# Summary and Key Terms

## *Memorandum of Understanding (MOU)*

| Key Terminology |
|---|
| ArenaCo |
| Transaction Documents |
| Umbrella Agreement |
| Project |
| Lease-Purchase |
| Transfer Date |

### Overview

- Parties to the MOU are the City of Seattle, King County, and ArenaCo. ArenaCo is the company that will construct, operate and maintain the arena.
- Binding agreement, except does not impact ability of City or County to perform their regulatory roles, including SEPA review, and is subject to each Party successfully fulfilling obligations.
- All parties agree to work and negotiate in good faith.
- This MOU document, while detailed, is the first of many documents that would be developed and executed. The set of future documents is referred to as the "Transaction Documents". One of the key future transaction documents is the "Umbrella Agreement", which will further define details.
- Following the execution of this MOU, the City, County and ArenaCo have up to 5 years to execute the more detailed Umbrella Agreement; otherwise the MOU expires.

### Description of Project

- The project is to develop, build and operate a multi-purpose sports and entertainment arena.
- Approximately: 700,000 sq.ft.
- Will accommodate approximately 19,000 attendees for concerts, 18,500 attendees for NBA games, 17,500 attendees for NHL games.
- Location is adjacent to First Avenue South between South Massachusetts Street and South Holgate Street.

### Construction and Delivery Method

- The City and County will use the Lease-Purchase method to call for bids to construct the facility. Under this approach, the winning bidder constructs the facility and the City and County agree to lease or purchase the facility following completion.
- ArenaCo is a bidder in this process.
- All public financing and most obligations contained in the MOU are contingent upon ArenaCo being selected through the bid process.
- If awarded the contract, ArenaCo would be responsible to build the facility, with the City and County obligated to lease or purchase it following completion.
- Prior to the completed arena being added to the new construction property tax rolls ArenaCo will own the facility. The City and County will lease the Arena for a nominal rent and then lease it back to ArenaCo.
- Within 6 months of when the facility is added to the property tax rolls, the City and County are obligated to either purchase the facility or to have a trustee prepay the 30 year facility lease. This date is the "Transfer Date".
    - o If the City and County exercise the option to purchase the facility from ArenaCo, ArenaCo would then lease the facility from the City and County and operate and maintain it. This is the option most commonly discussed.

- If the City and County instead exercise the option to have a trustee prepay the facility lease, the City and County would then lease the facility for 30 years, and ArenaCo would sub-lease the facility and operate and maintain it.

**First Installment of Public Financing**

- Prior to any public financing occurring, ArenaCo must meet these requirements:
  - Acquisition of ownership rights to an NBA franchise with NBA acknowledgment of the Arena Lease and a non-relocation agreement in place.
  - Satisfy the City and County as to the financial ability of ArenaCo and its investors to meet obligations under the MOU.
  - Acquisition of all land required for the Arena and facilitation of the City's and County's due diligence on the land as to its environmental condition.
  - Successfully complete land use processes and secure any required permits, including a master use permit.
  - Completion of SEPA review.
  - Secure required financing to complete construction of arena facility.
  - Funded the City/County Reserve Account (described below).
  - ArenaCo and NBA team are domiciled in Seattle for tax purposes.
  - Successfully complete any transaction documents required.
  - Be the successful bidder of the City and County's call for proposals to construct the arena.
- Once these criteria are met, the City will purchase the land from ArenaCo. The value will be based on an independent appraisal, but is capped at $100 million. This is the first installment of public financing and does not involve the County. This date is referred to as the "Closing Date".
- In the case of a significant natural disaster or other material adverse condition that may occur prior to financing, the City and County are not obligated to make any financial contribution.

**First Installment**

**Closing Date**

**Second Installment**

**Second Installment of Public Financing**

- The second installment of public financing occurs on the Transfer Date and will involve both the City and the County.
- The amount of the second installment of public financing is dependent upon whether an NHL team has been secured and all conditions met, including a non-relocation agreement for the term of the Arena Lease.
  - If these NHL conditions have been satisfied, the second installment will be an amount that, when combined with the first installment, will total $200 million.
  - If these NHL conditions have not been satisfied, the second installment will be an amount that, when combined with the first installment, is the lesser of:
    - The amount of debt that could be supported by stabilized Arena Tax Revenues and base rent (the exact method of calculating stabilized revenue will be established in the Umbrella Agreement and will be based upon experience); or
    - $120 million.

