

July 19, 2012

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

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

**RECITALS**

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

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

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

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

**UNDERSTANDINGS**

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

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

**3. Description; Cost Reimbursement.**

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

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

**4. Initial Site Acquisition and Permitting.** ArenaCo has acquired or will acquire the property that comprises the Project Site. At its sole cost and expense, ArenaCo will seek a master use permit and all other permits or approvals required for the Project. At ArenaCo’s

expense, the City will provide dedicated planning staff to facilitate the review and processing of permit applications relating to the Project, with planning staff time to be billed at the then applicable rate schedules of the City.

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

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

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

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

**9. Ground Lease, Lease-Purchase Agreement and Arena Lease.** The City will ground lease the Project Site to ArenaCo for a period of at least 30 years (the “Ground Lease”), commencing on the Closing Date. The Ground Lease will require ArenaCo to pay ground rent in the amount of \$1 million annually, which annual rent will be paid by ArenaCo in equal semi-annual installments, and will be pro-rated for any partial year on a monthly basis. This annual Ground Lease rent obligation will terminate on the Commencement Date as defined below. Also

on the Closing Date, the City and County will enter into an agreement (“Lease-Purchase Agreement”) pursuant to which ArenaCo will construct the Arena building structure (“Arena Facility”) in accordance with the Design Standards as defined in paragraph 15, for lease (with an option to purchase as described in this MOU) to the City and County. The term of the Lease-Purchase Agreement will be co-extensive with the original term of the Ground Lease and the payments to be made by the City and County under the Lease-Purchase Agreement will not exceed the prevailing rates for comparable space.

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

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

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

provided that ArenaCo reimburses the City and County for the reasonable and necessary costs of such refinancing. Any refinancing of the Public Financing will endeavor to lower debt service costs each year as opposed to redeeming bonds only in late maturity years.

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

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

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

**11. Ownership of Arena Facility and Improvements.** ArenaCo will install all tenant improvements and furnishings, including without limitation the seating, suite furnishings, offices, locker rooms, press areas, basketball floor, ice-making systems and equipment, dasher board systems, sound systems, scoreboards, ribbons, concession equipment, training equipment, and other items (“Arena Tenant Improvements”). For federal income tax purposes, ArenaCo will own all or a portion of those Arena Tenant Improvements, to be set forth in the Transaction Documents: or in a schedule included in the Lease-Purchase Agreement or Arena Lease, as applicable, which schedule may be amended from time to time. The initial Arena Tenant Improvements will be commensurate with the construction of a first-class arena as set forth in the Design Standards and Operating Standards. The Arena Tenant Improvements (but not any NBA Team- or NHL Team-owned equipment or fixtures) will become the property of the City and County upon the termination of the Arena Lease without any further obligation on the part of the City or County. Upon termination of the Arena Lease, ArenaCo will be obligated to surrender the Arena Facility and Arena Tenant Improvements to the City and County in a condition consistent with the program of capital repairs, replacements and improvements required pursuant to paragraph 13 and in a state of repair comparable to facilities of a similar age

and suitable for continued uninterrupted use by NBA and NHL teams and as a major entertainment facility.

