King County

Metropolitan King County Council
Budget and Fiscal Management Committee
Staff Report

Agenda item No.:	5	Date:	May 29, 2012
Proposed No.:	2012-0202	Prepared by:	Wendy Soo Hoo Mark Melroy John Resha

SUBJECT

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

Today's briefing focuses on describing the proposal. The analysis of the proposal is ongoing and will be presented in upcoming meetings of the Budget and Fiscal Management Committee.

BACKGROUND

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

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

The Mayor, Executive and ArenaCo also announced in February that they were charging an Arena Review Panel with reviewing the proposal to determine whether: City and County general fund resources would be protected; the City and County would be significantly protected from financial risks; and the partnership would result in an investment into the community and region. The panel's report was released April 4th and is contained in Attachment 4.

As traffic impacts were identified as a concern both by the Mayor's and Executive's Arena Review Panel and by stakeholders in the area around the stadiums, including the Mariners and the Port of Seattle, ArenaCo funded an expedited transportation study that was managed by the City. The Seattle Arena Multimodal Transportation Access and Parking Study was completed on May 23rd (Attachment 5). *Staff analysis of the study is ongoing.*

The timeline below gives an overview of the transaction, based on information provided by Executive staff.

<u>*Key Actual and Projected Dates for the Project*</u>

- **May 22nd:** Executive transmitted Proposed Ordinance 2012-0202
    - **MOU** – agreement between the City and County and ArenaCo
    - **Interlocal Agreement** – agreement between the City and County that identifies the debt split and establishes the governance structure and process

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

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

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

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

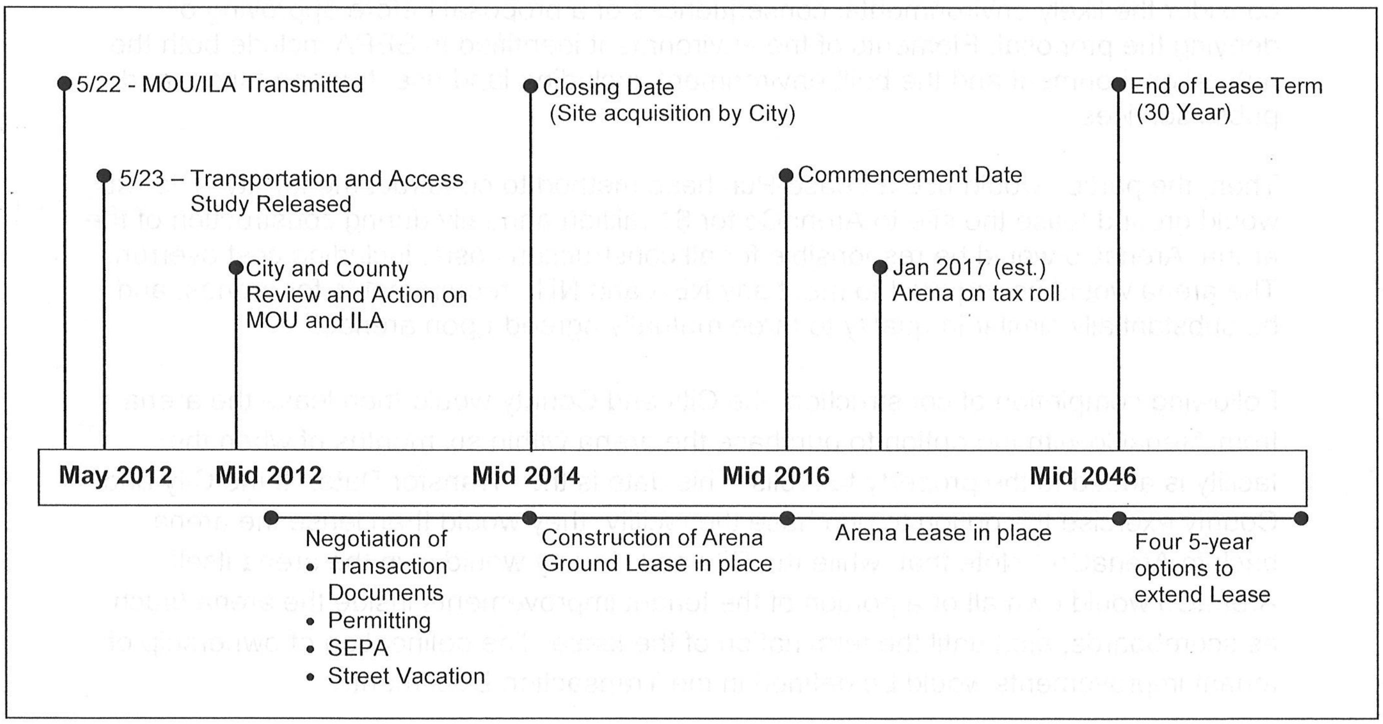
- **Mid-2016:** Once construction is complete and the arena is ready for occupancy ("Commencement Date"), the City and County would carry out a lease-purchase and lease the arena back to ArenaCo. This marks the second installment of public financing.
    - **No County bonds would be issued until the construction is complete.** *Council action would be required to authorize the sale of bonds.*

- **Public financing is reduced if NHL team is not secured**. The County's involvement would be limited to the amount that the County reasonably determines can be supported by its anticipated share of property taxes attributed to the arena, with a maximum of $5 million.