**Structure of Public Financing**

- Public financing will include two installments of Limited Tax General Obligation bonds or Certificates of Participation, with durations of approximately 30 years.
- The MOU contemplates debt service amounts rising at one percent annually for the first 10 years and level debt service from Year 11 on for each installment. Debt service during the period of construction will be structured to accommodate limited revenue flows until operations begin.
- The MOU acknowledges that most of the public financing obligations will be taxable. If the City and County determine that tax-exempt debt can be issued, the revenue streams supporting those debt service payments would be excluded from Arena Tax Revenues and would not be guaranteed by ArenaCo. The City and County would use this strategy only with otherwise secure revenue streams, such as property taxes.
- The MOU leaves flexibility for the City and County, in consultation with ArenaCo, to work collaboratively to structure debt in the most cost-effective manner available at the time financing occurs. Public financing will be consistent with City and County debt management policies.

**Ground Lease and Arena Lease**

- The City will lease the site to ArenaCo for $1 million annually during construction. This ground lease will continue until the arena is ready for occupancy ("Commencement Date").
- On the Commencement Date, the Arena Lease begins. Provisions of the Arena Lease include:
    - Term of at least 30 years, and no less than the term of any public financing.
    - ArenaCo will pay Base Rent in the amount $2 million annually. ArenaCo will also pay Additional Rent if required such that the combination of Base Rent, Arena Tax Revenues, and Additional Rent are sufficient pay City and County public financing obligations. The total annual debt service obligations of the City and County public financing are referred to as the "Annual Reimbursement Amount".
        - "Arena Tax Revenues" means the amount of property tax, sales tax, leasehold excise tax, admissions tax, business and occupation tax, and parking tax revenues attributable to the arena and arena tenant improvements that have been received by the City and County on and from the project site and arena. Arena Tax Revenues excludes taxes that are restricted in their use, such as dedicated sales taxes for Metro Transit and criminal justice purposes, and dedicated property taxes, such as those that support Emergency Medical Services. Only parking taxes collected directly by ArenaCo or an affiliate that can be directly tied to activity at the arena are included. Business taxes paid by the NHL and NBA teams are included in Arena Tax Revenues.
    - The Arena Lease includes options for four 5-year extensions, with base rent increasing to $4 million during the first extension, and by inflation thereafter. Lease extensions are contingent upon extensions of NHL and NBA non-relocation agreements.

**City and County Oversight**

- The City and County will appoint a "City-County Representative" who will represent the City and County during the regular course of business.

**Ground Lease**

**Commencement Date**

**Arena Lease**

**Base Rent**

**Additional Rent**

**Annual Reimbursement Amount**

**Arena Tax Revenues**

**City-County Representative**

- The City-County Representative will have access to all non-privileged major meetings involving ArenaCo and project managers during all phases of the project and will also have access to all written and electronic non-privileged information.

**Arena Design, Development and Construction**

- ArenaCo is solely responsible for the cost of design, permitting and construction, including any cost overruns, and any cost of remediation of any hazardous materials on the project site.
- The City and County will have reasonable ongoing input during design and will have the right to approve the schematic design and design standards. Approval will not be unreasonably withheld.
- ArenaCo will make good faith efforts to address concerns raised by the City-County Representative. The City and County do not have any responsibility for the design or construction of the arena.
- The design will conform to any applicable City and County codes, any NBA and NHL requirements for arenas, and be substantially similar in quality to three mutually agreeable NBA/NHL arenas. The design will also will be in conformance with applicable City requirements for sustainable construction and will strive to utilize the most modern practices of sustainable design.
- The City and County have the right to object to material deviations during construction from the approved design schematics or to the extent there is a violation of federal or state law.
- The City and County will be a beneficiary of a performance bond guaranteeing timely completion of the facility and securing appropriate insurance.
- All parties agree upon the importance of inclusion of minority workers who are traditionally disenfranchised and low-income workers and businesses in project design and construction.

