to preserve the status quo pending the completion of that process. Except for such an
1088 action to obtain equitable relief, neither party may commence a civil action with respect to any
1089 Disputed Matter submitted to mediation until after the completion of the initial mediation session
1090 provided for in this paragraph 25.b, or 45 days after the date of filing the written request for
1091 mediation, whichever occurs first. Mediation may continue after the commencement of a civil
1092 action, if the parties so desire.

1093
1094 **26. Oral Agreements and Commitments.** The Parties acknowledge that oral
1095 agreements or oral commitments to lend money, extend credit, or forbear from enforcing
1096 repayment of a debt are not enforceable under Washington law.

1097
1098 **27. Notice Provisions.** All notices provided for herein may be delivered in person,
1099 sent by Federal Express or other overnight courier service or mailed in the United States mail

1100 postage prepaid and, if mailed, shall be considered delivered three (3) business days after deposit
1101 in such mail. The addresses to be used in connection with such correspondence and notices are
1102 the following, or such other address as a Party shall from time to time direct:

1103 City:

1104

1105

1106 Copies to:

1107

1108

1109 County:

1110

1111

1112 Copies to:

1113

1114

1115 ArenaCo:

1116

1117

1118 Copies to:

1119

1120

1121 Executed as of the date first written above

1122

1123 THE CITY OF SEATTLE

1124 a Washington municipal corporation

1125

1126

1127 By: _____

1128 Its: _____

1129

1130

1131 KING COUNTY, WASHINGTON

1132 a political subdivision of the State of Washington

1133

1134

1135 By: _____

1136 Its: _____

1137

1138

1139 WSA Properties III, LLC, a Delaware limited liability company:

1140

1141 By: Horton Street, LLC, a Delaware limited liability company

1142 Its: Manager

1143

1144

1145 By: _____
By: Christopher Hansen

1146 Its: Manager

1147

1148

EXHIBIT A

LABOR PEACE AGREEMENT

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

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

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

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

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

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