Kerry Smith
CEN ArenaCo ORD
April 15, 2013
Version #1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117769

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with Horton Street, LLC to operate and manage KeyArena and utilize it for the playing of professional basketball games.

WHEREAS, the City of Seattle owns KeyArena, a multi-purpose sports and entertainment facility located at Seattle Center; and

WHEREAS, Horton Street, LLC ("ArenaCo") is awaiting NBA approval of its request to acquire a National Basketball Association team franchise ("NBA Team") and to relocate the NBA Team to Seattle commencing with the 2013-14 season; and

WHEREAS, anticipating the NBA's approval of the relocation request, ArenaCo and the City wish to establish terms and conditions for the interim use of KeyArena for home games for the NBA Team; and

WHEREAS, ArenaCo intends to expend substantial sums for capital improvements to KeyArena so that it will comply with NBA requirements and provide a first-rate patron experience and has agreed that certain capital improvements costing at least $3 Million Dollars will remain at KeyArena at the conclusion of the agreement; and

WHEREAS, the Director of the Seattle Center has the general authority to enter into construction agreements for capital improvements of the sort contemplated in the Arena Use Agreement and to enter into other short-term agreements to provide for an orderly transition of KeyArena operations to ArenaCo; and

WHEREAS, the Parties to the Arena Use Agreement have not finalized the specific improvements that will be covered in the KeyArena construction agreement; and

WHEREAS, City employees will continue to perform the functions that have historically been performed by City employees at KeyArena; and

WHEREAS, the agreement between the City and ArenaCo will continue the exceptional venue and patron experience at KeyArena for sports, entertainment and NBA events and, potentially, National Hockey League (NHL) events; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Seattle Center Director is authorized to execute, deliver and perform, for and on behalf of The City of Seattle, an Arena Use Agreement ("Agreement") between the City and Horton Street, LLC, for the use and management of KeyArena, contingent on NBA approval of ArenaCo's request to acquire and relocate an NBA Team to Seattle commencing with the 2013-14 NBA season, and further contingent on the City and ArenaCo executing a construction agreement (the "Construction Agreement" referenced in the Attachment 1) to allow ArenaCo to construct necessary improvements. The Agreement shall be substantially in the form attached to this ordinance as Attachment 1.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this

_____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: ARENA USE AGREEMENT
Exhibit A: Depiction of Authorized Arena Use Areas
Exhibit B: Other Agreements
Exhibit C: City's Capital Maintenance and Repairs
Exhibit D: Depiction of City-Managed Portion of the West Court Building
Exhibit E: Insurance Requirements

Attachment 1

ARENA USE AGREEMENT

by and among

THE CITY OF SEATTLE,
a Washington municipal corporation, as tenant in common

and

HORTON STREET, LLC
a Delaware limited liability company

_____, 2013

ARENA USE AGREEMENT

This ARENA USE AGREEMENT (this "Arena Use Agreement") is dated as of _____, 2013, and entered into by and between THE CITY OF SEATTLE, a Washington municipal corporation (the "City"), acting through the Director of its Seattle Center Department, and Horton Street, LLC, a Delaware limited liability company ("ArenaCo") (collectively, the City and ArenaCo are the "Parties").

AGREEMENT

ARTICLE I - DEFINITIONS

As used in this Arena Use Agreement, capitalized terms have the meanings indicated below unless a different meaning is specifically provided or unless the context otherwise requires.

"Advertising" means, collectively, all advertising, sponsorship and promotional activity, signage, designations (including, but not limited to, "pouring rights," naming rights or similar designations and rights of exclusivity and priority), messages and displays of every kind and nature, whether now existing or developed or used in the future including, without limitation, permanent, non-permanent and transitory signage or advertising displayed on permanent or non-permanent advertising panels or on structures, portions of the Arena, fixtures or equipment (such as scoreboard advertising and canopy advertising); audio or video public address advertising and message board advertising; programs; electronic insertion and other forms of virtual signage; advertising on or in schedules, admission tickets and yearbooks; all other print and display advertising; promotional events sponsored by advertisers; advertising display items worn or carried by Concessionaires or personnel engaged in the operation of any Event; and logos, slogans or other forms of advertising affixed to or included with cups, hats, and T-shirts; advertising of Concessions; advertising through broadcast rights; internet rights for the Arena website; and other concession, promotional or premium items.

"Arena" means KeyArena, the multipurpose sports and entertainment facility located at 401 First Avenue North, Seattle, Washington, together with the South KeyArena Parking Lot, the West Court Building box office, and the KeyArena digital signage board, all as depicted on Exhibit A attached hereto and incorporated herein, including all existing improvements currently located therein or attached thereto.

"Arena Capital Improvements" means any improvements to the Arena made by ArenaCo, including without limitation, any improvements to the seats, suite furnishings, offices, locker rooms, press areas, basketball floor, ice-making systems and equipment (if applicable), dasher board systems (if applicable), sound systems, scoreboards, ribbons, concession equipment, training equipment and other improvements, furniture, furnishings, and other items necessary for the operation of the Arena by ArenaCo under this Arena Use Agreement, or that

are otherwise required by the NBA in order for the NBA Team to be allowed by the NBA to play its home games at the Arena during the term of this Arena Use Agreement (or if applicable, required by the NHL for an NHL team to be allowed by the NHL to play its home games at the Arena during the term of this Arena Use Agreement).

"Arena Manager" means the City employee responsible for managing the City employees working at the Arena and the functions performed by such City employees at the Arena as provided for and subject to the conditions provided in this Arena Use Agreement.

"Arena Operating Expense(s)" means all expenses or obligations, as determined on a cash basis, of whatever kind or nature made or incurred by ArenaCo or any arena management firm that may be engaged by ArenaCo for the management and operation of the Arena, including, but not limited to, the Use Fee; the Patron Use Fee; reimbursement of Event Expenses, the costs of Routine Maintenance and Repairs (including supplies); the costs of City Administrative Personnel; Impositions (as provided and defined herein); box office expenses for Events; all expenses incurred to obtain Arena Revenues; salaries, wages and benefits of ArenaCo's and its agents' personnel working at the Arena; human resource support services and training and development expenses; contract labor expenses; Utilities; deposits for Utilities; telephone expenses; management fees paid to any arena management firm; 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; Arena and Event security expenses other than general building exterior security; police, fire, Emergency services, traffic and pedestrian management and other public safety expenses related to the Arena; other Event-handling activities at the Arena; all expenses payable by ArenaCo under any license agreements with professional sports 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; 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 incurred in the production and promotion of Events at the Arena; office supplies; employment fees; freight and delivery expenses; expenses for purchase or 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; and all damages, losses or expenses incurred by ArenaCo or any arena management firm 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 or to the extent not the responsibility of the City as provided in this Arena Use Agreement).

"Arena Revenues" means all cash and in-kind revenue, 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 this Arena Use Agreement associated with the management, operation, use, enjoyment, maintenance or repair of the Arena (other than City Events as set forth in Section 4.3). "Arena Revenues" include, but are not limited to, box office fees; Patron Use Fees; ticket fees; building use fees; revenues from Concessions (other than net Concession and catering revenues derived from the Bumbershoot Festival payable to the City, as described in Section 4.3, or its successor); all other licensing and rent revenues, forfeited or applied 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) services rendered at or related to the Arena, (4) the amounts received from seat use charges, (5) the amounts generated from the use and operation of an Arena internet website and other similar media, (6) the right to sell, or the sale of Advertising and Arena sponsorships including, without limitation, naming rights, (7) the non-ticket amounts generated from the sale or license of suites and premium seats, including club seats, and (8) club membership fees, but expressly excluding (notwithstanding the provisions above), in all cases, sums received or collected by ArenaCo for and on behalf of and actually paid to a user of the Arena. "Arena Revenues" do not include any taxes, fees or charges ArenaCo may be obligated to collect and submit to taxing or other governmental authorities on behalf of others.

"ArenaCo" means Horton Street, LLC, a Delaware limited liability company.

"Business Day" means any day other than (i) a Saturday, a Sunday or legal holiday; or (ii) a day on which commercial banks in Seattle, Washington are authorized or obligated by law to close; or (iii) any other day that City offices are closed.

"City Administrative Personnel" means the Arena Manager, a City analyst, and event booking and servicing staff assigned to the Arena.

"Capital Maintenance and Repair Work" means any work (including all labor, supplies, materials, equipment, design and engineering work) reasonably necessary to maintain the Arena roofs, permanent risers, walls, rafters and structural supports, and the infrastructure for all mechanical, electrical, plumbing, HVAC, fire alarm and other systems and components identified in Exhibit C attached hereto and incorporated herein that are required or used in or for the operation and use of the Arena in at least the same condition as existed as of the Commencement Date.

"Commencement Date" means July 1, 2013.

"Concession(s)" means the business of selling, furnishing or renting of foods, beverages, apparel, game programs, sporting equipment, goods, pay-for-play entertainment, souvenirs, novelties or merchandise (but not including parking) in, at, from or in connection with the operation of the Arena whether sold, furnished or rented from shops, kiosks or by individual

vendors circulating through the Arena including, without limitation, any restaurant (whether open to the public or restricted to members thereof), club, membership dining room concession stands, or other facility therein for sale of food or beverages or novelties or merchandise, and including sales to fill orders for any such items received by any Concessionaire operating a Concession at the Arena by mail, facsimile, telephone, internet site, mobile device, or other form of social media, or other medium of communication.

"Concessionaire(s)" means any person, including ArenaCo, operating a Concession.

"Construction Agreement" means the agreement between the City and ArenaCo dated April, 2013, containing the terms and conditions for construction of the Initial Improvements.

"Contract Year" means each twelve-month period that begins on July 1 and ends on the following June 30 during the Term of this Agreement.

"Director" means the Director of the Seattle Center Department of the City or such official's designee.

"Emergency" means any condition or situation which threatens (or if not promptly acted upon will threaten) the health, safety or welfare of users of the Arena or the structure or systems of the Arena itself or any portion thereof or which physically or functionally prevents the holding or continuance of an Event.

"Event of Default" has the meaning set forth in Article XX.

"Event Expenses means those expenses which are directly related to an Event and which would not otherwise have been incurred except for the occurrence of such Event, which include, without limitation, cleaning, security, event coordination, ushers, security, admissions staff, advertising, set-up and take-down, clean-up, production costs (including stage and sound and video crew) and the associated labor salary, wages and benefits, supplies and equipment, out-of-pocket travel expenses, permits, and taxes.

"Environmental Laws" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., Federal Hazardous Materials Transportation Control Act, 42 U.S.C. § 1801 et seq., Federal Clean Air Act, 42 U.S.C. § 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. § 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. § 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., Washington Water Pollution Control Act, RCW ch. 90.48, Washington Clean Air Act, RCW ch. 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW ch. 70.95, Washington Hazardous Waste Management Act, RCW ch. 70.105, Washington Hazardous Waste Fees Act, RCW

ch. 70.95E, Washington Model Toxics Control Act, RCW ch. 70.105D, Washington Nuclear Energy and Radiation Act, RCW ch. 70.98, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW ch. 70.99, Washington Underground Petroleum Storage Tanks Act, RCW ch. 70.148, and all regulations issued thereunder, as the same may be amended from time to time.

"Event(s)" means all revenue or nonrevenue producing sports, entertainment, cultural, civic and other activities and events which are conducted at the Arena.

"Expiration Date" has the meaning set forth in Section 2.2.

"Facility Fee" has the meaning set forth in Section 7.5.

"Force Majeure" has the meaning set forth in Section 22.5.

"Hazardous Substances" means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.

"Imposition(s)" means all governmental assessments, franchise fees, excises (including leasehold excise tax), 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 to any of the transactions ArenaCo is authorized to perform under this Arena Use Agreement and its use and occupancy of the Arena.

"Law(s)" or "Applicable Laws" means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the Parties, or the Arena, or both, in effect either at the time of execution of this Arena Use Agreement or at any time during the Term, including without limitation, any regulation or order or a quasi-official entity or body (e.g. board of fire examiners or public utilities) including, but not limited to, Environmental Law and all rules, laws and regulations issued thereunder, as the same may be amended from time to time.