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

This timeline is also shown below in Exhibit 1.

Exhibit 1
Key Actual & Projected Dates for SODO Arena Project



Summary of the Proposal

Under the proposal, the first contribution of public funds to the project occurs when the City acquires the site from ArenaCo. This also represents the point at which the land would enter public ownership. *Note that the County would not be party to this transaction.*

The City would acquire the site only after:

- The permitting and SEPA review of the project is complete;

- A call for bids, consistent with the Municipal Leasing Act, is made and ArenaCo is the winning bidder;
- Transaction documents, including an Umbrella Agreement, are approved by the City and County;
- The NBA team is acquired with a non-relocation agreement in place;
- The City and County have been satisfied regarding the financial ability of ArenaCo and its investors to meet obligations specified in the MOU; and
- ArenaCo has funded a required reserve account with the first year's reimbursement amount.

It is worth highlighting that site acquisition would not occur until State Environmental Policy Act (SEPA) requirements are met. SEPA requires state and local agencies to consider the likely environmental consequences of a proposal before approving or denying the proposal. Elements of the environment identified in SEPA include both the natural environment and the built environment, including land use, transportation, and public services.

Then, the parties would use a Lease-Purchase method to construct the facility. The City would ground lease the site to ArenaCo for $1 million annually during construction of the arena. ArenaCo would be responsible for all construction costs, including cost overruns. The arena would be required to meet any NBA and NHL requirements for arenas, and be substantially similar in quality to three mutually agreed-upon arenas.[1]

Following completion of construction, the City and County would then lease the arena from ArenaCo with the option to purchase the arena within six months of when the facility is added to the property tax rolls. This date is the "Transfer Date." If the City and County exercise the option to purchase the facility, they would then lease the arena back to ArenaCo.[2] Note that, while the City and County would own the arena itself, ArenaCo would own all or a portion of the tenant improvements inside the arena (such as scoreboards, etc.) until the termination of the lease. The delineation of ownership of tenant improvements would be defined in the Transaction Documents.

Note that the Transfer Date would be the point at which the second installment of public financing occurs. *This would involve both the City and the County.* The amount of this installment is contingent on whether a NHL team has been secured.

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[1]The arena would also be required to comply with City requirements for sustainable construction and ArenaCo would commit to using the City of Seattle's Inclusion Plan.

[2]Alternatively, the City and County could exercise an option to have a trustee prepay the facility lease – in this case, the City and County would lease the facility for 30 years and sub-lease the facility to ArenaCo. This is a less likely scenario.

- **If the NHL team has been secured:** The second installment would be an amount that (along with the amount the City contributed for the purchase of the site) totals $200 million, with the City contributing $120 million in total and the County contributing $80 million.

- **If the NHL team has not been secured:** The second installment would be an amount that (when combined with the amount the City contributed for the purchase of the site) is the lesser of the amount of debt that could be supported by the tax revenues and rent at the site or $120 million. Notably, the County's contribution would be capped at $5 million and would be limited to an amount of debt that the County reasonably determines can be supported by its anticipated share of property taxes attributed to the arena.

In the first scenario, the public contribution for both the City and County is capped at $200 million. In the second scenario, the public contribution is capped at $120 million with the County's participation being limited to up to $5 million. The public financing would be in the form of Limited Tax General Obligation bonds or Certificates of Participation, with a duration of approximately 30 years. Under the proposal, the debt service would increase at one percent annually for the first 10 years, then level off for the remainder of the term.

