King County

Metropolitan King County Council
Budget and Fiscal Management Committee

Staff Report

Agenda item No.:	4	Date:	October 2, 2012
Proposed No.:	2012-0388	Prepared by:	Wendy Soo Hoo Mark Melroy John Resha

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SUBJECT

Proposed Ordinance 2012-0388 would authorize the King County Executive to execute agreements related to a sports and entertainment arena in the SoDo neighborhood in Seattle. The agreements include a memorandum of understanding (MOU) with the City of Seattle and a private entity proposing to develop the arena (ArenaCo), and an interlocal agreement (ILA) with the City.

BACKGROUND

On July 30, 2012, the King County Council approved Ordinance 17395, authorizing the Executive to enter into a MOU with the City of Seattle and ArenaCo and an ILA with the City of Seattle. The County Council amended the transmitted agreements to:

- provide stronger financial security provisions;
- clarify that the State Environmental Policy Act review will include consideration of reasonable alternatives and ensuring that the city and county councils will be able to consider the result of the State Environmental Policy Act review and determine whether to proceed with or without additional or revised conditions;
- require ArenaCo to fund an independent economic impact study to examine the impacts that might result from the construction and operation of the proposed arena; address pedestrian infrastructure improvements;
- require ArenaCo to adopt a community benefit agreement with appropriate community organizations and exceed the current National Basketball Association standards for providing affordable tickets; and
- affirm the value of having a Women's National Basketball Association team in the Seattle region and require the city, county and ArenaCo to use reasonable efforts to support the Seattle Storm at either the arena or Key Arena.

On September 13, 2012 the Seattle City Council's Government Performance and Finance (GPF) Committee voted to pass version 2 of Seattle Council Bill 117480. This legislation amended the arena-related agreements authorized by the King County Council on July 30, 2012 (Ordinance 17395). The full Seattle City Council approved the legislation on September 24, 2012.

ANALYSIS

This staff report summarizes key differences between the agreements approved by the King County and Seattle City Councils.

Memorandum of Understanding

SODO Transportation Infrastructure Fund

The SODO Transportation Infrastructure Fund would be funded with tax revenues generated during interim play at Key Arena and at the new arena before the Transfer Date (when the City and County exercise the option to purchase the arena and the arena would be taken off the tax roll). The fund must equal $40 million. If the tax revenues do not reach $40 million, then a portion of the proceeds of the Second Installment of Public Financing would be deposited to provide the additional amount needed.

In the MOU adopted by the County Council, in the NBA-only scenario, the public financing totaled $120 million, with up to $5 million from King County. In the City's proposed MOU, if a portion of the proceeds of the Second Installment is required to be deposited into the SODO Transportation Infrastructure Fund, the Public Financing would increase by a corresponding amount up to $25 million. The County would be required to potentially contribute up to an additional $10 million in this scenario, increasing the County's potential contribution in the NBA-only scenario from up to $5 million to up to $15 million.

The SODO Transportation Infrastructure Fund would give "first priority to projects protecting the operations of the Port of Seattle and improving freight mobility, and then to projects that improve pedestrian safety, enhance transit service and connectivity, and overall traffic management in the SODO area." Following discussions between both Councils' staffs, the City Council's adopted MOU included language that specified that "Allocation among these priorities is to be determined by the City and County through interlocal agreement and approved by future ordinances." The intent was to acknowledge that the prioritization of how much funding is allocated to each of these priorities and to which specific projects will be determined jointly by the City and County.

Staff notes that the City's MOU removed the requirement for ArenaCo to participate in causing infrastructure to be built for safe and convenient pedestrian access. While the

City's MOU suggests potential for pedestrian improvements to be funded by the SODO Transportation Infrastructure Fund, it is a policy determination whether the language as adopted by the City Council is sufficient to achieve the County Council's policy goals.

Changes to Flow of Funds

Base Rent Reduction- Base Rent is reduced to $1 million rather than $2 million. This reduces the likelihood that Excess Arena Tax Revenues will be generated. However, the City Budget Office's model does not anticipate any excess Arena Tax Revenues being generated except in the last two years of the lease, so this may not be a significant issue.

City-County Capital Account - Under the MOU adopted by the County Council, any excess Arena Tax Revenues could be applied to paying down debt service or placed in the City-County Capital Account at the City and County's sole discretion. The City and County would also have the sole discretion to use the funds in the City-County Capital Account to make major system repairs. Under the City's proposed MOU, the first $2 million of any excess Arena Tax Revenues must be placed in the City-County Capital Account, which ArenaCo could then use to perform routine maintenance or capital improvements. ArenaCo could also use additional amounts from the City-County Capital Account to make certain Major Capital Projects identified by the City and County as being necessary to maintain the facility to the required Operating Standards.

Under the County Council's adopted MOU, ArenaCo was solely responsible for routine maintenance and all capital repairs, so allowing ArenaCo to use the first $2 million of excess tax revenues and additional amounts for Major Capital Projects is a shift in policy. However, as noted above, excess ArenaTax Revenues may not be likely to materialize.