"Liens" means, with respect to any property, any mortgage, lien, pledge, charge or security interest and with respect to the Arena, the term "Lien" shall also include any liens for taxes or assessments, Impositions, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier lien or other similar liens, including, but not limited to, mechanic's liens and claims.

"NBA" means the National Basketball Association.

"NBA Team" means the NBA franchise authorized to play its 2013-2014 home games in Seattle.

"NHL" means the National Hockey League.

"NHL Team" means any NHL franchise authorized to play any of its 2013-2014 home games in Seattle in Seattle.

"Patron Use Fee" fee is defined in Section 7.2.

"Routine Maintenance and Repairs" means all work (including all labor, supplies, materials, services and equipment) which is of a routine, regular, and predictable nature and reasonably necessary for the routine upkeep of the Arena other than the Concession stands, kitchen, kitchen storage areas, and suites. Routine Maintenance and Repairs includes, but is not limited to, the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the components of any building systems as regular, periodic maintenance procedures; (ii) periodic testing and repair of building systems, including, but not limited to, structural, mechanical, electrical, plumbing, HVAC, card-key security, fire alarm, and lighting and sound systems; (iii) ongoing trash removal; (iv) touch-up painting; (v) cleaning prior to, during and following all Events; (vi) repair of Event-related damage; and (vii) changing of standard, isolated light bulbs, fuses and circuit breakers.

"Use Fee" has the meaning set forth in Section 7.1.

"Utilities" means all utilities and services furnished to the Arena, including without limitation, gas, electricity, water, sewer, garbage and recycling collection, light, heating and cooling, and telecommunications services.

ARTICLE II - USE OF ARENA; TERM

2.1 Use Authorization. In consideration of the mutual covenants and agreements contained herein, the Parties agree that ArenaCo will use, manage and operate the Arena for the Permitted Use identified in Section 3.3.

2.2 Commencement and Term. This Arena Use Agreement shall commence July 1, 2013 (the "Commencement Date"), and shall expire on June 30, 2015; *provided, however*, that ArenaCo shall have the right to extend the term of this Arena Use Agreement for an additional period of one (1) year, through June 30, 2016, by giving the City written notice of ArenaCo's election to do so by no later than December 31, 2015 (with either June 30, 2015 or June 30, 2016, as applicable, being referred to herein as the "Expiration Date"). Notwithstanding anything in this Arena Use Agreement to the contrary, either Party may terminate this Arena Use Agreement at any time after June 30, 2015, upon reasonable notice to the other Party if ArenaCo discontinues presentation of home games of the NBA Team at the Arena; *provided, however,*

that if ArenaCo exercises the right to extend the Term of this Arena Use Agreement for the additional one (1) year period as provided for in this Section 2.2, then in no event shall this Arena Use Agreement be terminated during the 2015-2016 NBA season when any home games of the NBA Team remain scheduled to be played at the Arena during the 2015-2016 NBA season.

ARTICLE III - ARENACO'S RIGHTS AND OBLIGATIONS

3.1 Management and Operations.

3.1.1 General. Subject to all of the terms and conditions herein, during the term of this Arena Use Agreement, ArenaCo shall have exclusive control over sales, marketing and operations of the Arena and the negotiation, execution, and delivery of contracts with promoters and other users of the Arena. In performing its obligations, ArenaCo shall continuously operate and manage the Arena in a professional, businesslike and efficient manner consistent with the terms and provisions of this Arena Use Agreement and industry standards as measured by other third-party service providers performing similar services for comparable sports and entertainment venues and in accordance with Applicable Laws. The Parties acknowledge that activity levels and potential uses of the Arena can vary from year to year based on situations and circumstances that are beyond ArenaCo's control. Nevertheless, ArenaCo acknowledges that activity at the Arena is critical to the vibrancy of Seattle Center and the City and ArenaCo agrees to perform its services during the term of this Arena Use Agreement with the goal of maximizing use of the Arena and the generation of revenues therefrom. ArenaCo may delegate any portion of its duties and responsibilities hereunder to subcontractors or agents, *provided, however*, that any such delegation shall not relieve ArenaCo of any of its obligations hereunder. ArenaCo shall not enter into any multi-year contracts or grant any rights with respect to the use or operation of the Arena that would extend beyond the Term of this Arena Use Agreement unless such agreements contain provisions reasonably acceptable to the City regarding assignment and termination.

Without limiting the generality of the foregoing, ArenaCo is authorized to and shall do each of the following:

(a) collect all Arena Revenues and pay all Arena Operating Expenses when due. In connection therewith, ArenaCo will use commercially reasonable efforts to collect all fees, rents and other amounts due from the licensees, Concessionaires and other users of the Arena. During ArenaCo's transition into and out management of the Arena, ArenaCo and the City shall each promptly remit to the other any Arena revenues collected by either of them for or applicable to any use, events or services performed during the other's term of management and operation of the Arena. The City shall have no responsibility for any Arena Operating Expenses that are incurred during the term of this Arena Use Agreement, except for incremental costs associated with City Events as set forth in Section 4.3 or as otherwise expressly provided for in this Arena Use Agreement;

(b) cause notices to be served upon the licensees, vendors, Concessionaires and other users to quit and surrender space occupied or used by them if and when determined by ArenaCo to be desirable, necessary and appropriate; and shall ask for, demand, collect and give receipts for all amounts which at any time may be due from any licensees, vendors, Concessionaires and other users of the Arena;

(c) negotiate final payments and/or final settlements without additional cost to the City with all parties involved in the use or operation of the Arena. ArenaCo shall commence, defend and settle without additional cost to the City such legal actions and proceedings brought by or against any third parties concerning the use or operation of the Arena by ArenaCo under this Arena Use Agreement as are necessary or required in the sole opinion of ArenaCo and retain counsel selected by ArenaCo in its sole discretion in connection therewith;

(d) employ, pay, including payment of employment taxes and industrial insurance premiums, and supervise, or cause its arena management firm to employ, pay and supervise, all non-City personnel that ArenaCo determines to be necessary for the operation of the Arena. Such personnel, during the course of their employment, shall be employees (or independent contractors, as the case may be), of ArenaCo, or its arena management firm, as applicable, and ArenaCo or its arena management firm, as applicable, shall determine all matters with regard to its employees, including, without limitation, compensation, bonuses, fringe benefits, hiring and replacement. ArenaCo agrees that throughout the term of this Arena Use Agreement, subject to the express provisions and conditions of this Arena Use Agreement (including, but not limited to, Section 5.2 hereof), City employees will continue to provide Administrative Services and Event staffing, and to perform Routine Maintenance and Repairs at the Arena in the same manner as they had been performing such functions and providing such services as of the Commencement Date, and that ArenaCo will reimburse the City for the full hourly costs (including wages and benefits) required to be paid or provided by the City to all such City employees by Applicable Laws, applicable collective bargaining agreements or other applicable written agreements;

(e) obtain and maintain, or cause to be obtained and maintained, throughout the term of this Arena Use Agreement, all necessary licenses, permits and authorizations for the operation of the Arena; *provided, however*, that any licenses, permits or authorizations that have been previously obtained or are maintained by the City as of the Commencement Date will be transferred and assigned to ArenaCo and may be used by ArenaCo for and in connection with the management and operation of the Arena during the term of this Arena Use Agreement. At all times, ArenaCo shall observe all restrictions, rules and conditions of all such licenses and permits and shall use commercially reasonable efforts to avoid any loss or suspension thereof. Prior to performing any services under this Arena Use Agreement, ArenaCo shall submit a photocopy or facsimile copy of a current and valid City of Seattle Business License to the Director. If any license or permit necessary for the provision of services expires during the term

of this Arena Use Agreement then, prior to next providing services hereunder, ArenaCo shall obtain and deliver to the Director documentation that such license or permit has been renewed;

(f) procure and negotiate contracts with all service providers and suppliers of the Arena;

(g) control the issuance of and issue all credentials for all Events at the Arena;

(h) ArenaCo shall use its reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Arena and prepare and file any and all reports required by any insurance carriers in connection therewith and provide copies thereof upon request to the City; and

(i) except as otherwise expressly provided in this Arena Use Agreement, ensure that the City has no obligation for any Arena Operating Expenses, other costs and expenses or to make any payment of any kind.

3.2 Management. The City hereby authorizes ArenaCo, through its General Manager selected as described in Section 5.1.1, to direct, supervise and manage the day-to-day activities of the Arena Manager, acknowledging that such Arena Manager will also continue to be supervised by the Director as provided in this Arena Use Agreement. The General Manager and the Arena Manager will work cooperatively to ensure that work done by City employees as provided in this Arena Use Agreement is performed in a timely and efficient manner. If the Arena Manager position becomes vacant during the Term of this Agreement, the City shall include the General Manager in the selection and hiring process for the position and will not engage or retain any replacement Arena Manager that is not reasonably acceptable to ArenaCo.

3.2.1 Marketing and Public Relations. ArenaCo shall plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Arena and its Events and negotiate, execute (in its own name and not in the name of the City) and perform all contracts for Arena promotions. ArenaCo shall maintain a website devoted exclusively to the Arena and each Party shall allow the other to link to its website. ArenaCo shall cooperate with Seattle Center marketing and public relations personnel to prepare, implement, coordinate and supervise public relations and Arena promotion programs that impact both the Arena and the Seattle Center campus or other facilities.

3.2.2 Naming Rights. ArenaCo will have the right to license and designate the name of the Arena and to license and name any and all other areas within the Arena. ArenaCo shall retain all revenues related to any and all such naming rights. Any name given to the Arena shall not violate the standards of good taste existing in the Seattle-King County area and will not otherwise be an embarrassment to the City. The name given to the Arena shall not include reference to any state, local or other municipality name unless such reference is to "Seattle." Any cost that ArenaCo incurs to change the name of the Arena shall be an Arena Operating

Expense and, at the end of the Term unless the Director authorizes otherwise, in writing, which authorization will not be unreasonably withheld, ArenaCo shall remove the name from the Arena and from any other installations at Seattle Center, including all signage (including directional signs), logs, tag lines, and websites.

3.2.3 Concessions and Catering. ArenaCo shall have the exclusive right to operate and/or contract for the operation of fixed and portable Concessions at the Arena for the sale of Consumable and Non-Consumable Concessions, and for catering. ArenaCo's food service Concessionaires may utilize the existing City-owned Arena kitchen and concessions equipment. Upon termination of this Arena Use Agreement, ArenaCo shall ensure that the kitchen and concessions equipment or equivalent replacements are in at least the same condition as on the Commencement Date (except for any of the same that constitute Arena Capital Improvements that are made by ArenaCo and that are agreed by the Parties to remain at the Arena as hereinafter provided, which will be in good and clean condition and operational, reasonable wear and tear excepted).

3.2.4 Advertising. Subject to the rights granted to the Women's Basketball Club of Seattle and Seattle University in separate agreements, copies of which ArenaCo acknowledges having received from the City, ArenaCo shall have the right to sell, license and display Advertising in the interior of the Arena and at such exterior locations on and around the Arena as the Director may from time to time permit, in the Director's reasonable good faith determination, and which have been previously used for or are intended to be used for such purposes. All graphic designs, text and images of any type or nature to be placed upon or affixed to any part of the Arena, whether authorized or performed by ArenaCo, including but not limited to printed materials, advertising, signage and other promotional materials shall be appropriate for a family-oriented public Arena. To that end, ArenaCo shall not permit the advertising of any tobacco or firearms, nor shall it allow any advertising containing inappropriate slang, or any barbarisms, racial epithets, obscenities or profanity, or that relate to any sexually-oriented business or enterprise or that contain any overt political reference. Upon expiration of the term of this Arena Use Agreement, ArenaCo, if directed in writing by the Director in his reasonable good faith determination, ArenaCo shall remove all such materials and shall restore the Arena to at least the same condition as on the Commencement Date at no cost to the City. ArenaCo and City will work cooperatively to promote and market the Arena by providing the other, in electronic format and at no charge, with copies of any promotional and marketing materials that may be specifically created to advertise the Arena or Seattle Center, and each Party does hereby authorize the other Party to utilize such materials, which may include graphics, images, photographs, drawings and original art for such purposes.