Terms of the Arena Lease

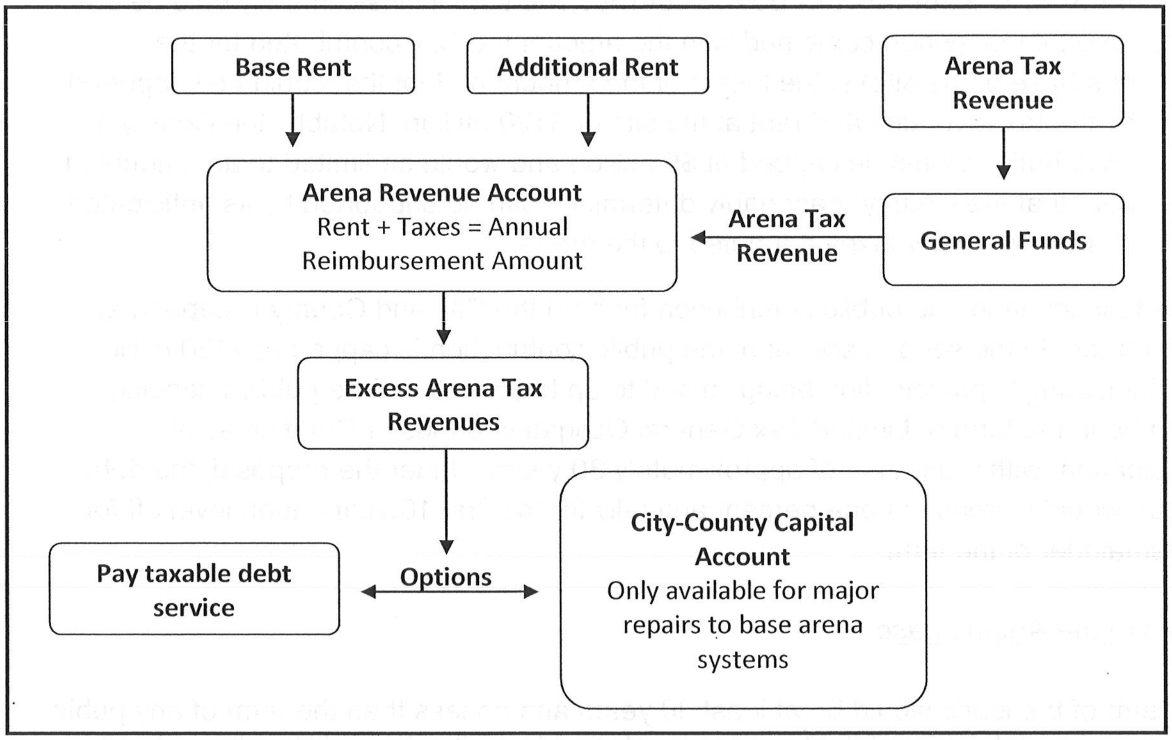
The term of the lease would be at least 30 years and no less than the term of any public financing. The total annual debt service is referred to as the Annual Reimbursement Amount with the Annual Reimbursement Amount being paid by the following sources:

- **"Base Rent"** paid by ArenaCo in the amount of $2 million annually;
- **"Arena Tax Revenues"**, which include the amount of property, sales, leasehold excise, admissions, business and occupation, and parking tax revenues attributable to the arena and arena tenant improvements (except that property taxes would not be included if tax-exempt debt is issued based on such revenue);
- **"Additional Rent"** paid by ArenaCo if the combination of Base Rent and Arena Tax Revenues described above do not meet the City and County's total debt service obligations (i.e., the Annual Reimbursement Amount).

Note that tax revenues generated for restricted purposes, such as dedicated sales taxes for Metro Transit or dedicated property taxes for Emergency Medical Services, would not count towards repaying the debt service.

In the event that the combination of Arena Tax Revenues and Base Rent exceeds the Annual Reimbursement Amount, then the City and County could apply the surplus to defease the outstanding financing or deposit the surplus revenues into a City-County Capital Account.[3] The flow of funds is shown in Exhibit 2 below.

Exhibit 2
Flow of Funds



Under the proposal, ArenaCo would be responsible to operate and maintain the facility, make all necessary capital improvements, and fund a Capital Account with $2 million annually to provide for improvements, though ArenaCo's obligations to make capital improvements are not limited by how much funding is available in this account. ArenaCo would also commit to using reasonable efforts to use minority and low-income workers and businesses in the operations and maintenance of the arena.

The lease includes options for four five-year extensions, with base rent increasing to $4 million during the first extension, and by inflation thereafter.

[3]The City-County Capital Account would have a cap of $10 million during the first 10 years. The cap would grow by $2 million annually until Year 15, when the cap would reach $20 million. The City-County Capital Account is intended to be used only for major repairs to components of base arena systems, such as the roof, HVAC, lights, etc. Once the public financing is paid off, the cap on this account would be removed.

Payment and Security Provisions

ArenaCo would be required to fund a Reserve Account that totals at least the Annual Reimbursement Amount for the following year. ArenaCo would also be required to certify annually that the preceding fiscal year's Net Arena Revenues (or revenues less operating costs) are at least two times the Annual Reimbursement Amount for the following year. If the Net Arena Revenues fall short, ArenaCo must fund the Reserve Account such that the total of the Net Arena Revenues and the reserve account is three times the following year's Annual Reimbursement Amount.