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

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

**b. ArenaCo Revenues.** For the initial term of the Arena Lease, ArenaCo will be entitled to all cash and in-kind revenues associated with the operation, use and enjoyment of the Arena (other than for any City-County Events, as hereinafter defined) (the “Arena Revenues”), subject to the payments and reserves required as described in this paragraph 12, and not including any taxes, fees or charges ArenaCo may be obligated to collect and submit to a taxing or other government authority on behalf of others. Subject to the foregoing, Arena Revenues means all revenues, determined on a cash basis, of whatever kind or nature received or obtained by ArenaCo or a third-party, within the scope of ArenaCo’s authority or responsibility under the Umbrella Agreement or the Transaction Documents for the management, operation or maintenance of the Arena, in all cases subject to all revenues reserved to the NBA Team or the NHL Team pursuant to applicable license agreements as required by the NBA and NHL. Arena Revenues include, but are not limited to, box office fees (excluding ticket revenue for the NBA Team and NHL Team), facility fees, parking revenues, revenues from consumable and non-consumable concessions, all other licensing and rent revenues, forfeited security deposits, ticket commission and convenience fees, and other fees actually received by ArenaCo, for or from the following: (1) the use or operation of, or admission to, the Arena or any portion thereof, (2) all rents, royalties, and concession payments from tenants, concessionaires and licensees, (3) interest on or proceeds of investment of any accounts (except the Reserve Account and Capital Account, as described in paragraphs 12.e(ii) and 13.a respectively), (4) rental or use of Arena equipment, (5) services rendered at or related to the Arena, (6) the amounts received from seat use charges and parking use fees, (7) the amounts generated from the use and operation of any Arena internet website and other similar media, (8) the right to sell, or the sale of permanent and ArenaCo temporary signage (but not temporary signage that is reserved or provided to the NBA Team and the NHL Team under their respective license agreements) and Arena sponsorships (including, without limitation, naming rights and founding partner sponsorships), (9) the non-ticket amounts generated from the sale or license of luxury suites and premium seating, and (10) club membership fees, but expressly excluding (notwithstanding the provisions above), in all

events, sums received or collected by ArenaCo for and on behalf of and actually paid to a user of the Arena.

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

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

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

**(i) Coverage Ratio.** ArenaCo will be required to certify annually ~~that whether~~ the Net Arena Revenues for the preceding fiscal year at fiscal year end are equal to at least two times (2.0x) the Annual Reimbursement Amount for the following year in which debt service is paid (the “Coverage Ratio”).— ArenaCo’s annual certification must be accompanied by certification from an independent certified public accountant as to the accuracy of the financial information underlying the Coverage Ratio or alternative evidence from ArenaCo acceptable to the City and County as to the reliability of ArenaCo’s certification. “Net Arena Revenues” means the Arena Revenues less Arena Operating Expenses. ArenaCo will, on a date set forth in the Transaction Documents, provide the City and County with an annual accounting and any reasonably requested documentation to confirm the Coverage Ratio. If Net Arena

Revenues are insufficient and fail to meet the Coverage Ratio, ArenaCo promptly (and in no event later than 30 days after the annual accounting is provided to the City and County) will increase the Reserve Account by an amount such that the balance of the Reserve Account plus Net Arena Revenues equal three times (3.0x) the Annual Reimbursement Amount for the following year. To the extent the amount held in the Reserve Account ever exceeds the Annual Reimbursement Amount for the following year, any amount over the Coverage Ratio in future years will be used to reduce the Reserve Account requirement back to the applicable ratio, provided that in no event will the amount held in the Reserve Account be less than the Annual Reimbursement Amount for the following year.

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

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

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

(i) **Payment Default; First Priority Payment and Lien.** If ArenaCo fails to pay all or any portion of the Base Rent or Additional Rent when due or to make any required deposit into the Reserve Account or the Capital Account when required, then the City and County may draw on the Reserve Account. The City’s and County’s right to receive required payments of Base Rent and Additional Rent and ArenaCo’s obligation to fund the Reserve Account and the Capital Account will have a first-priority payment position on all revenue and receivables of ArenaCo. As the payment obligations of ArenaCo to the City and County hereunder constitute operating expenses, (e.g., including but not limited to rent) such payment obligations will be senior to all debt service payments on any Arena-related financing and intercompany debt. The City’s and County’s right to receive the required payments of Base

Rent and Additional Rent as well as the amounts in the Reserve Account and the Capital Account will be secured by a lien on revenues and receivables of ArenaCo ~~with such lien and its priority to be as agreed upon by lenders to ArenaCo, the City and the County and~~ and further secured as provided in subsection 12.f(ii) below. The City and County and any private lenders to ArenaCo will each have a first lien on separate assets of ArenaCo, which division of assets shall reflect the proportionate share of debt held as between the City and County and the private lenders. In the event of a "Payment Default", which for the purposes of this MOU will be defined as ArenaCo's failure to replenish the Reserve Account to the required amount within thirty (30) days of receipt of notice from the City and County of any draw on the Reserve Account, the City and County may exercise any and all remedies at law or equity or under or pursuant to this MOU, the Umbrella Agreement and the Transaction Documents.