3.2.5 Ticketing. ArenaCo shall control and coordinate all ticketing and seating configurations and sales for Events at the Arena, subject to the rights granted to Ticketmaster in its January 1, 2013 agreement with the City, a copy of which agreement ArenaCo acknowledges having received from the City.

3.2.6 Administration. ArenaCo shall have the sole right and responsibility to plan, coordinate, manage and administer the operation of the Arena, including establishing and maintaining procedures for payment of Arena Operating Expenses, receipt of Arena Revenues, establishing and maintaining all Accounts, preparation of all budgets for the management and operation of the Arena and related materials, development and implementation of accounting policies for the Arena, coordination of the work of any party performing services at the Arena, and monitoring actual and projected Arena Operating Expenses.

3.2.7 Scheduling of Events. ArenaCo shall notify the Arena Event Booking Representative each time it schedules an Event at the Arena (including NBA and, if applicable NHL, Events). The City's Arena Event Booking Representative will enter the Event dates in the City's Event Management System ("EMS") and use it to inform City work units of Event staffing requirements and, when such Events are made known to the public by ArenaCo, to notify the public of such Events by including them on the Seattle Center website.

3.2.8 Scheduling Coordination and Traffic Control. The City and ArenaCo shall cooperate in good faith to develop and implement a traffic management plan to facilitate the ingress and egress of traffic to and from Events at the Arena.

3.3 Permitted Uses. During the Term, ArenaCo shall have the right to use and occupy the Arena as follows (collectively, the "Permitted Uses") but only to the extent such use and occupancy is not a Prohibited Use:

3.3.1 The operation of an NBA franchise and, if applicable, an NHL franchise, including, without limitation, the exhibition, presentation and broadcasting (or other transmission) of games and activities related thereto;

3.3.2 The exhibition, presentation and broadcasting (or other transmission) of other amateur or professional sporting Events, exhibitions and tournaments, musical performances, theater performances and other forms of live entertainment, public ceremonies, fairs, markets, fireworks displays, shows, or other public or private exhibitions and activities related thereto;

3.3.3 Restaurants, clubs and bars (including brew pubs and sports bars) located in the Arena;

3.3.4 Sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items customarily sold and marketed in sports and entertainment facilities;

3.3.5 Conducting public and private tours of the Arena;

3.3.6 Specialty retail uses including, but not limited to, kiosks, carts and similar movable or temporary retail facilities;

3.3.7 Entertainment and other uses in the Arena or, on a temporary basis and on Event days only, in the West Court area outside the Arena, with prior notice to the Director;

3.3.8 Educational uses in the Arena;

3.3.9 Office space for use by ArenaCo and any of its Arena licensees and Concessionaires;

3.3.10 Storage of equipment and supplies used in connection with the operation of the Arena or all other Permitted Uses.

3.3.11 All such other uses as are normally and customarily allowed for other similar arenas and facilities and that are not inconsistent with the terms of this Arena Use Agreement.

3.4 Prohibited Uses. ArenaCo shall not use, or permit the use of, the Arena for any other or additional purposes that is not a Permitted Use without first obtaining the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the Permitted Uses hereunder, ArenaCo agrees that it shall not (collectively, the "Prohibited Uses"):

3.4.1 Create, cause, maintain or permit any public or private nuisance in, on or about the Arena;

3.4.2 Use, allow or permit the Arena to be used for any purpose which violates any Applicable Law;

3.4.3 Do or permit anything to be done in or about the Arena nor bring or keep anything therein which will cause a cancellation of any insurance policy covering the Arena or any part thereof or any of its contents.

3.5 Event Security Plans. ArenaCo shall create, maintain, and modify and replace from time to time an event security plan (including a crisis management plan). The City and ArenaCo shall cooperate to ensure that ArenaCo's plan is consistent with any crisis management or event security plans in effect for the entirety of Seattle Center. ArenaCo shall deliver a copy of its initial plan to the Director within sixty (60) days from the Commencement Date and shall deliver a copy of each material modification thereto within a reasonable period of time after its adoption.

3.6 Contract Provisions. Notwithstanding anything in this Arena Use Agreement to the contrary, all contracts and agreements entered into by ArenaCo related to the Arena shall be either (a) expressly subject to and subordinate to this Arena Use Agreement and, except with the

prior written approval of the City, will not extend beyond ArenaCo's occupancy under this Arena Use Agreement, or (b) contain provisions allowing for termination thereof as of the end of the term of this Arena Use Agreement, or (c) contain provisions regarding assignment thereof that are subject to the prior written approval of the City. Additionally, each such contract and agreement shall (x) provide that the City be named as an additional named insured under any insurance policy which is intended to cover the Arena or Events, and (y) contain indemnity language reasonably satisfactory to the City, protecting the City and its elected officials, officers, employees and agents from liability arising under any such contract or agreement to the fullest extent permitted by law.

3.7 Significant Event Reports. Should any Force Majeure Event (as defined in Section 22.5), casualty, accident, injury or other event occur that could have a material impact on the City, the Arena, or the operation of the Arena, ArenaCo will immediately prepare a written "Significant Event Report" (herein so called) detailing all available information and the steps being taken to correct the problem and forward the same to the Director within two (2) Business Days after ArenaCo's discovery of such Force Majeure Event, casualty or other event. The City may at any time request that ArenaCo prepare a Significant Event Report on any event that in the Director's reasonable opinion falls under this category.

3.8 Other Agreements. ArenaCo agrees to assume all of the City's liability under and to fully perform, at its sole cost and expense, all "Arena Agreements" (as hereinafter defined), including and such Arena Agreements that are sponsorship agreements, suite licenses, club licenses, facility use agreements, licensing agreements, and vendor and service provider agreements in effect at the Arena or affecting any facility, property and equipment in or on the Arena premises that are in effect as of the Commencement Date. Exhibit B, attached hereto and incorporated herein, contains a list of the Arena Agreements affecting the operation of the Arena between the City and third parties in effect as of the Commencement Date ("Arena Agreements") and which ArenaCo agrees to assume. ArenaCo acknowledges receiving copies of such Arena Agreements from the City or from others acting on the City's behalf and further acknowledges that some of the rights and obligations under such Arena Agreements have been subcontracted to others over whom the City has no control. The Parties agree that, whenever possible, the City will assign the Arena Agreements to ArenaCo. ArenaCo may renegotiate but unless expressly permitted or otherwise agreed by the other party to such Arena Agreements, shall not terminate existing Arena Agreements for production of an Event. Notwithstanding the foregoing or anything else contained in this Arena Use Agreement, prior to the Commencement Date ArenaCo and the City (and/or its agents and representatives) will review and determine any executory obligations and any required termination payments that will exist under the Arena Agreements as of the Commencement Date, will determine and reconcile the amounts and nature of any deposits or other sums that have been paid to or are being held by the City (or any of its agents or representatives) under any of the Arena Agreements, and the City (or its agents or representatives) and ArenaCo will make any necessary arrangements for the transfer of any such deposits or other sums to ArenaCo or its designees as of the Commencement Date. ArenaCo may terminate any non-Event Arena Agreements unless those Arena Agreements pertain to more

than one Seattle Center facility (meaning only the current Ticketmaster, StaffPro, Facility Merchandising, Inc. and Convention Communication Provisioners, Inc. agreements) unless or to the extent that any such Arena Agreements allow for partial termination applicable only to the Arena, or unless the other party agrees to any partial termination applicable only to the Arena. ArenaCo agrees to fully indemnify the City in accordance with the provisions of Section 14.1 against any losses the City may incur as a consequence of any such performance, renegotiation or termination by ArenaCo of any such Arena Agreements. ArenaCo shall be responsible, at its sole cost, for fulfilling all obligations under any existing Arena Agreements, and under any new suite licenses, club license or naming rights agreements for the Arena that may be entered into by ArenaCo following the Commencement Date. For any of the Arena Agreements that pertain to more than one Seattle Center facility, the Parties shall cooperate to ensure that services provided to patrons and clients are uninterrupted and that revenues thereunder or received in connection therewith are allocated and paid or remitted appropriately among the applicable facilities and among the Parties.

ARTICLE IV - CITY'S RIGHTS AND OBLIGATIONS

4.1 General. Throughout the term of this Arena Use Agreement, the City will provide Administrative Personnel, Event staffing and Routine Maintenance and Repairs using City employees as provided herein, at ArenaCo's expense as an Arena Operating Expense. City employees will continue to perform all of the functions they were performing as of the Commencement Date, and ArenaCo employees or agents will only perform work and functions at the Arena that City employees had not previously performed. ArenaCo will fully cooperate with the City to ensure that all collective bargaining and other obligations to City employees are fulfilled. The City shall have the right to store existing City-owned equipment or replacements thereto that is used for Arena Routine Maintenance and Repairs at the Arena. In addition, the City will be responsible for the following, at City expense:

4.1.1 Security. Providing 24-hour general exterior building security and surveillance for the Arena, to the same extent as provided for other Seattle Center facilities.

4.1.2 Landscaping. Maintaining the Seattle Center campus landscape and hardscape up to the Arena's exterior doors and walls.

4.1.3 Fleet and Equipment Management and Provision. Making available, to the same extent as made available to other Seattle Center facilities, or as otherwise reasonably required for the proper management, operation and use of the Arena as provided for in this Arena Use Agreement, City-owned maintenance equipments, including, but not limited to, forklifts, scooters, and any Zambonis. The City acknowledges that the cost of delays due to unavailability of equipment is significant for Arena Events and will attempt to prioritize Arena use of equipment over other Seattle Center facilities in the case of conflicting equipment needs.

4.1.4 Administrative Overhead. At ArenaCo's request, providing general administrative functions for the Arena that were performed by City employees as of the Commencement Date, and that were not historically shown by Seattle Center as a KeyArena expense, including, but not necessarily limited to, Seattle Center Human Resources, Customer Service, Executive Staff and Fiscal Services indirectly related to the functioning, operation and management of the Arena.

4.1.5 NBA Parking. Each Contract Year the Director shall issue to ArenaCo 500 permits authorizing parking by ArenaCo and NBA Team players, staff and ticket holders in the City's First Avenue North Parking Garage for each pre-season, regular season and post-season NBA game. At ArenaCo's request, the Director will also issue up to 500 permits per Event for other NBA-related Events, such as a "Select a Seat" or premium seat-holder Events for parking in the First Avenue North Parking Garage. In addition, subject to existing use agreements that constitute Arena Agreements (as they may be hereafter amended or modified), ArenaCo will have the sole right to use, or license or allow others to use, all of the parking spaces in the South KeyArena Parking Lot (*i.e.*, the loading dock area) at no additional charge during the entire term of this Arena Use Agreement.

4.1.6 NHL Parking. If an NHL Team plays games or sponsors other Events in the Arena during the term of this Arena Use Agreement, each Contract Year the Director shall issue to ArenaCo 500 permits authorizing parking by ArenaCo and such NHL Team players, staff and ticket holders in the City's First Avenue North Parking Garage for each pre-season, regular season and post-season NHL game. At ArenaCo's request, the Director will also issue up to 500 permits per Event for other NHL-related Events, such as a "Select a Seat" or premium seat-holder Events for parking the First Avenue North Garage.

4.1.7 Parking Permits. In addition to the parking permits referred to in Section 4.1.5 and Section 4.1.6, the City will provide ArenaCo with four (4) parking permits for other Seattle Center parking facilities. ArenaCo shall pay for any additional parking it may request at the then-current established Seattle Center parking rates.

