

September ~~11~~24, 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 Use Agreement." 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");~~ the MOU.

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

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

~~C.D.~~ Subject to environmental and certain other review detailed in the MOU, the Parties have determined that, if developed, the Arena would provide general public benefits as well as specific direct and indirect benefits to both Parties and their residents. As more specifically described in the MOU, ArenaCo is responsible for development and construction of the Arena Facility, including all construction costs and overruns. Public financial investment in the ~~Arena project (as further defined in the MOU, the "Public Financing")~~ Project may occur only consistent with and upon the occurrence of specific actions described in the MOU. The MOU will be implemented through an Umbrella Agreement and Transaction Documents to be negotiated between the Parties and ArenaCo. The MOU, Umbrella Agreement and Transaction Documents are collectively referred to herein as the "Arena Facility Agreements."

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

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

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

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

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

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

C. If the Parties exercise the option to purchase the Arena Facility, as described in ~~ParagraphSection~~ 4.(B)(i) above, the Second Installment of the Public Financing may be structured as bonds issued by the City and the County, respectively. In that event the Ground

Lease ~~will terminate and~~terminates, the City and County will thereafter hold title to the Arena Facility as tenants in common (with ownership percentages in proportion to their respective actual shares of the Public Financing). If the Parties cause a trustee to prepay the principal component of all remaining lease payments required under the Lease-Purchase Agreement, as described in ~~Paragraph~~Section 4.(B)(ii) above, the Public Financing will be structured as certificates of participation in a stream of lease revenues. In either case, the City will convey to the County an interest in the Project Site so that the Parties will be tenants in common in the Project Site (with ownership percentages in proportion to their respective actual shares of the Public Financing).

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

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

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

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

H. If the Arena Use Agreement is terminated prior to the end of its initial term, and if the City and the County are tenants in common and become responsible for costs relating to the Arena, the City and County will contribute to those costs proportionately to their shares of the Public Financing. Arena Tax Revenues and any rental payments under any Arena Use

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

5. Financing.

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

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

C. On the date of the Second Installment Two, and in connection with the lease and/or purchase of the Arena on or after the Transfer Date, each Party will incur a share of Public Financing obligations, ~~part of which is expected to be tax exempt obligations representing amounts of obligations the Parties determine can be prudently retired from each Party's anticipated property taxes attributable to the Arena and the Arena Tenant Improvements during the term of the Arena Use Agreement. The total amount of Public Financing will not exceed a cumulative amount (i.e., including Installment One), totaling \$200 million of City and County obligations, of which up to \$120,000,000 will be City obligations and of which up to \$80,000,000 will be County obligations; provided, however, that if, as set forth in Paragraph for the Arena and also a share of any required "SODO Fund Contribution" (defined as up to \$40 million in Public Financing from the Second Installment required to bring the cumulative contributions to the SODO Transportation Infrastructure Fund to \$40,000,000 as set forth in Section 11.b of the MOU).~~

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

ii. Only NBA Scenario. If, as set forth in Section 10.ii of the MOU, all of the conditions related to an NHL Team have not been satisfied by the Transfer Date, the principal amount of the County's participation in the Public Financing County's payment obligation will not exceed the sum of (a) \$5,000,000 (or a lesser amount that the County reasonably determines can be prudently ~~retired~~ financed from its anticipated property taxes attributable to the Arena and the Arena Tenant Improvements) and (b) ~~forty percent (40%) of the "SODO Fund Contribution," defined as up to \$40 million in Public Financing from Installment Two required to bring the cumulative contributions to the SODO Transportation Infrastructure Fund to \$40,000,000 (as set forth in Paragraph 11.b of the MOU); the County's~~

SODO Fund Contribution to be calculated as the lesser of \$10 million and forty percent of the SODO Fund Contribution. In this scenario, the City's payment obligation will not exceed the total of (a) \$120,000,000 less (b) \$5,000,000 (or a lesser amount that the County reasonably determines can be prudently financed from its anticipated property taxes attributable to the Arena and the Arena Tenant Improvements) plus (c) the remaining SODO Fund Contribution after calculation of the County's SODO Fund Contribution.

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

6. Application of Arena Tax Revenue.

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

B. The City and the County will each dedicate to the Project all Arena Tax Revenues and ~~Revenue that each derives from the Arena and the Arena Tenant Improvements during the term of the Arena Use Agreement, except for taxes that are subject to legal restrictions that preclude their use either for payment of Arena related debt or expenses (other than City parking taxes attributable by contract to the Arena).~~ Ground Lease, Base and Additional Rent revenues during the term of the Arena Use Agreement.