**(ii) Parent Guaranty.** ArenaCo hereby agrees that the direct equity owner of ArenaCo (the "ArenaCo Parent") will also be the direct equity owner of the entity that owns and operates the NBA Team unless there is a sale, transfer or assignment in accordance with paragraph 20.c(ii). In addition to the security provided for in paragraph 12.f(i) above, ArenaCo shall deliver, on the Transfer Date, an unsecured and unconditional guaranty of ArenaCo Parent (the form of which shall be included in the Transaction Documents) guarantying ArenaCo's obligations under the Arena Lease. Further, the City and County will also be entitled to receive the first distributions of any proceeds from any sale of the NBA Team, subject only to repayment of any obligations of the NBA Team related to any debt of the NBA Team to the NBA or other lenders approved by the NBA that are secured by the NBA franchise and other assets of the NBA Team up to the \$125 million cap on such debt currently allowed under applicable NBA rules ("NBA Team Secured Debt Obligations"). The right of the City and County to receive distributions of proceeds of sale of the NBA Team to satisfy (A) ArenaCo's obligations under the Arena Lease and (B) the NBA Team's obligations under the non-relocation agreement required by paragraph 21.d shall be secured by a security interest in those proceeds granted by ArenaCo Parent and the NBA Team, subject to the NBA Team Secured Debt Obligations as described herein. Notwithstanding the foregoing, however, if the NBA revises its rules to allow NBA teams to borrow in excess of the current limit of \$125 million that may be secured by the NBA franchise and other assets of NBA teams, then the NBA Team will be entitled to increase the amount of the NBA Team Secured Debt Obligations; provided, however, that the NBA Team will limit the amount of the NBA Team Secured Debt Obligations that will be senior to the right of the City and County to receive distributions of any proceeds from any sale of the NBA Team to the lesser of: (A) the maximum amount of NBA Team Secured Debt Obligations that is then allowed under NBA rules, or (B) 40% of the then "fair market value" ("FMV") of the NBA Team. The FMV of the NBA Team will be as mutually agreed upon in good faith by the Parties at that time; provided, however that if the Parties are unable to agree upon the FMV of the NBA Team at that time, then the FMV of the NBA Team will be determined by a sports industry recognized appraiser with experience in valuing NBA teams selected by the mutual agreement of the Parties pursuant to a customary valuation process to be specified in the Umbrella Agreement; but provided further, however, that if the NBA Team Secured Debt increase of the NBA Team is being sought in connection with the acquisition of the NBA Team on an arm's-length basis by an unrelated party, then the FMV will be equal to the actual all-in acquisition price of the NBA Team.

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

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

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

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

(iii) **Arena Revenue Account.** The City will create an “Arena Fund” (and accounts and subaccounts associated therewith) (collectively, “Arena Revenue Account”) into which the City and County will deposit any Arena Tax Revenues plus Base Rent and Additional Rent payments received by the City and County.

(iv) **City-County Capital Account.** On an annual basis, after payment of the Annual Reimbursement Amount has been made and only to the extent of any excess Arena Tax Revenue, the City and County, at their option, but in consultation with ArenaCo, and in the manner established in the Transaction Documents, will either (a) ~~reserve and apply~~use all or a part of the excess to redeem or defease other outstanding principal of the Public Financing or, (b) ~~to~~ deposit all or part of such excess into a separate account to be used for the below-described capital improvements (“City-County Capital Account”). The City-County Capital Account shall at all times be the property of the City and County. If, at any time during the first ten (10) years of the Arena Lease, the City-County Capital Account has a balance of \$10 million, no additional deposits will be made into the City-County Capital Account. After the tenth (10th) year of the Arena Lease, the allowed balance of the City-County Capital Account will increase by \$2 million annually, until the fifteenth (15th) year, and thereafter the maximum balance of the City-County Capital Account will be \$20 million. Any excess Arena Tax Revenues not ~~required to be~~