4.2 Capital Maintenance and Repair Work. During the term of this Arena Use Agreement, the City will be solely responsible for all Capital Maintenance and Repair Work, except that ArenaCo shall be responsible for any work that may be required to maintain any portions of any Arena building system that it elects to upgrade or replace as part of the Initial Improvements described in Section 8.1 or any other Arena Capital Improvements ArenaCo determines to make thereafter during the term of this Arena Use Agreement. A list of building systems and services for which the City will be responsible under this Arena Use Agreement, together with the City's anticipated Arena improvements for the calendar years 2013 and 2014 is attached hereto as Exhibit C and incorporated herein by reference. The City shall have the reasonable good faith discretion as to whether to undertake any Capital Maintenance and Repair Work beyond that listed in Exhibit C, except in cases of Emergency; *provided, however*, that the City will undertake normal Capital Maintenance and Repair Work as part of an annual work plan

and consistent with a schedule that it will develop in cooperation with ArenaCo. Notwithstanding anything in this Arena Use Agreement to the contrary, the City's responsibility for Capital Maintenance and Repair Work does not extend to maintenance occasioned by an act or omission of ArenaCo or its officers, agents, employees, subtenants, contractors, invitees or licensees. In the event that the City fails to perform any Capital Maintenance and Repair Work required to be made under this Arena Use Agreement and such failure is materially interfering with ArenaCo's use and management of the Arena as provided for in this Arena Use Agreement, then ArenaCo shall so notify the Director and the Parties shall promptly (but in no event later than three (3) days after provision of notice from ArenaCo to the Director) meet to determine the necessity, timing and scope of the repairs. If the City thereafter fails to timely perform the agreed Capital Maintenance and Repair, ArenaCo will have the right to have such Capital Maintenance and Repair Work performed by its employees, agents or contractors, and to deduct the reasonable and necessary costs and expenses thereof from the Use Fees and Patron Use Fees that may thereafter become due to the City, or if no such Use Fees or Patron Use Fees are thereafter due to the City by ArenaCo, then the City will reimburse ArenaCo for such reasonable and necessary costs and expenses for all such Capital Maintenance and Repair Work within thirty (30) days following receipt by the City of an invoice therefor from ArenaCo. Any dispute between the Parties as to the right of ArenaCo to withhold and deduct the costs and expenses of performing, or having its employees, agents or contractors perform, any Capital Maintenance and Repair Work, or to be entitled to reimbursement from the City for any such Capital Maintenance and Repair Work so performed, as provided in this Section 4.2 shall be resolved in accordance with the dispute resolution procedures described in Article XXI.

4.3 City's Use of Arena. The City shall have the right to use the Arena or portions thereof to host the Bumbershoot Festival, or its successor, each Labor Day weekend, as provided for in the then-current agreement between the City and the Bumbershoot Festival, beginning on the Friday before Labor Day for move-in purposes, through 11:59 p.m. of the Tuesday after Labor Day for move-out purposes, and for one other Event per year that does not conflict with previously scheduled Events or hold dates ("City Events"). For City Events, the City will (a) pay no rent, use or license fees to ArenaCo, (b) be required to pay only the incremental operating costs incurred by ArenaCo with respect to such City Events and any applicable taxes, and (c) receive the net Concession and catering revenues (*i.e.,* Concessionaire gross sales actually received from or in connection therewith, less the cost of goods sold and labor costs) from Bumbershoot, and (d) retain all broadcast rights and revenues (but ArenaCo will not be required to provide or pay for or incur any costs or expenses related to the broadcast of any such City Events). Incremental costs shall not include the costs of foregoing alternative events or attributed overhead operational costs, unless otherwise specifically agreed in advance by the City in the event that the City requests that a previously scheduled Event be moved or a previously held date for an Event be released or moved and the user or licensee requires the payment of a fee or costs in connection with the moving or release of such Event date or held date.

ARTICLE V - STAFFING AND EMPLOYEES

5.1 ArenaCo Management.

5.1.1 General Manager. ArenaCo shall at all times during the Term employ staff or engage an arena management firm experienced in the operation, management, marketing or performance of the specific operations, management, marketing, duties and services contracted for at comparable multi-purpose facilities to operate and manage the Arena. ArenaCo or its arena management firm shall designate a full-time general manager ("General Manager") responsible for the day-to-day operations of the Arena to serve as ArenaCo's representative at the Arena, with authority to bind ArenaCo. The General Manager shall supervise ArenaCo employees and contractors; supervise and manage the Arena Manager; coordinate all activities and operations associated with Events taking place at the Arena, and be the liaison between ArenaCo and the City, through the Arena Manager and the Director, with respect to the administration of this Arena Use Agreement. ArenaCo shall identify its proposed General Manager to the City prior to the Commencement Date. The City has the right to conduct reasonable due diligence to determine the qualifications of the proposed General Manager based on experience, competency, and industry stature and may reject any candidate whom the Director reasonably and in good faith determines to be not qualified based on such standards. If ArenaCo decides to self-operate the Arena and if by the Commencement Date, ArenaCo has not proposed a candidate reasonably acceptable to the City as provided above, ArenaCo agrees it will promptly contract with an arena management firm.

5.1.2 ArenaCo Staff. For all work and job responsibilities that have not historically been performed by City employees, ArenaCo shall select, employ, train, furnish and deploy employees (including relief personnel) necessary to fulfill ArenaCo's obligations hereunder who are acceptable to ArenaCo; and shall discipline and, if necessary in the opinion of ArenaCo, discharge such ArenaCo employees. Whenever reasonably practicable, ArenaCo shall hire its personnel from within the greater Seattle area. Upon receipt of written notice from the Director of any reasonable and significant objection by the City to any of ArenaCo's employees, the Parties (through the General Manager, on behalf of ArenaCo, and the Director, on behalf of the City) will meet to address and attempt to resolve such objection. In the event ArenaCo is unable to address such objection to the reasonable satisfaction of City, ArenaCo shall discontinue the use of such employee in connection with this Arena Use Agreement and a suitable replacement ArenaCo employee shall be promptly substituted; *provided, however*, that City's right to require replacement of any such ArenaCo employee, and ArenaCo's obligation to comply with any such request shall be subject to restrictions imposed upon ArenaCo by any federal, state or local statue, law, code, regulation or ordinance or by any collective bargaining agreement or other contract affecting such employee.

5.2 City Staff. The City shall select, employ, train, furnish and deploy employees necessary to provide the City services hereunder. ArenaCo may direct and supervise the day-to-

day activities of such City employees assigned to work in the Arena through coordination with the Arena Manager. Subject to the provisions of this Arena Use Agreement, including, but not limited to, the following paragraph, the City retains the right to determine which Seattle Center employees are assigned to work in the Arena, and to schedule, discipline, hire, terminate and promote such City employees. Any such City employees will continue to receive their benefits and privileges of City employment, including matters set forth in any applicable collective bargaining agreement, the City of Seattle Personnel Rules and the Seattle Municipal Code and charter, and any other Applicable Laws. ArenaCo shall fully cooperate with the City to ensure that all collective bargaining obligations applicable to any City employees working at the Arena are fulfilled.

Notwithstanding the foregoing, if ArenaCo has any reasonable and significant objection to any of the City's employees, the Parties (through the General Manager, on behalf of ArenaCo, and the Director, on behalf of the City) will promptly meet to address and attempt to resolve such objection. If the City is unable to promptly address such objection to ArenaCo's reasonable satisfaction, the City shall discontinue the use of such employee in connection with this Arena Use Agreement and a suitable City employee shall be promptly substituted; *provided, however*, that ArenaCo's right to require replacement of a City employee, and the City's obligation to comply with any such request shall be subject to restrictions imposed upon the City by any federal, state or local statue, law, rule, regulation or ordinance or by any collective bargaining agreement or other contract affecting such employee.

5.3 Appearance. All Arena employees and City employees working at the Arena shall be required to wear an identification badge and uniforms provided or approved by ArenaCo or professional business attire acceptable to ArenaCo while on duty. All such employees shall be restricted from consuming alcoholic beverages while on duty or in areas where patrons or clients are present. Smoking will be permitted only in designated, outdoor areas. In establishing and enforcing such standards, ArenaCo and the City will fully cooperate with each other to ensure that all applicable collective bargaining obligations are fulfilled.

ARTICLE VI - ARENA OPERATIONS

6.1 Access to Arena. ArenaCo and its agents, employees, suppliers and other such persons, who are necessary for ArenaCo to render the services contemplated herein, shall have access to the Arena in order for ArenaCo to provide the services contemplated herein, subject to reasonable security precautions. When providing Services hereunder, ArenaCo's agents, employees, suppliers and other persons necessary to its operations shall be entitled to admission to such areas, including restrooms and changing rooms, through entrances managed by ArenaCo or through a reasonably convenient entrance to the Seattle Center campus designated by City.

6.2 Office Space. At no cost to ArenaCo, the City shall provide ArenaCo office space in that portion of the second floor of the West Court Building managed by the City and shown on Exhibit D or as otherwise agreed by the Parties in good faith.

6.3 Team Facilities. With the permission of the Women's Basketball Club of Seattle, ArenaCo may use the locker rooms, weight rooms, training room, family room, office space, and equipment necessary for the NBA Team to play its games at the Arena and the first floor of the West Court Building. If ArenaCo wishes to provide any additional such furniture, fixtures and equipment required, it shall do so at its sole cost and expense.

6.4 Care of Arena. ArenaCo, its directors, employees, agents and subcontractors shall not damage or in any manner deface the Arena and shall not cause anything to be done whereby any Seattle Center facility shall be in any manner defaced or damaged by ArenaCo, its directors, employees, agents and subcontractors, normal wear and tear excepted. ArenaCo shall submit a written notice to the Seattle Center Director regarding the circumstances of any damages to the Arena or other Seattle Center facility by ArenaCo, its directors, employees, agents and subcontractors within forty-eight (48) hours after the occurrence of any such event. If during the period of ArenaCo's use, the Arena or any other Seattle Center facility is damaged or defaced as a direct result of ArenaCo's gross negligence or willful misconduct, ArenaCo shall pay City such sum as is reasonably necessary to restore the damaged portion of the Arena to its condition immediately prior to the occurrence of such damage.

6.5 Public Art. The Arena contains art that is part of the City's public art collection. ArenaCo shall not remove or alter the public art in any way without obtaining prior, written consent from the City's Office of Arts and Cultural Affairs.

6.6 Department of Information Technology. The City's Department of Information Technology ("DoIT)" is responsible for City-owned telecommunications equipment installed in the Arena telecommunications closets. ArenaCo must coordinate all proposed work it wishes to do that affects the Arena telecommunications infrastructure with DoIT.

6.7 Use of Recycled Content Paper. ArenaCo shall use, whenever practicable, recycled content paper on all documents submitted to City, in accordance with Seattle Municipal Code ("SMC") 3.38.904.

6.8 Use of Recyclable and Biodegradable Products. ArenaCo shall, whenever reasonably possible, use recyclable and biodegradable products for containers and supplies used in the Arena. ArenaCo shall use Green Seal certified cleaning products in performance of all cleaning and janitorial work to protect the health, safety, wellness and environmentally sustainable practices that the City of Seattle requires of companies doing business with the City.

6.9 Recycling and Composting of Waste Materials. ArenaCo, at no cost to the City, shall collect, sort and separate into such categories as are required by sorting and recycling standards applicable to all of Seattle Center, all solid waste products at the Arena. Each separately sorted category of waste product shall be placed in a separate receptacle reasonably approved by the City. The City reserves the right to refuse to collect or accept from ArenaCo any waste product that is not sorted and separated as required by law, ordinance, rule or regulation,

and to require ArenaCo to arrange for the collection of the same at ArenaCo's sole cost and expense using a contractor satisfactory to the City. ArenaCo shall pay all costs, fines, penalties, and damages that may be imposed on the City or ArenaCo as a consequence of ArenaCo's failure to comply with the provisions of this subsection.