**Operations and Management**

- ArenaCo is solely responsible to operate and maintain the facility in a standard comparable to three mutually agreeable professional basketball and ice hockey arenas.
- Failure to operate the facility in accordance with standards constitutes a default, and enables the City and County to replace ArenaCo as the operator, among other remedies.
- The City and County will have the right to use the facility for at least 12 events each year rent free. The City and County would pay direct operating costs for these events
- ArenaCo will market the arena in a manner that promotes economic development in the area.
- ArenaCo will enter into license agreements with the NBA and NHL teams for terms consistent with the public financing. The City and County have the right to review and approve these agreements to ensure they include non-relation agreements and definitions of arena and team revenue streams.
- ArenaCo will maintain ongoing general liability insurance and property insurance for the full replacement value of the arena.
- ArenaCo makes an ongoing commitment to use reasonable efforts to use minority and low-income workers and businesses in the operations and maintenance of the arena.

**Security Provisions and Default**

**City/County Events**

**City/County Approval of Team Leases**

**Reserve Account**

**Coverage Ratio**

**First Priority Payment**

- ArenaCo will fund a Reserve Account held in escrow that totals at least the amount required for City and County debt service obligations for the following year.
- ArenaCo will be required to certify annually that Net Arena Revenues for the preceding fiscal year are at least two times the amount required for the following year's total City and County debt service. This amount is referred to as the "Coverage Ratio". Net Arena Revenues are the total amount of revenues received by ArenaCo, less operating costs, which includes rent obligation to the City and County. If Net Arena Revenues are less than the Coverage Ratio, ArenaCo must fund the reserve account such that the total amount of net arena revenues and the reserve account is three times debt service for the following year.
- The City's and County's right to receive rent payments are secured by a first priority payment position from Arena Revenues, senior to any private debt service. This includes revenues from facility naming rights, suite and premium seating sales, concession payments, box office fees, and other arena-related revenues. This excludes revenues reserved by the NBA and NHL to the teams themselves, such as ticket revenues. The City and County will be further secured by a lien on revenues and receivables of ArenaCo, the terms of which are to be agreed upon between the City, County and private lenders to ArenaCo.
- Should the City or County need to draw down the Reserve Account, ArenaCo has 30 days to refill the account. A default occurs if ArenaCo fails to refill the Reserve Account within 30 days.
- The company that owns the equity in both ArenaCo and the NBA team will provide a guaranty of the Arena Lease. Further, in the event of default and the team(s) ceasing to play in the Arena, the City and County will have first rights to the proceeds of the sale of an NBA team, subject only to repayment of any NBA team obligations to the NBA. Debt obligations to the NBA by the NBA team owner are capped (initially at $125 million) to ensure that the team owner has sufficient equity in the team to meet obligations of the City and County in a default scenario.
- The NBA and NHL teams each will be subject to a non-relocation agreement with specific performance requirements, including the playing of home games in the arena, liquidated damages and injunctive relief provisions.
- Assignment of the Arena Lease to another party is subject to the written consent of all parties, and in particular subject to the City and County being satisfied of the financial capacity of the assignee to meet all ArenaCo obligations. In such event, the assignee must assume all obligations of ArenaCo.
- Both the Capital Account and the City-County Capital Account also serve as security for debt service payments.

**Surplus Arena Tax Revenues**

- If the combination of Arena Tax Revenues and Base Rent exceeds debt service levels, then the City and County may either apply surplus revenues to redeem or defease outstanding principal amounts for the public financing, or may deposit the surplus revenues into the City-County Capital Account subject to the cap. The City-County Capital Account has a cap of $10 million during the first 10 years. This cap grows by $2 million annually until year 15, when the cap is

**Guaranty from Equity Parent Company**

**Non-Relocation Agreement**

**Surplus Revenues**

**Debt Prepaid**

**City/County Capital Account**

**Capital Account**

**Capital Account Contribution**

$20 million. Surplus revenues that would cause the City-County Capital Account to exceed the cap must be used to redeem or defease outstanding principal of the public financing.

- If the total public financing is retired, then the City-County Capital Account cap is removed.