deposited to the City-County Capital Account as provided in this MOU shall be used only to redeem outstanding principal of the Public Financing, in consultation with ArenaCo and for no other purpose until such time as all outstanding principal of the Public Financing has been fully retired or defeased. The deposits described in this paragraph will not in any way limit ArenaCo's obligation to make its annual payment into the Capital Account and to make all capital repairs, replacements and improvements to the Arena as provided in this MOU.

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

### 13. Capital Improvements.

a. **Capital Account.** ArenaCo will be required to make (i) a single cash deposit or (ii) two equal semi-annual cash deposits (at its option) into an account ("Capital Account") in an amount equal to \$2 million annually ("Capital Account Requirement"). Funds in the Capital Account shall be used to make capital repairs, replacements or improvements to the Arena in accordance with this paragraph 13. The initial Capital Account deposit will be made on the first anniversary of the Commencement Date and payments will be made semi-annually thereafter on the dates that Base Rent and Additional Rent are due.

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

c. **Procedure for Making and Approving Capital Improvements and Major Maintenance; Inspections.** ArenaCo will, on an annual basis, prepare a proposed five-year capital budget ("Five-Year CIP") for anticipated Capital Expenditures to be funded by the Capital Account and the City-County Capital Account; provided, however, that nothing herein shall relieve ArenaCo of its obligations set forth in paragraph 13.b above, regardless of whether a Capital Expenditure is contemplated by the Five-Year CIP. Within sixty (60) days of the submission, the City and County will either accept the Five-Year CIP or provide comments. The Parties will undertake best efforts to come to a mutually acceptable agreement on the Five-Year CIP within sixty (60) days thereafter, and if the Parties are unable to reach an agreement within said 60-day period, then the issue will be submitted to the dispute resolution provisions of this MOU. In addition, the Parties will develop a procedure for periodic joint inspections and a schedule of major maintenance activities which shall be prepared or reviewed by professionals knowledgeable about life-cycle cost analysis for comparable public facilities. ~~This procedure~~

~~will include~~ This procedure will include (i) the right of the City-County Representative to receive material non-privileged information during the progress of major capital improvement projects and (ii) the right of the City and County to enter upon the Arena for the purposes of performing inspections of the Arena and Tenant Improvements. An ArenaCo representative will, at the request of the City and County, accompany the City and County Representative on the inspections. Within 30 days after such inspection, the City and County may provide ArenaCo with a list of any capital repairs, replacements or improvements or maintenance that the City-County Representative determines are necessary to maintain the Arena and Tenant Improvements in accordance with the Operating Standards. If ArenaCo disputes the City-County Representative's determination, the ArenaCo representative and the City-County Representative will promptly meet to attempt to resolve the dispute. If they fail to resolve the dispute, the parties will attempt to mediate the dispute. If the parties fail to resolve the dispute through mediation, the Parties will submit their dispute the dispute resolution provisions of this MOU.

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

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

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

**a. Operating Expenses.** ArenaCo will control and will be solely responsible for all day-to-day operations, expenses, and costs for routine maintenance of and repairs to the Arena ("Arena Operating Expenses") to maintain it to a standard comparable to three mutually ~~agreeable~~ agreed upon professional basketball and ice hockey arenas suitable for NBA and NHL teams and recently constructed, serving as the home facility for NHL and NBA Teams or under construction ("Operating Standards"). ~~For the avoidance of doubt, the~~ The City and County will

have no responsibility for any Arena Operating Expenses (except for incremental out-of-pocket expenses associated with City-County Events).