Changes to Financial Protections

Broadened Parent Guaranty - If another entity acquires at least 10% equity in ArenaCo, then that entity shall be deemed an ArenaCo Parent and would be required to provide the same Parent Guaranty. If the other ArenaCo Parent is also the owner of the NHL Team, then it shall also guarantee the obligations of the NHL Team under the NHL Team's non-relocation agreement.

Personal Guaranty - If ArenaCo fails to make its payment to cover the debt service on the Public Financing, the City and County would draw upon the Reserve Account until it was empty. Then, the Parent Guaranty obligations to guarantee the lease would be triggered and if those obligations are not met, then the Personal Guaranty is triggered.

Chris Hansen would make payment to cover debt service. Once the Personal Guaranty is triggered for the first time, it only lasts for five years and so covers only a one-time five-year period through the life of the lease.

The City MOU requires certification from an independent certified public accountant that Mr. Hansen's net worth is no less than $300 million, but does not specify the methodology for calculating net worth. This would need to be more clearly defined in the Transaction Documents.

First Right to Distribution - Under the City MOU, the maximum amount of outstanding debt to the NBA is changed from $125 million to $150 million to account for the public financing used to fund the SODO Transportation fund (i.e., up to an additional $25 million). This means the right to distribution of the proceeds of the sale of the NBA team would be after this $150 million was paid to other creditors.

Put and Call Options - Upon expiration of the lease, the City and County would have 180 days to exercise the right to require ArenaCo to purchase the arena and land for $200 million.

ArenaCo would have 180 days to require the City and County to sell the arena and land for the greater of how much the City purchases the land for escalated by CPI or $200 million. If ArenaCo exercises this option, the City and County could require ArenaCo to build a substantially similar new arena.

If these options are not exercised, then if neither the NBA nor NHL team agrees to continue to play at the arena, then the City and County, could require ArenaCo to pay to demolish and remove the arena.

The City Council's adopted MOU calls for the decisions provided for around the Put and Call options to be made jointly by the City and County. If there is a dispute, the decision would be made by the majority owner (i.e., the City).

Changes Related to Key Arena

Key Arena Fund - The City will establish a fund to be managed by the City and used for improvements to Key Arena or to fund improvements at the new arena. The first $7 million in Key Arena Taxes (i.e., tax revenues generated during interim play at Key Arena) would be deposited into the Key Arena Fund. If ArenaCo negotiates a long-term lease with each existing anchor tenant at Key Arena, then the City will direct $5 million to the new arena and $2 million will stay for improvements at Key Arena.

Key Arena Study Cost Reimbursement - $150,000 is identified for Key Arena planning within the $5 million reimbursement cap. This slightly reduces the amount available for reimbursing County expenses in the event total expenses exceed $5 million.

Key Arena Taxes - Taxes generated while the NBA and/or NHL Team is playing at Key Arena would go into the Key Arena Fund described above. The City's proposed MOU as drafted would include County tax revenues as well as City tax revenues. For the County, this would be primarily sales tax revenues. Roughly estimated, this could be about $30,000-$35,000 per year while the team is playing at Key Arena.

Not including the County sales tax for this purpose would allow those tax revenues to continue to be used for general County purposes. However, the County could also benefit from having its County tax revenues go into the Key Arena Fund because it would slightly reduce the amount of public financing needed to fill the SODO Transportation Infrastructure Fund in the event only the NBA Team has been secured. Furthermore, $5 million of the Key Arena Fund could potentially go to support the new shared arena.

Community Benefit Agreement

The City Council's proposed MOU no longer has the City and County as signatories, so the City and County will not be involved in negotiating the content.

Provisions for lower-priced tickets incorporated by the County Council remain in place under the City's MOU.

Economic Impact Analysis

Under the City Council's proposed MOU, the City and County would manage the economic impacts analysis with reimbursement from ArenaCo for a cost of up to $150,000.

Under the County Council's adopted MOU, the study would be managed and paid for by ArenaCo with specific timelines. The County Council's MOU called for a maximum cost of $200,000. Transferring the responsibility to the City or County could make it more difficult to procure a vendor and complete the study within the required timelines. It is a policy decision whether to accept these changes.

SEPA

While the County's MOU specified that the SEPA review would include consideration of reasonable alternatives, the City's MOU specifies that the alternatives considered would include a "no action" alternative and an alternative site at Seattle Center.

Interlocal Agreement

Governance

Under the County Council's adopted ILA, in the NBA-only scenario, the County would only have one representative on the arena advisory board (appointed by the County Council) and the City would have two. In the City's proposal, the County's contribution in the NBA-only scenario would increase from up to $5 million to up to $15 million. It is a policy question whether the County wishes to have two representatives on the advisory board.

SEPA Roles

The City Council's ILA states that the City and County will enter into a lead agency agreement and coordinate with one another so that full SEPA review is completed.

The matrix on the subsequent pages provides a side-by-side summary of key changes in the County Council's and City Council's agreements.