The City's and County's right to receive rent payments would have a first priority payment position from arena revenues – before any private financing payment obligations. The City's and County's right to receive rent payments as well as the amounts in the Reserve Account and Capital Account would be secured by a lien on ArenaCo's revenues (such as facility naming rights, suite and premium seating sales, and other revenues), though not team revenues (such as ticket revenues). Note that the lien position would need to be agreed upon by ArenaCo's lenders, the City and the County. This is a change from the original proposal concept announced in February – at that time the City's and County's right to receive rent payments was anticipated to be secured by a first lien position.

However, to increase the security to the City and County, the parent company that owns the equity in both ArenaCo and the NBA team would provide a guaranty of the Arena Lease. Further, in the event of default, the City and County would have first rights to the proceeds of the sale of an NBA team, subject only to repayment of any NBA team obligations to the NBA. Debt obligations to the NBA by the NBA team owner would be capped to ensure that there is sufficient equity in the team to meet the City's and County's obligations in a default scenario.

In addition, the non-relocation agreements for the team(s) would include specific performance requirements, liquidated damages and injunctive relief provisions.

Notably, under the ILA, in the event of a payment default by ArenaCo, any Arena Tax Revenues and Base Rent received from ArenaCo would be divided between the City and County based on their proportionate share of the outstanding public financing. After Year 15 of the lease, up to 50 percent of the tax revenues would be allocated first to pay the County's debt service with the balance allocated to pay the City's debt service. Any additional rent and withdrawals from the Reserve Account, Capital Account, and City-Capital Account would be allocated first in any year to the support County debt service, then to support City debt service.

City and County Oversight

The City will appoint a joint City-County Representative (after consultation with the County) to represent the City and County during the regular course of business. This position will be funded by ArenaCo. The City will be responsible for day-to-day decision making, supervising the City-County Representative, and administering a fund for arena-related revenues and rent payments. The City will also be the lead party with respect to reviews and approvals related to design and construction.

The ILA would also establish an Arena Project City-County Advisory Board to act in an advisory role by providing oversight and making recommendations to City and County officials regarding the various agreements, the arena, and the arena fund. The Advisory Board would be comprised of an appointee for the Mayor, an appointee for the County Executive, an appointee for the City Council, and an appointee of the County Council. However, if the County's participation in the public financing does not exceed $5 million (i.e., a NHL team has not been secured by the Transfer Date), the only County representative would be the County Executive's appointee.

Other Miscellaneous Provisions

- Under the proposal, ArenaCo would reimburse the City and County for up to $5 million in costs associated with work leading to the opening of the arena. The first reimbursement would occur when the City acquires the site – i.e., when the first installment of public financing is made.

- ArenaCo would be required to contract with the City for traffic management and emergency medical staff during operation of the arena.

- Prior to completion of the project, the NBA and NHL franchises will have the option to play their home games at Key Arena – in this event, ArenaCo will make improvements to Key Arena. ArenaCo will also work with the City on developing a long-term operating plan for Key Arena.

- ArenaCo agrees to enter into labor peace or project labor agreements.

- ArenaCo commits to using the City's Inclusion Plan as guidance for use of Women and Minority business Enterprises on the Project.

Upcoming Hearings & Analysis

Analysis of this proposal is ongoing. At the direction of the Chair of the Budget and Fiscal Management Committee, staff has been working to organize a panel of experts in the following areas: economics, public finance, public-private partnerships, labor, urban development, and transportation.

In addition, the Committee will have the opportunity to hear from the Prosecuting Attorney's Office and from consultants who assisted in developing the proposal – these consultants include outside legal counsel with experience working on other major arena projects and a consultant who has worked on the development, planning and operations of sports and entertainment facilities for more than 25 years.

Proposed Ordinance 2012-0202 will be on the agendas for the Budget and Fiscal Management Committee meetings on June 5th and June 19th. Special meetings will be scheduled as necessary. All Councilmembers will be invited to attend the committee's regular and special meetings.

Note that we are coordinating with the City Council's Government Performance and Finance Committee, as both Councils will need to take action on the agreements. We are also working to schedule a joint hearing, potentially in mid-July.

ATTACHMENTS

1. Proposed Ordinance 2012-0202
2. Fiscal Note
3. Transmittal Letter
4. Executive-transmitted Summary and Key Terms
5. Mayor/Executive Arena Review Panel Report
6. Seattle Arena Multimodal Transportation Access and Parking Study

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