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

(ii) **Impositions.** As used herein, the term "Impositions" means (without duplication of any expense set forth above) all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, general and special, ordinary and

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

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

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

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

**e. Team License and Related Agreements.** ArenaCo shall enter into license agreements, or other similar agreements, regarding the use of the Arena with the NBA Team and the NHL Team (the "Team License Agreements."). The Team License Agreements shall be subject to the approval of the City and County as being consistent with the terms of this MOU and the Transaction Documents, and shall recognize the City and the County as third-party beneficiaries. In connection with such approval right, each Team License Agreement shall provide (i) that the team shall play its preseason, regular season and playoff home games at the Arena in accordance with paragraph 17; (ii) that the team shall acknowledge and accept, in a separate agreement in the form that will be one of the Transaction Documents, that the Team

agrees to the non-relocation provisions in accordance with paragraph 17; (iii) that there is scheduling priority for the team (but if there is both an NBA Team and an NHL Team then playing in the Arena, subject to reasonable accommodation for any scheduling priority granted to either such team); (iv) for a term of at least 30 years; (v) for payment of rent; (vi) for allocation of the payment of game day expenses; (vii) for allocation of other expenses including maintenance; (viii) for an acknowledgment that ArenaCo shall retain all revenues related to naming rights, Arena founding partner sponsorships and other primary sponsorships related to the Arena; (ix) that ArenaCo shall retain all revenues related to suite sales; (x) that ArenaCo shall retain all revenues not retained by or payable to the teams or leagues for other premium and club seats; (xi) for allocation of revenues from parking, concessions, merchandise, and ticket surcharges (if any); (xii) for marketing of the Arena and the teams; (xiii) for insurance; and (xiv) for indemnification, including indemnification of the City and the County.

**15. Arena Design, Development and Construction.** ArenaCo will develop, design and construct the Arena as a first-class arena as set forth in the agreed-upon Schematic Design Package and related Design Standards (all as defined below). The City and County will have reasonable ongoing input through a designated representative (the “City-County Representative”) in addition to whatever regulatory design procedures and requirements apply. Within ten (10) business days after execution of the Umbrella Agreement, ArenaCo shall designate an individual who shall serve as the ArenaCo representative for the purposes of communicating with the City-County Representative and decision-making regarding any and all matters related to the construction of the Arena and its operation (“ArenaCo Representative”). The ArenaCo Representative shall have the authority to legally commit ArenaCo regarding any matter relating to Arena construction. ArenaCo will use all reasonable efforts to involve and keep the City-County Representative fully informed on a timely basis of all significant aspects and decisions for design and construction of the Arena. In order to enable the City-County Representative to attend, become informed about the status of the Project, participate in discussions and present the City’s and the County’s position with respect to matters being discussed, the ArenaCo Representative will schedule regular meetings of senior design and construction staff of ArenaCo and other design and construction principals to discuss major issues related to the development and construction of the Project. The City-County Representative will also be notified of weekly design meetings. The City-County Representative will be notified of the time and place of such meetings and of any special meetings held by senior ArenaCo development staff to address similar development issues. The ArenaCo Representative will also participate in such separate meetings with the City-County Representative as the City-County Representative may reasonably request with at least three (3) days’ prior notice. The ArenaCo Representative will also timely provide the City-County Representative with copies of significant construction-related documents including schedule updates, meeting minutes, requests for information (RFIs), responses to the RFIs, change order proposals and design changes. The City-County Representative will be entitled to full disclosure of all material matters relating to the Project as more fully described in paragraph 15.m below and will have the rights to specific prior review and approval as set forth in this paragraph 15.m including, without limitation, reasonable approval on the acceptability of the exterior design program. ArenaCo will fully and fairly review and make good faith efforts to address satisfactorily the City-County Representative’s reasonable concerns prior to making a final decision in any matters concerning the Arena exterior design, so long as such input is timely received. However, the City-County Representative’s review and recommendations, or other actions performed by the City-County Representative as described herein, will not in any manner

cause the City or the County to bear any responsibility for the design or construction of the Arena or any defects related thereto.