	King County Council Adopted	Seattle City Council Adopted	Implications
Flow of Funds	Base Rent = $2 million ArenaCo solely responsible for capital improvements and routine maintenance Excess tax revenues could be used to pay down debt or for capital improvements	Base Rent = $1 million First $2 million of any excess tax revenues can be used by ArenaCo for routine maintenance or capital improvements	City Council changes reduce likelihood of generating excess tax revenues and if excess tax revenues are generated the first $2 million could be used by ArenaCo for routine maintenance or capital improvements Excess tax revenues were not anticipated in City/County modeling until the last two years of the arena lease, although Mr. Hansen's more optimistic projections suggest potential for excess tax revenues
Transportation	ArenaCo required to participate to cause infrastructure improvements that will provide safe and convenient pedestrian access from the arena to light rail stations. Added language requiring SEPA review to consider comprehensive traffic impact analysis, impacts to freight mobility, and pedestrian connections between the arena and light rail stations	Created $40 million SODO Transportation Infrastructure Fund to be funded with taxes generated while team(s) play at Key Arena and at the new arena before it transfers into public ownership. If those revenues do not total $40 million, a portion of the Second Installment would fund the difference. In the NBA-only scenario, the City and County would provide an amount of increased public financing (up to $25 million) equivalent to the amount of the Second Installment that was added to the SODO fund.	In addition to the up to $5 million King County would put towards the lease-purchase of the arena, King County would also fund up to $10 million of the SODO fund in the NBA-only scenario. (In the two-team scenario, the County's obligation of $80 million would not change.)

		The fund will give first priority to projects protecting the Port and improving freight mobility, and then to projects that improve pedestrian safety, enhance transit, and overall traffic management in SODO. Governance and management of the fund will be determined later through interlocal agreement.	
SEPA	Required consideration of reasonable alternatives, as well as consideration of comprehensive traffic impact analysis, impacts to freight mobility, and pedestrian connections between the arena and light rail stations	Required consideration of alternative sites, including an alternative site at Seattle Center and a “no action” alternative	
Financial Protections	Required ArenaCo to covenant not to enter into any agreements that would interfere with City & County right to proceeds of sale of the NBA Team. Required ArenaCo and ArenaCo Parent to be established as bankruptcy remote special purpose entities to reduce potential for strategic bankruptcy filing. Required annual certification of ArenaCo coverage ratio by	Retained the County Council’s improvements. Broadened parent guaranty to cover NHL team owner, if the NHL team owner acquires at least 10% equity in ArenaCo. Added a personal guaranty lasting for 5 years from when it is triggered: If ArenaCo fails to make its payment to cover the debt service on the Public Financing, the City and County would draw upon the Reserve Account until it	Financial protection is increased through the City’s changes

	independent accountant or alternative evidence. Added requirements related to City and County right to review financial records of ArenaCo and ArenaCo Parent.	was empty. Then, the parent guaranty obligations to guarantee the lease would be triggered and if those obligations are not met, then the personal guaranty is triggered. Chris Hansen would make payment on outstanding debt. Once the Personal Guaranty is triggered for the first time, it lasts for five years and covers a one-time five-year period through the life of the lease. Inclusion of Put and Call options: (1) City and County could require ArenaCo to purchase the arena and land at the end of the lease. (2) ArenaCo could require City/County to sell the arena and land and the City and County could then require ArenaCo to build a substantially similar facility. (3) City and County could require ArenaCo to demolish the facility. If the City and County disagreed about exercising one of these options, the City would make the decision.	
Team Name	Strengthened requirement that ArenaCo use best efforts, including potential to incur costs, to acquire Seattle Sonics name & history.	Retained the County's changes	
Economic Impact Analysis	Required an independent economic impact analysis as a condition precedent, to be conducted by a consultant selected by the City and	Required Mr. Hansen to fund at a cost not to exceed $150,000, but with the process to be managed by the City and County.	Potentially less funding is available for the study. Also, City procurement and management of the study could take longer than the negotiated timelines.

	County and to be funded by Mr. Hansen at a cost not to exceed $200,000. Specific timelines were required for the procurement of the consultant and completion of the study.		However, even if the timelines are not met, the Councils would still have the right to make a decision 45 days after the study is completed.
Key Arena	No policy directives related to Key Arena, but included language stating that the parties affirm the value and importance of having the WNBA in the Seattle region and would use reasonable efforts to support the Seattle Storm at either the proposed arena or Key Arena.	Requires first $7 million in Key Arena Taxes (i.e., tax revenues generated during interim play at Key Arena) to be deposited into a Key Arena Fund. This includes County taxes (primarily sales tax - $30,000 to $35,000 annually). If ArenaCo negotiates a long-term lease with the Seattle Storm, then the City will direct $5 million to the new arena and $2 million will stay for improvements at Key Arena.	Not including County sales tax for this purpose would allow those tax revenues to continue to be used for general County purposes. However, the County could also benefit from having its County tax revenues go into the Key Arena Fund because it would slightly reduce the amount of public financing needed to fill the SODO Transportation Infrastructure Fund in the event only the NBA Team has been secured.

ATTACHMENTS

1. Proposed Ordinance 2012-0388
2. Seattle City Council MOU – *track changes compared to King County Council MOU*
3. Seattle City Council ILA – *track changes compared to King County Council ILA*