**Capital Improvements**

- ArenaCo will annually prepare and submit a five-year capital plan for anticipated expenditures that will be subject to review by the City and County.
- Regular independent inspections for compliance with standards will be performed.
- ArenaCo is required to deposit $2 million annually into the Capital Account. The Capital Account will hold funds from ArenaCo designated for capital improvements. This account is distinct from the City-County Capital Account, in which surplus Arena Tax Revenues will be placed by the City and County, which are also designated for capital improvements.
- The Capital Account is designated for repairs, replacements and improvements, defined as relating to items with a lifespan of at least three years and costing at least $5,000 per item, or other systems required for the functioning and maintenance of the arena in accordance with agreed upon standards or laws.
- The City-County Capital Account is designated for repairs identified in the five-year capital plan, or for major repairs to components of base systems or the facility.
- ArenaCo is required to fund all capital work relating to the arena. ArenaCo's obligation does not depend on available funds in the Capital Account or City-County Capital Account. If funds are not available from those sources, ArenaCo must fund the required work with other funds.

**City and County Costs and Reimbursements**

- ArenaCo will pay for dedicated staff in the Department of Planning and Development to facilitate the processing of permit applications.
- ArenaCo will pay for the City-County Representative.
- ArenaCo will also reimburse the City and County for up to $5 million in costs associated with development of the MOU, Transaction Documents, and other work leading to the opening of the Arena. The first reimbursement occurs at the time of the first public financing and monthly thereafter through the opening of the arena.
- During operation of the arena, ArenaCo is required to contract with City departments for any services provided by departments, such as traffic management and emergency medical staff that may be required.

**Ownership of Arena Facility Improvements**

- ArenaCo will install all tenant improvements.
- During the Arena Lease, ArenaCo will own all or a portion of tenant improvements, as to be defined in the Transaction Documents.
- Upon the termination of the Arena Lease or its extensions, all tenant improvements (excluding NBA or NHL team owned equipment) will become the property of the City and County. The condition of these improvements must be consistent with the operating standards and in a condition suitable for uninterrupted use.

**KeyArena**

- Prior to completion of the project, the NBA and NHL franchises will have the option to play their home games at KeyArena.

- In this event, ArenaCo will make improvements to KeyArena related to this interim use. Improvements that are permanent in nature become the property of the City. These may include modernization of telephone, data and broadcast backbones of the arena, in addition to renovation of some spaces in KeyArena.
- Any taxes generated during the tenancy at KeyArena by NBA or NHL franchise teams above current tax levels would be used to benefit the arena project.
- ArenaCo will provide and discuss multiple options for the future use of Key Arena.

**Other Provisions**

- City-County Representative can deny names for the facility that violate the standard of good taste or references to other states or municipalities other than Seattle or King County.
- Subject to its ability to obtain applicable rights and approvals, the NBA franchise will use the name "Seattle Supersonics".
- Terms may be mutually modified in the future to take advantage of tax benefits.
- ArenaCo and affiliated NHL and NBA teams must be domiciled in Seattle for tax purposes.
- ArenaCo agrees to enter into labor peace or project labor agreements.
- ArenaCo commits to using the City's Inclusion Plan as guidance for use of Women and Minority business Enterprises on the Project.

## *Inter-local Agreement (ILA)*

**Overview**

- Binding agreement between the City and County.
- Identifies relative obligations between the City and County as they relate to the MOU with ArenaCo.
- Terminates upon the latter of the Arena Lease or when all public financing is retired or defeased.

**City Responsibilities**

- The City will be responsible to appoint and supervise the City-County Representative in consultation with the County and will be responsible for the day-to-day decision making with respect to the arena. The City can also replace the City-County Representative.
- The City is responsible to issue the call for bids for the project.
- The City will acquire title to the land and ground lease the land to ArenaCo as provided for in the MOU.
- The City will be the lead party with respect to reviews and approvals relating to design and construction.
- The City is responsible to pay nominal rent to ArenaCo under the terms of the lease-purchase between the Commencement Date and the Transfer Date. Those payments are credited against the City's share of the second installment of public financing.
- The City will administer a common fund that will hold City and County revenues attributable to

the project and rent payments from ArenaCo. This is the "Arena Revenue Account".