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

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

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

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

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

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

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

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

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

collaborative process through the preparation of design development plans and outline specifications.

**f. City-County Design Approval.** The City-County Representative will have the right to approve the Schematic Design Package for the Arena, which approval shall not be unreasonably withheld or delayed. ~~The City-County Representative shall have the right to object to any material deviations from the approved Schematic Design Package or to the extent there is a violation of federal or state law or validly enacted or existing local ordinance.~~

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

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

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

**j. Other Provisions.** The Project should promote and include the racial and ethnic communities of the City of Seattle and King County. Part of this Project's economic and community contribution is to engage local minority workers and businesses who are historically disenfranchised, as well as low-income workers and businesses. All Parties agree upon the importance of effective strategies and programs to include local minority and woman workers and firms in Project design and construction, with an ongoing commitment by ArenaCo to use

reasonable efforts to use such local workers in the operations and maintenance aspects of the Arena. To that end, ArenaCo commits to using the City of Seattle's Inclusion Plan as guidance for use of Women and Minority Business Enterprises (WMBEs) on the Project. This includes using specific strategies such as the use of the "Worksheet of Possibilities" that helps bidders analyze what work or supply could be subcontracted to WMBE firms, the use of the "Contract Commitment Log" that documents (i) WMBE firms the prime contractor commits to subcontract with, and ~~the minimum guaranteed~~(ii) contract ~~amount to be~~amounts awarded to WMBE firms.

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

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

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

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

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

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

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

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

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

**20. Additional Provisions.**

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

given to the Arena will not include reference to any state, local or other municipality name unless such reference is to “Seattle” or “King County.”

**b. Team Name.** ~~Subject to NBA approval and applicable rules, regulations and requirements of the NBA, and subject to the ability of~~ ArenaCo or an affiliate of ArenaCo ~~to shall~~ obtain the rights to the name ~~and~~ trademarks ~~under, history and memorabilia~~ from the current owner thereof; ~~related to the “Seattle SuperSonics” (as those rights are more thoroughly described below), and~~ any NBA Team domiciled in Seattle, Washington and operated by ArenaCo or an affiliate of ArenaCo that owns such NBA team will use the name “Seattle SuperSonics.” The City will use its best efforts to assist ArenaCo or an affiliate of ArenaCo that owns such NBA Team to: (i) acquire the unrestricted rights to use the name trademarks, any logos, symbols, designs, trade dress (including, but not limited to, team colors) or other indicia associated with the Seattle SuperSonics/SuperSonics for purposes of identifying such NBA Team, ~~at no cost to ArenaCo or such affiliate,~~ and (ii) obtain the right to use and refer to the Seattle SuperSonics history (e.g., statistics, player histories and records) from prior NBA seasons during which the NBA Team formerly known as the Seattle SuperSonics played their NBA home games in Seattle, ~~at no cost to ArenaCo or such affiliate,~~ and (iii) obtain a transfer of the trophies, banners, and retired jerseys and other related memorabilia from the current owner thereof, ~~at no cost to ArenaCo or such affiliate.~~ When appropriate, ArenaCo or an affiliate will prominently include “Seattle” as part of the team name in public references for marketing, advertising, promotional and other business purposes, subject to the requirements and restrictions of the NBA; provided, however, that it is understood and agreed that the names “SuperSonics” and “Sonics” may be used without the name “Seattle” to market, advertise and promote the team and for other business purposes when deemed appropriate by ArenaCo or an affiliate of ArenaCo that owns the NBA Team.