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

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

E. The City and County will each, in proportion to their respective ~~debt issuances;~~ "Allocation" (amounts shall be defined in future documents and will reflect each Party's respective financial participation in the Project, including all capital contributed that has an effective cost similar to general obligation bonds), be entitled to transfers from the Arena Revenue Account ~~in amounts necessary to pay or provide for the payment of debt service (or lease payments in the case of certificates of participation) on the taxable portion of the Public Financing that Party incurs in connection with the Arena.~~ If amounts in the Arena Fund exceed the amounts necessary to provide for each Party's ~~current debt service, then unless~~ Allocation, the Parties shall mutually determine ~~otherwise, how to apply~~ the excess amounts in the Arena Fund ~~will be applied to the retirement or defeasance of outstanding Public Financing on a pro rata basis (i.e., based on the City's and County's pro rata shares of the outstanding Public Financing) consistent with Section 13.k of the MOU.~~

F. In the event of a Payment Default by ArenaCo, and so long as that Payment Default continues: (a) Arena Tax Revenues and Base Rent (if any) received from ArenaCo will be divided between the Parties ~~based on in proportion to each Party's proportionate share of the outstanding taxable Public Financing~~ Allocation, except that after year 15 of the Arena Use Agreement, to the extent necessary to ~~provide pay~~ for the ~~County's current debt service on its Public Financing~~ County annual Allocation, up to 50% of Arena Tax Revenues will be allocated first to the County, with the balance allocated to the City, and (b) Additional Rent payments and withdrawals of balances in the Reserve Account, the Capital Account and the City-County Capital Account, will be ~~allocated paid~~ first to ~~current debt service on the County's taxable Public Financing (to the extent not provided for by County in an amount sufficient, together with any Arena Tax Revenues and Base Rent), to equal the amount of the County Annual Allocation,~~ and next to ~~current debt service on the City's taxable Public Financing, the City.~~ Further amounts received by the Parties from or in respect of obligations to the Parties from ArenaCo, its affiliates, or others (e.g., amounts received from the Parties' security interest (as described in ~~Paragraph 12~~ Section 13.f of the MOU and any corresponding terms in the Arena Facility Agreements)) will be allocated to the Parties in proportion to their respective ~~shares of outstanding taxable Public Financing, Allocations.~~

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

7. Governance.

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

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

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

C. Notwithstanding the foregoing, if the principal amount of the County’s participation in the Public Financing does not exceed ~~\$5,000,000~~ \$15,000,000, considering up to \$10 million as the County’s portion of the SODO Fund Contribution, the only County representative on the Advisory Board will be the appointee of the County Council (as described above).

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

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

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

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

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

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

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

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

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

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

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

(vii) The Parties intend to act primarily through the City-County Representative and the County Liaison. Either Party may, however, designate a different person within that Party's organization to act on behalf of that Party. The Parties also acknowledge and agree that the collaborative decision-making required herein will require each to provide the

other with reasonable advance notice of matters requiring decisions and reasonably prompt resolution of such matters in order to assure effective, efficient and timely interactions with ArenaCo.

8. Dispute Resolution.

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

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

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

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

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

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

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

12. Risk Provisions.

A. Each Party shall defend, indemnify and hold harmless the other party, and all of its officials and employees, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property (collectively "Claims"),

which arise out of or are related to any negligent acts or omissions or any breach of this Agreement by the indemnifying party or its employees, contractors or agents. Provided, that if any such Claims are caused by or result from the concurrent negligence or breach of this Interlocal Agreement by the City or its employees, contractors or agents and the County or its employees, contractors or agents, each party's obligation hereunder applies only to the extent of the negligence or breach of such party or its employee, contractor or agent.

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

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

D. To the maximum extent allowed by law, ~~including RCW 35.32A.090~~, the City agrees to defend, indemnify and hold harmless the County, and all of its officials and employees, from any and all claims, demands, suits, and actions (collectively "Claims"), which arise out of or are related to any claim that the Arena Facility Agreements or the transactions contemplated thereunder do not comply with Seattle Municipal Code 20.47. ~~The City's obligations under this indemnity provision are subject to having sufficient budget authority at the time the obligations must be fulfilled.~~

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

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

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

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

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

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

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

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

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

City:

Copies to:

County:

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Copies to:

~~20~~

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

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

KING COUNTY, WASHINGTON

CITY OF SEATTLE

By: _____
County Executive

By: _____
Mayor

Date: _____

Date: _____

EXHIBIT A

Material and Milestone Decisions (* Denotes Milestone Decisions)

Pre-Development and Planning Phase

Agreement on terms of Umbrella Agreement and Transaction Documents (MOU ¶ 7)
Agreement on allocation of reimbursable development costs (MOU ¶ 3.b)
Agreement on selection of consultant and implementation of Economic Impact Analysis

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.i)
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.e)
Agreement on repairs, replacements or maintenance for Arena (MOU ¶ 13.e)
Agreement on use funds in City-County Capital Account (MOU ¶ 12.e)
Agreement on use of the Arena for City-County Events (MOU ¶ 14.e)
*Agreement on sale of ArenaCo or assignment of Arena contracts (MOU ¶ 20.e)**

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.e)~~

Operations Phase

Monitor Rent and Additional Rent Payments ~~(MOU ¶ 12.e)~~
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.e)~~
Monitor marketing efforts ~~(MOU ¶ 14.d)~~