6.10 Firearms. Firearms are not allowed at events on City property and this policy applies to ArenaCo's activities and Events at the Area. ArenaCo agrees to adopt and implement a policy prohibiting any person, except for law enforcement officers and on-duty security personnel, from possessing firearms in the Arena. ArenaCo will notify employees, contractors, volunteers and others who might enter the Arena of this policy, and will notify City security if ArenaCo becomes aware of any violation of such policy. The City shall provide and place signage notifying the public of this policy at entrances to the Seattle Center campus.

ARTICLE VII - USE FEE AND OTHER CONSIDERATION

7.1 Use Fee. Throughout the term of this Arena Use Agreement, ArenaCo shall pay the City (without prior notice, demand, invoice, offset or deduction other than as may be expressly provided for in this Arena Use Agreement) an annual Use Fee in the amount of $1,500,000.00 (the "Use Fee.

7.2 Patron Use Fee. In addition to the Use Fee, ArenaCo shall also collect, or cause its licensees to collect, and shall pay to the City a Patron Use Fee of $1.00 per ticket sold for all Events other than NBA Events, NHL Events, Seattle Storm Events and City Events at the Arena that are sold for $25.00 or less, and $2.00 per ticket for all tickets that are sold for $25.01 and above (individually a "Patron Use Fee" or collectively the "Patron Use Fees"), with a guaranteed annual minimum Patron Use Fees payment to the City of $500,000.00. The Patron Use Fee shall not apply to complimentary tickets to the Events to which Patron Use Fees are applicable as provided above, unless such complimentary tickets to such Events exceed 10% of sellable capacity for the Event, in which case the Patron Use Fee shall be payable for those complimentary tickets to such Events that exceed 10% of sellable capacity for such Events.

7.3 NHL Use Fee. If ArenaCo secures and schedules an NHL Team to play events at the Arena ("NHL Events"), in addition to the Use Fee and Patron Use Fee, ArenaCo shall pay the City (without prior notice, demand, invoice, offset or deduction other than as may be expressly provided for in this Arena Use Agreement) an annual NHL Use Fee in the amount of $750,000.00 for NHL Events.

7.4 Time for Payment; Interest on Unpaid Indebtedness. ArenaCo shall remit the Patron Use Fees to the City monthly, in arrears, together with the pro rata portion of the Use Fee, on the first day of each and every month, beginning with the month immediately following the Commencement Date. In accordance with Ordinance 117969, any amounts due and unpaid shall accrue interest at the rate of one percent (1%) per month from the date due until paid in full.

7.5 Facility Fee. Notwithstanding anything to the contrary contained in this Arena Use Agreement, ArenaCo shall be entitled to collect or cause its licensees to collect such other or greater fees other than or in excess of the Patron Use Fees required to be collected and paid to the City as provided in this Arena Use Agreement as ArenaCo may determine, in its sole discretion, including, but not limited to so-called "facilities fees" (collectively the "Facility Fees" or individually a "Facility Fee"), in such amounts as ArenaCo may determine, in its sole discretion, and may pass or allow its licensees to pass any such Facility Fees or other fees on to consumers by separately stating such Facility Fee or any such other fees as an addition to the ticket or admission price. Notwithstanding anything contained in this Arena Use Agreement, ArenaCo will be entitled to retain, or allow its licensees to retain, or pay to any third party or cause to its licensees to pay to any third party, any such Facility Fees or any other fees so collected and charged.

7.6 Bumbershoot Catering and Concessions. ArenaCo shall pay the City the net amount (*i.e.,* Concessionaire gross sales less cost of goods sold and labor costs) of all Catering and Concessions revenues actually received by ArenaCo from the sale of concessions at the Arena during the annual Bumbershoot Festival or its successor Event.

7.7 Arena Suite Usage. The City shall have the right to exclusive use of one suite that ArenaCo may designate from time to time, for up to ten (10) non-NBA Events per Contract Year that are mutually agreed upon by the City and ArenaCo in good faith, at no cost to the City other than any food and beverage items and food and beverage services the City uses at such Events, which will be the responsibility of and paid for by the City.

ARTICLE VIII - ARENA CAPITAL IMPROVEMENTS

8.1 ArenaCo Initial Improvements. ArenaCo has invested or will invest a minimum of $3,000,000.00 in Arena Capital Improvements to the Arena (the "Initial Improvements"). The Initial Improvements are identified in Exhibit ___ to the Construction Agreement between ArenaCo and the City. To the extent possible, the Parties shall agree in good faith at or prior to the time of installation of any such Arena Capital Improvements which such Arena Capital Improvement ArenaCo may remove following the term of this Arena Use Agreement and which Arena Capital Improvements shall thereafter remain at the Arena; *provided, however*, that if the City and ArenaCo are unable to reach such an agreement at or prior to the time of installation of a specific Arena Capital Improvement, then absent a subsequent written agreement between the City and ArenaCo, ArenaCo shall not be entitled to remove any Arena Capital Improvement if its removal would materially diminish the functioning of any Arena building system reasonably necessary for the Arena to continue to function as such, substantially as it had been doing as of the Commencement Date and, *provided, further,* that in all events, ArenaCo shall leave behind Arena Capital Improvements that had original costs of at least $3 Million. No later than six months prior to the expiration of the term of this Arena Use Agreement, the Parties will meet to determine the disposition of any of the Initial Improvements not addressed by the Parties in the

Construction Agreement and any subsequent Arena Capital Improvements not otherwise addressed in separate construction agreements. If the Parties cannot agree on ArenaCo's plans to remove any item constituting an Arena Capital Improvement (either initially at or prior to the time of installation thereof or subsequently as provided in this Section 8.1), then the dispute will be resolved in accordance with the dispute resolution procedures described in Article XXI. In determining which Arena Capital Improvements will remain at the Arena, the Parties shall take into reasonable good faith consideration future plans for the Arena's use and the need for the Arena to be left in an intact, fully functional state, for such use and the need for any such Arena Capital Improvements to remain at the Arena in order to accomplish such use.

8.2 Subsequent Improvements. After the Initial Improvements, ArenaCo shall not make any Arena Capital Improvement costing $25,000.00 or more in or to the Arena, or any additions or alterations to any Arena utility system, without first submitting to the Director professionally-prepared plans and specifications for such work and obtaining the Director's prior written approval, which may be granted, withheld, or conditioned in the Director's good faith reasonable discretion. If the Director approves such request, such approval will be conditioned on negotiation of a written construction agreement between the Parties that addresses, among other things: (a) project coordination (as hereinafter provided) including reimbursement of reasonable and necessary Seattle Center typical project management expenses; (b) temporary construction and staging areas; (c) timelines and schedules; (d) insurance for construction activities; (e) compliance with then-current Seattle Center Technical Construction Standards; (f) enforcement and assignment of warranties; (g) environmental review and permitting; and (h) ownership, transfer and removal of the improvement upon termination of this Arena Use Agreement. Subject to the provisions of Section 8.1 above, any Arena building element or system that ArenaCo elects to revise or upgrade must be left in an intact, functional state upon termination of this Arena Use Agreement unless the Parties agree to suitable replacement and restoration alternatives.

8.3 Project Management and Coordination. ArenaCo shall manage or engage an experienced individual or firm (the "Project Manager") to manage construction of all Arena Capital Improvements. The City will assign a Project Coordinator, whose responsibility will be to facilitate all Seattle Center project approvals, provide coordination of the project with Seattle Center during the course of construction, and represent Seattle Center on all issues affecting Seattle Center operations.

8.4 Ownership of Arena Capital Improvements. Any future construction agreement shall contain provisions for ownership, transfer, retention or removal of the Arena Capital Improvements installed.

8.5 Liens. ArenaCo shall keep the Arena free from, and indemnify the City with respect to, all Liens incurred or permitted by ArenaCo or its arena management firm, their respective agents, employees, contractors or subcontractors; if within sixty (60) days following the filing or other assertion of any such Lien, ArenaCo does not cause such Lien to be released in

a manner satisfactory to the City (such as by posting a bond or other acceptable security), the City shall have the right but not the obligation to cause such Lien to be released by any means the City deem proper including, without limitation, payment of such Lien; all reasonable sums paid and expenses incurred by the City in connection therewith including, without limitation, reasonable attorneys' fees and costs, shall be treated as Arena Operating Expenses payable by ArenaCo to the City within five (5) days of written demand therefor. ArenaCo agrees to indemnify, protect, defend and hold the City harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorney's fees and costs) incurred in connection with any such Liens. ArenaCo's obligations pursuant to this Section 8.5 shall survive the expiration or earlier termination of this Arena Use Agreement. Nothing contained in this Arena Use Agreement shall be construed as the consent or request of the City, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment for any construction, alteration, addition, repair or demolition of or to the Arena Land or the Arena (or any part thereof). NOTICE IS HEREBY GIVEN THAT THE CITY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO ARENACO, OR ANYONE HOLDING AN INTEREST IN THE ARENA, THE ARENA LAND (OR ANY PART THEREOF) THROUGH OR UNDER ARENACO, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, MATERIALS OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE INTEREST OF THE CITY IN THE ARENA LAND OR THE ARENA.

ARTICLE IX - CITY INSPECTIONS

9.1 The City reserves the right to enter the Arena during regular business hours following reasonable prior notice (but not less than 24 hours except in cases of Emergency), *provided* that (a) the Director shall not interfere with the operations of the Arena, and (b) no inspections shall be held during any Event (other than in the case of an Emergency). No notice shall be required to be given by the City in order for the City to conduct fire, safety and health inspections that do not otherwise require any notice, or to exercise the City' normal police powers at the Arena. Additionally, the City may enter the Arena or cause their authorized representatives to enter the Arena to perform Maintenance or Repair Work in accordance with Section 4.1.

ARTICLE X - RECORDS, REPORTS AND AUDITS

10.1 Quarterly Reports by ArenaCo. ArenaCo agrees to provide the City, within thirty (30) days after the end of each quarter of every Contract Year throughout the term of this Arena Use Agreement, a financial report documenting with reasonably sufficient backup the amount of Patron Use Fees accrued by ArenaCo, by Event, during the preceding quarter and any amounts thereof due to the City, and for the reporting period that includes the annual Bumbershoot Festival, that includes a report of the gross Concessions and catering sales, the cost

of goods sold, labor costs and net Concession and catering sales revenue for the such festival. The City may request that ArenaCo provide additional supporting information provided such requests are reasonable and directly related to the performance of ArenaCo's services hereunder.

10.2 Quarterly Reports by City. The City agrees to provide ArenaCo, within thirty (30) days after the end of each quarter of every Contact Year throughout the term of this Arena Use Agreement, an Arena accounting report and invoice detailing the Event Expenses, Seattle Center Utilities, Routine Maintenance and Repairs, and City Administrative Personnel provided for the Arena during the preceding month. Each report shall identify the above by source. All information shall be documented to ArenaCo's reasonable satisfaction, and provided in electronic form.

10.3 Year End Reporting. Within sixty (60) days following the end of each Contract Year throughout the Term, ArenaCo shall provide the City a year-end report that includes the amount of Use Fee, Patron Use Fee and Bumbershoot Concessions revenue paid to the City. Such report and accounting shall be in a form reasonably acceptable to the City and accompanied by such documentation as the City may reasonably require, together with the balance of any Patron Use Fee due for that year. Within sixty (60) days following the end of each Contract Year, the City shall provide ArenaCo with a year-end report that includes an accounting of all Event Expenses, Seattle Center Utilities, Routine Maintenance and Repairs and City Administrative Personnel expenses. Such report and accounting shall be in a form reasonably acceptable to ArenaCo and accompanied by such documentation as ArenaCo may reasonably require.

10.4 Accounting Systems. ArenaCo shall use such inventory control systems and/or equipment as is customary in the industry to record Concession Sales, ticket sales and Patron Use Fees. All systems and equipment shall be subject to inspection by City, its officers, employees and representatives, upon reasonable notice during such hours that the Arena is operating or during regular business hours. Any such inspection shall be made so as not to interfere with ArenaCo's business activities hereunder.