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

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

**e. Review of ArenaCo Financial Information.** For purposes of satisfying the conditions precedent described in paragraph 21.a and during the term of the Arena Lease, the City and County will have the right to review all relevant financial records relating to the ability of ArenaCo and its affiliates and investors, including ArenaCo Parent and its investors, to carry out their financial obligations under the Arena Lease and the Transaction Documents, but only if a statutory exemption for such financial records is available under chap. 42.56 RCW (the Public Records Act). If such an exemption is not available, ArenaCo shall provide an alternative and reliable means by which the City and County can assess the ability of ArenaCo and its affiliates and investors, including ArenaCo Parent and its investors, to carry out their financial obligations under the Arena Lease and the Transaction Documents.

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

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

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

**b. SEPA and Permitting.** (i) SEPA review associated with any City or County actions as contemplated by paragraph 5 of this MOU has been completed, including consideration of reasonable alternatives; (ii) the master use permit and all other permits required for construction of the Project have been obtained; (iii) the City and County and their respective councils have considered the SEPA review in connection with their respective actions and have ~~waived this condition precedent, which waiver may be withheld only~~ determined whether it is appropriate to proceed with or without additional or revised conditions based on the ~~basis of an exercise of SEPA substantive authority review~~; and (iv) any challenges to the Project have been resolved in a manner reasonably acceptable to the Parties.

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

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

**d. NBA Team, Lease ~~and~~, Non-Relocation Agreement, and Community Benefits Agreement.** ArenaCo or a third party under contract with ArenaCo has secured (i) ownership rights to an NBA franchise, and (ii) the rights to the "Sonic" name, trademarks, history and memorabilia, as described in paragraph 20.b, and that NBA franchise and the Parties have entered into a non-relocation agreement as described in paragraph 17, the Parties and the appropriate community organizations have entered into the Community Benefit Agreement described in paragraph 20.f, the NBA has acknowledged the Arena Lease, the NBA has approved locating the NBA Team in Seattle and the NBA has acknowledged the non-relocation agreement and ArenaCo has entered into a Team License Agreement with the NBA Team as required by and consistent with paragraph 14.e.

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

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

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

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

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

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

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

**25. Dispute Resolution.**

**a.** In the event any dispute, disagreement, claim or controversy arises between the Parties concerning this Agreement or any of the provisions hereof (each, a "Disputed Matter"), the City-County Representative and the ArenaCo Representative will meet and attempt to resolve the Disputed Matter through negotiations, except as provided in Section 15.h. If the representatives

are unable to reach agreement, the Disputed Matter shall be referred jointly to the City's Director of Finance and ArenaCo's chief executive officer. If such executives do not agree upon a decision, then the City's Mayor, the County Executive and ArenaCo's owners or managing members shall meet and attempt to resolve the matter. If such individuals are unable to resolve the Disputed Matter within ten (10) days, then either the City and County, collectively, or ArenaCo may, upon written notice, submit the matter to mediation.

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

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

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

City:

Copies to:

County:

Copies to:

ArenaCo:

Copies to:

**Executed as of the date first written above**

THE CITY OF SEATTLE  
a Washington municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

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

By: \_\_\_\_\_  
Christopher Hansen  
Its: Manager

## EXHIBIT A

### LABOR PEACE AGREEMENT

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

Seattle Building & Construction Trades Council (project construction), Unite Here Local 8 (food & beverage concessions, restaurant, and hotel employees), Teamsters Local 117 (operations employees), SEIU Local 6 (janitorial employees), and IATSE Local 15 (staging and audiovisual employees).

The labor peace agreements will include a promise by the labor organizations limiting their rights to engage in concerted economic action at the Arena aimed at bringing economic pressure to bear against the Developer, including such activities as striking, picketing and boycotting. The Developer has agreed to require the same labor peace guarantee from any successor or replacement contractor, sub-contractor, operator, or developer acquiring the right to develop or operate business opportunities covered by this agreement during the term of the Arena Lease between ArenaCo and the City of Seattle and King County.

The Developer shall maintain such labor peace or project labor agreements with such labor organizations for the duration of the proprietary interest of the City and County or other public agencies in uninterrupted revenues from the operation of the Arena which agreements will ~~limits~~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 and the above-referenced labor organizations.