**City and County Joint Responsibilities**

- The City and County will both enter into a lease-purchase agreement with ArenaCo, assuming they are the winning bidder in the call for bids. On the Commencement Date, the City and the County become tenants in common in the leasehold estate in the arena with ownership in proportion to their anticipated shares of public financing.
- On the Transfer Date, the City and County will jointly exercise the option to purchase the facility or will cause a trustee to prepay the full lease amount. Ownership shares under both scenarios are in proportion to the share of public financing.
- In the event that the Arena Lease is terminated prior to the end of the initial term, the City and County become responsible for costs and will contribute proportionately based on their relative shares of public financing.
- The City and the County both dedicate all Arena Tax Revenues to the benefit of the project for the duration of the Arena Lease, except for those legally restricted as to their use (other than parking taxes attributable by contract to the arena). These taxes will be deposited into the Arena Revenue Account. Funds in the Arena Revenue Account are used to pay taxable debt service by the City and the County.

**Public Financing**

- The City will finance the public acquisition of the project site for the fair market value of the site, but not to exceed $100 million. This is the First Installment of public financing.
- The Second Installment of public financing will consist of financing from both the City and the County and it is anticipated to involve both taxable and tax-exempt financing from each party.
    - If conditions related to an NHL franchise are not yet satisfied as of the Transfer Date, then the relative shares of City and County for the Second Installment of public financing are:
        - The County is limited to the lesser of:
            - An amount supported by the County's portion of anticipated property tax revenues related to the Arena and arena improvements; or
            - $5 million.
        - The City in an amount that, in combination with the First Installment and the County's contribution, satisfies the requirements of the MOU (the lesser of $120 million and the amount that can be supported by base rent and Arena Tax Revenues).
    - If conditions related to an NHL franchise are satisfied as of the Transfer Date, then the County Obligation will be $80 million and the City obligation will be the amount that, in combination with the first installment, totals $120 million.
- In the event that the County's participation in the public financing does not exceed $5 million, the County may determine not to hold an ownership interest in the arena site, facility, or leasehold and may instead assign its rights to the City.
- City and County debt structures will have the same basic structure and neither structure can be modified without the consent of the other party.

County Financial Obligation

City Financial Obligation

City-County Advisory Board

- It is anticipated that debt supported by property taxes will be issued as tax-exempt debt, and in that event those revenues are not deposited into the Arena Revenue Account.
- Neither party guarantees the debt of the other party.

**City-County Advisory Board**

- The City and County will appoint members to an Advisory Board that will provide oversight of the administration of the Arena Fund and will make recommendations to the City and County officials on arena-related matters.
- The City-County Representative will provide reports to the Advisory Board at least quarterly on the status of all expenditures and fund balances. Monthly updates of related revenues are also called for.
- The Advisory Board will consist of four representatives, one from the executive and legislative branches of the City and County. Representatives will be elected officials or employees of the City or County.
- If the County financial contribution is limited to $5 million, then the County will have only one representative on the Advisory Board, appointed by the County Executive.
- The Mayor of the City may take action or direct the City-County Representative to take action on unforeseen issues if an immediate decision is required and notice is promptly given to Advisory Board representatives.

**Cost Reimbursement**

- The City and County will be reimbursed by ArenaCo for up to $5 million for pre-development costs, exclusive of fee associated with permit review and costs for the City-County Representative. If the total of related costs exceeds $5 million, each party's respective share is reduced proportionately.

**Default**

- In the event of default, the City and County are entitled to amounts of Arena Tax Revenues and Base Rent proportionate to current debt service. Except that after year 15 of the Arena Lease, to the extent necessary to pay current debt service, the County is entitled to up to half of these revenue streams, and the City is entitled to at least half of these revenues streams.
- Additional rent and withdrawals from the Reserve Account, Capital Account and City-Capital Account are allocated first in any year to support County current debt service as needed, and then to support City current debt service as needed.
- Amounts received in connection with other security interests from ArenaCo or its affiliates are distributed between the City and County in proportion to the their outstanding public obligations.