10.5 Records Retention. Throughout the term and for a period of six (6) years after the end of the year to which they pertain, ArenaCo shall keep and maintain, at a business office within the City of Seattle, complete and accurate books and records for the Arena, separate and identifiable from ArenaCo's other books and records. The City and its authorized representatives shall have the right, at the City's sole cost and on no less than seven (7) Business Days' prior written notice to ArenaCo, to audit ArenaCo's records and books. Such an audit shall be performed by either (a) a qualified employee or consultant of the; or (b) the Washington State Auditor. There shall be no more than one (1) audit in any twelve-month (12-month) period. ArenaCo's accounting system shall always be maintained in accordance with GAAP.

10.6 Preparation of City's Budget. Seattle Center prepares a biennial budget for the Arena identifying estimated revenues and expenses and maintenance plans for the Arena. The

Seattle Center budget is based on a calendar year and is subject to the review and approval of the Seattle City Council. The Parties shall work cooperatively to estimate Arena Operating Expenses for each calendar year of the term and to schedule, plan and budget for Arena staffing and maintenance requirements to be provided by the City under this Arena Use Agreement.

ARTICLE XI - IMPOSITIONS

11.1 ArenaCo shall pay or cause to be paid any and all Impositions that accrue during the term of this Arena Use Agreement as and when they become due and payable, and before any fine, penalty, interest or cost may be added. ArenaCo shall promptly provide proof of such payment to the City upon request. ArenaCo shall pay leasehold excise tax on Taxable Rent as defined in RCW 82.29A, and if the State of Washington makes any demand upon the City for the remittance of leasehold excise taxes payable by ArenaCo as a consequence of ArenaCo's management, operation or occupation of the Premises or withhold funds due to the City to enforce collection of such leasehold excise taxes, ArenaCo shall immediately pay the same together with all interest and penalties accessed in connection therewith, or, at its sole expense, shall contest such action and indemnify the City for all sums expended by the City or withheld from the City by the State in connection with such taxation; *provided* that ArenaCo shall not be deemed to be in default as long as ArenaCo, in good faith, is contesting the validity or amount of any such taxes. The provisions of this Article shall survive the termination of this Arena Use Agreement. Notwithstanding the foregoing or anything else to the contrary contained in this Arena Use Agreement, for the term of this Arena Use Agreement, if the City imposes, either directly or indirectly, any new or increased taxes, fees, impositions or assessments against ArenaCo, the NBA Team or the NHL Team with respect to the management, use and operation of the Arena, and/or the Arena Capital Improvements (such as, but not limited to, new or increased admissions taxes or assessments, utilities, taxes, facility benefit assessments, possessory interest taxes or personal property taxes) above and beyond those already required to be paid under or already established by existing Laws as of the Commencement Date, then ArenaCo shall receive full credit for the amounts of such new or increased taxes, fees, impositions or assessments paid by ArenaCo, the NBA Team or, if applicable, the NHL Team, against sums otherwise owed to the City under this Arena Use Agreement, including, but not limited to, the Use Fees or Patron Use Fees. The previous sentence shall not apply, however, to (a) any new or increased taxes, fees, impositions or assessments required to be paid under or already established by existing Laws as of the Commencement Date; or (b) any taxes, fees, impositions or assessments imposed pursuant to a favorable vote of taxpayers within an assessment district including the Arena in which ArenaCo and NBA Team, and if applicable NHL Team, participate as voters, to the extent permitted by law; or (c) any new or increased taxes, fees, imposition or assessments which are "generally applicable," meaning that such new or increased taxes, fees, impositions or assessments (i) must apply City-wide, and (ii) must be payable by a substantial number of taxpayers in addition to ArenaCo, the NBA Team and, if applicable, the NHL Team, and (iii) if they are admission, ticket, entertainment or similar taxes, fees, impositions or assessment, then they must apply in a similar fashion to comparable sports

and entertainment venues throughout the City of Seattle.

ARTICLE XII - COMPLIANCE WITH LAWS; LEGAL RELATIONS

12.1 Compliance with Laws. ArenaCo shall comply with all Laws concerning its use and occupancy of the Arena, including without limitation, Environmental Laws. ArenaCo shall not use the Arena for the transportation, storage or generation of any Hazardous Substances in violation of Environmental Laws.

12.2 Americans with Disabilities Act. Americans with Disabilities Act. At all times during the term of this Arena Use Agreement, the City will be solely responsible for the permanent and non-permanent structural features and systems of the Arena and all fixtures and other things attached and affixed thereto, and all improvements thereto (including, but not limited to, any Capital Repair and Maintenance Work that is the responsibility of the City under this Arena Use Agreement and any other improvements made at the Arena by the City, but excluding any Arena Capital Improvements made by ArenaCo, including the Initial Improvements) with respect to compliance with all applicable provisions of the Laws, including, but not limited to, all applicable provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101-12213, as amended by the Civil Rights Act of 1991, 42 U.S.C. 1981(a), as amended (the "ADA"). Without limiting the foregoing, at all times during the term of this Arena Use Agreement, ArenaCo will be solely responsible for insuring that all non-structural and non-permanent improvements and alterations made to the Arena by ArenaCo, (including any Arena Capital Improvements made by ArenaCo, including the Initial Improvements) and all operations of ArenaCo and users and licensees of the Arena other than the City, such as, but not limited to, all patron ticketing and services, availability of accessible seating and the infilling of conventional seats, floor seating, path of travel, concession and suite services, auxiliary aids and services (including assistive listening devices, qualified sign language interpreters, etc.) comply with all applicable provisions of the Laws, including, but not limited to, the ADA. In addition, any work, alteration or thing that ArenaCo may change or do or cause to change or be done at the Arena on an Event basis and which is not within the definition of Arena Capital Improvement shall be considered non-structural and non-permanent. If any Arena Capital Improvements are made by ArenaCo to any existing systems or portions of the Arena (as opposed to any Arena Capital Improvements that replace any such systems or portions of the Arena), then ArenaCo will only be responsible for insuring compliance with the applicable provisions of ADA that apply to the actual Arena Capital Improvements made by ArenaCo to such systems and portions, and the City will still be responsible for insuring compliance of the system or portion of the Arena other than the actual Arena Capital Improvements made by ArenaCo continue to comply with the applicable provisions of ADA. Any Arena Capital Improvements, including Initial Improvements, shall comply with the new construction and alterations provisions of the ADA, 28 CFR § 36.402, 36.403. Both the City and ArenaCo have retained ADA consultants to better understand the issues arising out of ArenaCo's operation and management of the Arena and the use of the Arena by the NBA Team (and if applicable, an NHL Team); *provided, however*, that the Parties agree that in addition to the specific requirements provided for above, in performing

all of their respective services required to be performed under this Arena Use Agreement, ArenaCo and City will each comply, and cause their respective employees, agents and representatives to comply, with any provisions of ADA applicable thereto.

12.3 Environmental Compliance. ArenaCo shall (a) maintain, keep current and comply in full with any and all permits, consents and approvals required by the Environmental Laws except for such non-compliance which could not reasonably be expected to have a material adverse effect on the Arena or the City and shall (b) comply with all Environmental Laws and shall not conduct or allow any use of or activity on or under the Arena Land that will violate or threaten to violate any Environmental Law.

12.4 Nondiscrimination. Each of ArenaCo and the City shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code (SMC), as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

12.5 Safety. Throughout the term of this Arena Use Agreement, ArenaCo shall be solely responsible for compliance with the applicable requirements of the Washington Industrial Safety and Health Act ("WISHA"), as it may be amended from time to time, in the operation of the Arena.

12.6 Notice. ArenaCo shall promptly notify the City of any suit, proceeding or action naming the City as a party that is initiated or threatened in connection with the Arena following receipt of notice thereof by ArenaCo, shall promptly furnish to the City, upon receipt by ArenaCo, copies of all legal notices received by ArenaCo affecting the Arena, and shall advise the Director if ArenaCo receives actual knowledge of any material noncompliance or potential material noncompliance with any Environmental Law, or receives any written or oral notification from any governmental authority or any third party regarding any material noncompliance or threatened or potential material noncompliance with or any request for information pursuant to any Environmental Law. The City shall promptly notify ArenaCo of any suit, proceeding or action naming ArenaCo or the NBA Team as a party that is initiated or threatened in connection with the Arena following receipt of notice thereof by the City, shall promptly furnish to ArenaCo, upon receipt by the City, copies of all legal notices received by the City affecting the Arena, and shall advise ArenaCo if the City receives actual knowledge of any material noncompliance or potential material noncompliance with any Environmental Law, or receives any written or oral notification from any governmental authority or any third party regarding any material noncompliance or threatened or potential material noncompliance with or any request for information pursuant to any Environmental Law.

ARTICLE XIII - EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES

13.1 General. If ArenaCo hires employees or subcontracts for the performance of the services required to be provided by ArenaCo under this Arena Use Agreement, then ArenaCo shall use affirmative efforts to recruit and encourage participation by women and minority ("WMBE") candidates and businesses. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach. ArenaCo shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses. A breach of the foregoing provision shall be a material breach of this Agreement.

13.2 Recordkeeping. ArenaCo shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement (a) ArenaCo's records of employment, employment advertisements, application form and other pertinent employment data necessary to determine compliance with this Article; and (b) relevant records and information necessary to document all of ArenaCo's solicitations to subcontractors and suppliers, all subcontractor and supplier proposals received, and all subcontractors and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records at reasonable time and upon reasonable advance notice.

ARTICLE XIV - INDEMNIFICATION

14.1 ArenaCo's Indemnification. ArenaCo shall protect, defend, indemnify, and save harmless the City and each of the City' officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever, including claims asserting ArenaCo's failure to comply with the applicable Environmental Laws or the applicable provisions of the ADA as provided for in this Arena Use Agreement (hereinafter "Claims"), arising out of or in any way resulting from acts or omissions of ArenaCo, its officers, members, managers, employees, agents, contractors, subcontractors, licensees and invitees, any arena management firm engaged by ArenaCo and their respective officers, directors, employees, agents, contractors, or subcontractors, for the negligence, willful misconduct or breach by ArenaCo of its obligations under this Arena Use Agreement, to the maximum extent permitted by law, including RCW 4.24.115, as now enacted or as hereinafter amended.

ArenaCo's obligations under this Section 14.1 shall include, but not be limited to:

(a) The duty to promptly accept tender of defense and provide defense to the City at ArenaCo's own expense.

(b) The duty to indemnify and defend the City from any such Claim brought by or on behalf of any of ArenaCo's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of ArenaCo's immunity under the Washington Industrial Insurance Act, RCW Title 51, as respects the City only, so as to provide them with a full and complete indemnity and defense of claims made by ArenaCo's employees. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

(c) In the event the City incur any judgment, award, and/or costs arising from any Claim for which they are entitled to be indemnified hereunder, including attorneys' fees, to enforce the provisions of this Section 14.1, all such reasonable fees, expenses, and costs shall be paid by ArenaCo.

Notwithstanding the provisions contained in this Section 14.1, ArenaCo's obligation to indemnify the City shall not extend to any claim, demand or cause of action to the extent caused by the acts or omissions, negligence, willful misconduct or breach of this Arena Use Agreement by the City or its officers, agents or employees.

14.2 City's Indemnification. The City shall protect, defend, indemnify, and save harmless ArenaCo and its officers, members, managers, employees, and agents, from any and all Claims, including, but not limited to, any Claims asserting the failure of the City to comply with the applicable provisions of the ADA as provided for in this Arena Use Agreement), arising out of or in any way resulting from acts or omissions, negligence or willful misconduct of the City's officers, officials, employees, agents, contractors, subcontractors, licensees and invitees acting within the scope of their employment, office or engagement by the City, including, but not limited to any breach by the City of its obligations under this Arena Use Agreement, to the maximum extent permitted by law including RCW 4.24.115, as now enacted or as hereinafter amended. The City shall not be obligated to protect, defend, indemnify and save harmless ArenaCo, its officers, members, managers, employees and agents from any Claims arising from such City exercise of regulatory authority as a permitting jurisdiction or its police power. Notwithstanding the provisions contained in this Section 14.2, the City's obligation to indemnify ArenaCo shall not extend to any claim, demand or cause of action to the extent caused by the negligence, willful misconduct or breach of this Arena Use Agreement by ArenaCo, any arena management firm, or their respective officers, managers, members, employees or agents.

14.3 Notice of Claim. Any Party making a claim for indemnification pursuant to this Article XIV (an "Indemnified Party") must give the Party from whom indemnification is sought (an "Indemnifying Party") written notice of such claim (an "Indemnification Claim Notice")

promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim against or involving the Indemnified Party by a governmental authority or other third party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; *provided* that the failure to notify or delay in notifying an Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Article XIV except to the extent that the Indemnifying Party's ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

14.4 Insurance. Each Indemnified Party acknowledges that it shall look first to the proceeds of any insurance policies maintained by the Indemnitor, if any, for recovery in respect of the obligations of the Indemnitor, and if such proceeds are insufficient, then to the Indemnifying Party.

14.5 Survival. The obligations contained in this Article XIV will survive the expiration or earlier termination of this Arena Use Agreement, but only insofar as such indemnities relate to any Claims that accrue or arise prior to the expiration or earlier termination of this Arena Use Agreement.

ARTICLE XV - INSURANCE

15.1 City's Insurance Obligation. The City will maintain property insurance or a program of self-insurance under which the Arena, excluding Lessee's Business Personal Property, is insured throughout the entire term of this Arena Use Agreement in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the premises. City's property insurance currently is subject to a $250,000 deductible, for which ArenaCo shall be responsible only to the extent to which the loss or damage is attributable to ArenaCo's negligent acts that are, or should be, covered by Tenant's minimum $250,000 Fire/Tenant Legal.

15.2 ArenaCo's Insurance Obligation. ArenaCo shall procure and maintain, or cause to be procured and maintained, throughout the entire term of this Arena Use Agreement, the insurance described in Exhibit E. On or before the Commencement Date, ArenaCo shall provide the City with certificates of insurance and applicable endorsements from the companies issuing such policies providing the required insurance stating that such coverage is in effect. ArenaCo shall provide copies of any required insurance policies to the City upon request. ArenaCo's procurement of the insurance required under this Article XV shall in no manner affect or limit

ArenaCo's indemnification obligations pursuant to Section 14.1. In the event of an insured loss, ArenaCo will be responsible for paying all claims that fall within the deductible limits of any insurance policies.

15.3 Terms of Insurance. The policies required under this Article XV shall:

15.3.1 Be written as primary policies not contributing with and not in excess of coverage that the City may carry.

15.3.2 Name the City as an additional insured on a form as broad as CG_2010 11/85 or its equivalent.

15.3.3 Expressly provide that the City shall not be required to give notice of accidents or claims and that the City shall have no liability for premiums.

15.3.4 Provide that such policies shall not be renewed, canceled, or materially modified without forty-five (45) days' prior written notice to the City.

15.3.5 Be issued by an insurer of recognized standing, rated "AVIII" or better as established by Bests' Rating Guide or an equivalent rating issued by such other publication of a similar nature as shall be in current use, and licensed to do business in the State of Washington, or be otherwise acceptable to the City.

15.3.6 For Commercial general liability insurance, be written on an "occurrence" basis, rather than on a "claims made" basis.

15.3.7 Provide that the insurer waives subrogation as to any rights to recovery from the City.

15.4 City's Acquisition of Insurance. If at any time during the Term, ArenaCo fails to procure or maintain insurance required under this Arena Use Agreement, or to pay the premiums for such insurance, the City shall have the right but not the obligation after ten (10) Business Days' prior written notice to ArenaCo to procure the insurance and to pay any and all premiums for such insurance. Any amounts paid by the City in connection with the acquisition of insurance shall be immediately due and payable, and ArenaCo shall pay to the City upon demand the full amount paid by the City.

15.5 Waiver of Recovery. Neither ArenaCo nor the City (or either of them) shall be liable to any other Party or to any insurance company (by way of subrogation or otherwise) insuring any other Party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence (whether ordinary or gross) of such Party, its agents or employees, to the extent any such loss or damage is actually covered by insurance benefitting the Party suffering such loss or damage. The provisions of this

Section 15.5 are not intended to limit the claims of ArenaCo or the City (or either of them) to the face amount or coverage of insurance policies herein provided for or to evidence a waiver by any Party of any claim for damages in excess of the face amount or coverage of any such insurance policies. Neither the issuance of any insurance policy required under, or the minimum limits specified in this Article XV with respect to ArenaCo's or the City' insurance coverage, shall be deemed to limit or restrict in any way ArenaCo's or the City' liability arising under or out of this Arena Use Agreement. Notwithstanding the foregoing, the failure of ArenaCo to obtain or maintain any insurance policy required hereunder shall be a defense for the City to any claim asserted by ArenaCo against the City by reason of any loss sustained by ArenaCo that would have been covered by any such required policy.

ARTICLE XVI - DAMAGE OR DESTRUCTION

16.1 If, at any time during the term of this Arena Use Agreement, the Arena is damaged or destroyed by fire, flood, earthquake, war, riot, explosion, insurrection, Force Majeure Events (as defined in Section 22.5) or any other natural disaster or other events beyond the control of the Parties, preventing or materially interfering with or having a material adverse impact on the operation and use of the Arena by ArenaCo or the NBA Team in a manner acceptable to the NBA, or an NHL Team (if applicable) in a manner that is acceptable to the NHL (a "Casualty"), the City will, at its sole cost and expense, use all reasonable efforts to secure the area of damage or destruction to safeguard against injury to persons or property, and promptly (but in no event more than 30 days) after learning of such damage, notify ArenaCo in writing whether the City will repair or restore the Arena and if so, the time necessary for the City to repair or restore such damage, as reasonably estimated by an architect, engineer or contractor reasonably acceptable to ArenaCo. If such estimate states that repair or restoration of such damage or destruction is not anticipated to be completed within either (a) sixty (60) days if such damage or destruction occurs during or is anticipated to result in the inability of NBA Team to play of any of its home games at the Arena during an NBA season (or if applicable occurs during or is anticipated to result in the inability of an NHL Team to play any of its home games at the Arena during an NHL season), or (b), if not, then one hundred and twenty (120) days from the date of such damage or destruction, then ArenaCo may terminate this Agreement upon written notice to the City, without liability, by providing written notice to the City not later than thirty (30) days after the determination of the time required to complete the necessary work. If the anticipated time for completion of repair or restoration work does not exceed the foregoing periods, or if it does but ArenaCo does not elect to terminate this Arena Use Agreement as provided herein, then the City, at its sole cost and expense (but with the application of the proceeds obtained from any insurance or self-insurance program provided for in this Arena Use Agreement), shall promptly commence as soon as possible, and thereafter proceed with reasonable diligence, to repair, restore, replace or rebuild the Arena as nearly as practicable to a condition that is at least substantially equivalent to that existing immediately before such damage or destruction occurred, *provided,* that the City shall not be required to undertake any such repair, restoration, replacement or rebuilding unless there are proceeds from insurance or self-

insurance programs provided for in this Arena Use Agreement available to the City to pay the full cost to effectuate such repairs, restoration, replacement or rebuilding; *provided further, however* that if for such reason the City is not required to undertake any such repair, restoration, replacement or rebuilding, and if the City does not promptly advise ArenaCo in writing that it will do so anyway within the applicable time period provided for above, then ArenaCo will have the right to terminate this Arena Use Agreement as provided for in this Section). During the course of any such repair or reconstruction of the Arena from any Casualty that prevents or materially interferes with or has a material adverse impact on the operation and use of the Arena by ArenaCo or the NBA Team (or if applicable the NHL Team), the Use Fee and Patron Use Fees shall be abated in full from the date of the Casualty until the completion of repairs.

ARTICLE XVII - ASSIGNMENT AND TRANSFER

17.1 Except as expressly permitted elsewhere herein, this Arena Use Agreement will not be assignable without the Director's written consent, which consent will not be unreasonably withheld, hindered or delayed; *provided, however*, that the City agrees that ArenaCo may assign this Arena Use Agreement: (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 (a) the purchaser, transferee or assignee assumes all obligations and liabilities of ArenaCo, or its assignee hereunder and ArenaCo demonstrates to the reasonable satisfaction of the City that such purchaser, transferee or assignee has sufficient experience and financial capability to meet all such obligations and liabilities of ArenaCo and its affiliates hereunder, and (c) 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.

ARTICLE XVIII - REPRESENTATIONS OF THE PARTIES

18.1 City Representations. The City represents to ArenaCo as follows:

18.1.1 Authorization; No Violation. The City is a municipal corporation of the State of Washington, and the execution, delivery and performance by the City of this Arena Use Agreement are within the power and authority of the City, and have been duly authorized by all necessary action and are authorized by and will not violate the City's charter, and any other Laws, or result in the breach of any material agreement to which the City is a party.

18.1.2 Litigation. Except as expressly provided in written notification by the City to ArenaCo prior to the date hereof, no suit is pending before or by any court or governmental body seeking to restrain or prohibit, or seeking damages or other relief in

connection with, the execution and delivery of this Arena Use Agreement or the consummation of the transactions contemplated hereby or which might materially and adversely affect the use and operation of the Arena as contemplated herein.

18.2 ArenaCo Representations. ArenaCo represents to the City as follows:

18.2.1 Existence. ArenaCo is a limited liability company duly formed and validly existing under the laws of the State of Delaware and authorized to do business in Seattle, Washington.

18.2.2 Power and Authority. ArenaCo has all requisite power and authority to enter into this Arena Use Agreement. As of the date hereof, the NBA has approved the relocation of the NBA Team to Seattle, Washington and has consented to allowing the NBA Team to play its home games in the Arena for the duration of this Arena Use Agreement, subject to the express provisions of this Arena Use Agreement.

18.2.3 Authorization: No Violation. The execution, delivery and performance by ArenaCo of this Arena Use Agreement has been duly authorized by all necessary action and will not violate the organizational documents of ArenaCo.

18.2.4 Litigation. Except as expressly provided in written notification to the City prior to the date hereof, or as otherwise known or disclosed to the City, to the knowledge of ArenaCo, no suit is pending against or affects ArenaCo or the NBA Team which could have a material adverse effect upon ArenaCo's performance under this Arena Use Agreement or the financial condition or business of ArenaCo. To the knowledge of ArenaCo, there are no outstanding judgments against ArenaCo which would have a material adverse effect upon its assets, properties or franchises.

18.2.5 Condition of Arena. ArenaCo represents and agrees that it has had a full opportunity to inspect the Arena and to have it inspected by the NBA and others, and has determined, following such inspections, that the Arena is suitable for ArenaCo's intended use. Otherwise, the City makes no representations or warranties whatsoever concerning the Arena's present condition or state of repair; *provided, however*, that nothing contained in this Section will relieve the City from performing any of its obligations expressly provided for in this Arena Use Agreement.

ARTICLE XIX - DEFAULTS, REMEDIES AND TERMINATION

19.1 Events of Default by ArenaCo. Each of the following events will constitute an Event of Default by ArenaCo:

19.1.1 ArenaCo's failure to operate and manage the Arena in accordance with the standards for operation set forth in Section 3.1.1 or to pay Arena Operating Expenses required to

be paid by ArenaCo, which failure is not cured within thirty (30) days following receipt by ArenaCo of written notice thereof from the City.

19.1.2 (a) (i) ArenaCo is determined to be bankrupt or insolvent; (ii) 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; (iii) ArenaCo makes any general assignment of its property for the benefit of creditors; (iv) 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; or (v) an involuntary petition of bankruptcy or insolvency is filed against ArenaCo and is not dismissed within 60 days after the filing.

19.1.3 If ArenaCo shall materially breach any of the representations, warranties, obligations, covenants or provisions in this Arena Use Agreement other than as referred to in Section 19.1.2 above (for which no additional cure period shall apply), such breach is not cured within thirty (30) days after written notice; *provided, however*, that if it is not reasonably possible to cure such breach within such thirty (30) -day period and such breach is capable of being cured, such cure period shall be for up to a period of up to 180 days if within thirty (30) days after such written notice ArenaCo commences diligently and thereafter continues to cure.

19.2 Event of Default by the City. It shall be an Event of Default by the City if the City shall breach any of the representations, warranties, obligations, covenants or provisions in this Arena Use Agreement, and such breach is not cured within thirty (30) days after written notice; *provided, however*, that if it is not reasonably possible to cure such breach within such thirty (30) day period and such breach is capable of being cured, such cure period shall be for a period of up to 180 days if within thirty (30) days after such written notice the City commence diligently and thereafter continues to cure.

19.3 Remedies upon ArenaCo Default.

19.3.1 Upon the occurrence of Event of Default, in addition to all other remedies available to the City, the City shall have the right (i) to institute any and all proceedings or claims permitted by law or equity to recover all unpaid sums and amounts then due and payable by ArenaCo under this Arena Use Agreement and, any and all amounts necessary to compensate the City for all damages proximately caused by ArenaCo's failure to perform its obligations under this Arena Use Agreement and (ii) at any time (including prior to the expiration of any cure periods) to institute any and all proceedings or claims permitted by law or equity to compel specific performance with respect to ArenaCo's obligations under this Arena Use Agreement and one or more actions to seek and obtain a temporary restraining order, together with such other temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction capable of issuing or granting such relief, to compel ArenaCo to comply with or refrain or cease from breaching or violating the terms, covenants and conditions of this Arena Use Agreement. ArenaCo agrees that the City' right to seek injunctive relief shall be

without the necessity of (i) proving irreparable harm; (ii) balance of harm; (iii) consideration of the public interest; (iv) establishing that monetary damages are inadequate; or (v) the posting of a bond. ArenaCo for itself, its successors and assigns acknowledges and agrees that the administration of an order for injunctive relief will not be impracticable and that, in the event of such breach or attempted breach, the balance of hardship weighs in favor of the entry of injunctive relief.

19.3.2 If the Event of Default is based upon ArenaCo's failure to operate and manage the Arena in accordance with the standards described in Section 3.1.1, or to pay Arena Operating Expenses, in addition to any other remedies, the City may in its sole discretion, replace ArenaCo or the arena management firm as the operator of the Arena, or the City may terminate this Agreement.

19.4 Remedies upon City's Default. In an Event of Default by the City, in addition to all other remedies available to ArenaCo, ArenaCo shall have the right (i) to institute any and all proceedings or claims permitted by law or equity to recover any and all amounts necessary to compensate ArenaCo for all actual damages proximately caused by the City' failure to perform its obligations under this Arena Use Agreement provided that the City shall not be liable for consequential or punitive damages, including lost profits, loss of business opportunities, or interference with business or contractual expectancies and (ii) at any time (including prior to the expiration of any cure periods) to institute any and all proceedings or claims permitted by law or equity to compel specific performance with respect to the City' obligations under this Arena Use Agreement and one or more actions to seek and obtain a temporary restraining order, together with such other temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction capable of issuing or granting such relief, to compel the City to comply with or refrain or cease from breaching or violating the terms, covenants and conditions of this Arena Use Agreement. The City agree that ArenaCo's right to seek injunctive relief shall be without the necessity of (i) proving irreparable harm; (ii) balance of harm; (iii) consideration of the public interest; (iv) establishing that monetary damages are inadequate; or (v) the posting of a bond. The City for themselves, their successors and assigns acknowledge and agree that the administration of an order for injunctive relief will not be impracticable and that, in the event of such breach or attempted breach, the balance of hardship weighs in favor of the entry of injunctive relief.

19.5 Rights and Remedies are Cumulative. The rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by any other Party.

19.6 Institution of Litigation Permitted. Any Party may, subject to Article XXI, institute litigation to recover damages for any Event of Default or to obtain any other remedy (including specific performance and any other kind of equitable remedy) consistent with the purposes of this Arena Use Agreement. Neither the existence of any claim nor cause of action of

a Party, whether predicated on this Arena Use Agreement or otherwise, shall (a) constitute a defense to specific enforcement of the obligations of such other Party under this Arena Use Agreement or (b) bar the availability of injunctive relief or any other equitable remedy under this Arena Use Agreement.

ARTICLE XX - CITY'S CONTROL OF CAMPUS

20.1 Except as expressly provided for in this Agreement, all areas and facilities at Seattle Center, other than the Arena, are subject to the City's exclusive control and management. Accordingly, the City may do any and all of the following (among other activities in support of the Seattle Center or other municipal objectives), all without incurring any liability whatsoever to ArenaCo:

A. Change of Vicinity. With reasonable advance notice to ArenaCo, the City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, exhibits, service areas, and parking areas, other than the South KeyArena Parking Lot, in the vicinity of the Arena as long as such increase, reduction or change does not materially interfere with access to or marketing, management and operations of the Arena by ArenaCo under this Arena Use Agreement.

B. Traffic Regulation. The City may regulate all traffic within and adjacent to the Arena, including the operation and parking of vehicles of ArenaCo and its invitees, employees, and patrons as long as such regulation does not materially interfere with access to or operations of the South KeyArena Parking Lot or the First Avenue North Garage during NBA Events, or access to or marketing, management or business operations of or at the Arena by ArenaCo under this Arena Use Agreement.

C. Display of Promotional Materials. The City may erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to and nearby the Arena.

D. Change of Businesses. The City may change the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Arena and to operate and to authorize others to engage in any and all forms and locations of business activity at the Seattle Center.

E. Hours of Operation. City may determine the days and hours the Seattle Center and various business operations other than the Arena will be open to the public.

F. Entrance Charges. City may impose a reasonable charge for admission to the Seattle Center and the facilities thereon, including during the Bumbershoot Festival,

provided, however, the City will ensure that ArenaCo's staff and patrons entering Seattle Center for the sole purpose of visiting the Arena are not charged an admission fee.

ARTICLE XXI - DISPUTE RESOLUTION

21.1 Dispute Resolution.

In the event any dispute, disagreement, claim or controversy arises between the Parties concerning this Arena Use Agreement or any of the provisions hereof (other than failure to pay Use Fees or Patron Use Fees) (each, a "Disputed Matter"), the City and ArenaCo will meet and attempt to resolve the Disputed Matter through negotiations between the ArenaCo General Manager and the Seattle Center Director of Finance and Administration. If the ArenaCo General Manager and the Seattle Center Director of Finance and Administration are unable to reach agreement, the Disputed Matter shall be referred jointly to the Seattle Center Director and ArenaCo's chief executive officer. If such executives do not agree upon a decision, then the City's Mayor 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 after the initial meeting between the City and ArenaCo, then the City or ArenaCo may, upon written notice, submit the matter to mediation.

The City or ArenaCo 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 Section 18.1.1, 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, including injunctive 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 Section, 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.

ARTICLE XXII - TERMINATION AND SURRENDER

22.1 Surrender of Possession. ArenaCo shall, upon the Expiration Date (as the same may be extended as provided for in this Arena Use Agreement) or earlier termination of this Arena Use Agreement, peaceably and quietly leave, surrender and yield up the Arena and all improvements, excepting those improvements which the Parties have specifically agreed that ArenaCo may remove from the Arena in consideration of the plans for future use of the Arena.

All remaining improvements installed by ArenaCo shall automatically become the property of the City without need for reimbursement to ArenaCo, and ArenaCo will provide the City with an assignment or bill of sale for the same upon request. ArenaCo shall deliver the Arena to the City in at least as good a state of repair as it was in on the Commencement Date, reasonable wear and tear excepted and in all respects consistent with the express provisions of this Arena Use Agreement. ArenaCo shall deliver the Arena free of subtenancies and Liens and in a reasonably clean condition and free of debris. ArenaCo shall promptly provide the City all keys for the Arena and any other property that is used by ArenaCo for the use, occupancy or maintenance of the Arena. Prior to such delivery, ArenaCo shall remove its personal property, signage, fixtures and equipment, and shall repair any damage resulting from the removal. Upon such expiration or termination of this Arena Use Agreement, at the City' request, ArenaCo shall assign to the City all of its right, title and interest in and to any maintenance and warranty contracts, service contracts, and equipment leases, subject to ArenaCo's rights with respect to any claims pending thereunder. The Parties further agree to work together throughout the Term to ensure a continuity of booking and operations when ArenaCo vacates the Arena.

22.2 Holding Over. In the case of any holding over or possession by ArenaCo after the Expiration Date or earlier termination of this Arena Use Agreement without the consent of the City, ArenaCo shall pay the City rent at one hundred percent (100%) of the total of Use Fee paid in the previous Contract Year computed on a daily basis and will continue to pay the City and any Patron Use Fees that thereafter become due. Further, in the event ArenaCo shall hold over beyond any date for surrender of the Arena set forth in the City's written demand for possession thereof, ArenaCo shall reimburse the City for all actual expenses and losses incurred by the City by reason of the City's inability to deliver possession of the Arena to a successor operator or redeveloper, together with the City's reasonable attorneys' fees, charges and costs associated therewith. The acceptance of rental payments under this Section 22.2 by the City shall not constitute an extension of the term of this Arena Use Agreement or afford ArenaCo any right to possession of the Arena. Such rental payments shall be due to the City for the period of such holding over, whether or not the City are seeking to evict ArenaCo, and, unless the City otherwise then agree in writing, such holding over shall be, and shall be deemed and construed to be, without the consent of the City, whether or not the City have accepted any sum pursuant to this Section 22.2.

22.3 Winding Up. Upon termination or expiration of this Arena Use Agreement for any reason, ArenaCo shall (i) promptly discontinue the performance of all services hereunder, and (ii) deliver or otherwise make available to the City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such non-confidential and non-proprietary information and materials with respect to ArenaCo's performance hereunder as may have been accumulated by ArenaCo in performing its obligations hereunder, whether completed or in process, (iii) deliver to the City within thirty (30) days of the termination date, a final accounting setting forth the information set forth in Section 10.3 and; (iv) deliver or otherwise make available any funds held by ArenaCo on the City's behalf; and (iv) to the extent applicable, terminate or assign all agreements entered into by ArenaCo in furtherance of its duties hereunder

to the City, which, subject to the Director's approval, shall accept any such assignments and be solely responsible for performing under such agreements from and after the date of such assignment. The payment and reporting obligations contained in this Section 22.3 shall survive the termination or expiration of this Arena Use Agreement.

ARTICLE XXIII - MISCELLANEOUS

23.1 Notices. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service or mailed in the United States mail postage prepaid and in all instances shall be considered delivered on the first to occur of the date of receipt or 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:
Director
Seattle Center Department
305 Harrison St.
Seattle, WA 98109
Tel.: (206) 684-7330
Fax. :(206) 233-3950

ArenaCo:
Horton Street, LLC
_____
_____
_____
Attn: Christopher Hansen

Copies to:
Jeffer, Mangels, Butler & Mitchell LLP
Attn: Daniel Grigsby
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

Any Party may from time to time by written notice given to the other pursuant to the terms of this Section 0 change the address or designees to which notices shall be sent or designate one or more additional Persons to whom notices are to be sent.

22.4 Relationship of Parties. It is not intended by this Arena Use Agreement to, and nothing contained in this Arena Use Agreement shall, create any partnership, joint venture or other

arrangement between the City and ArenaCo, but rather that ArenaCo and the City shall be independent contractors. No term or provision of this Arena Use Agreement is intended to establish or create any rights in any persons or entities other than the Parties and the respective approved successors or assigns of each of the Parties.

22.5 Unavoidable Delay. Neither Party shall be liable to the other for any delay in the performance of its obligations under this Arena Use Agreement caused by strikes (other than strikes directly caused by the acts or omissions of ArenaCo, or by ArenaCo's failure to bargain in good faith, or by lockouts) acts of nature, unusually inclement weather, unavoidable casualties and similar causes beyond the reasonable control of the Party claiming such delay other than such delays resulting from either Party's failure to comply with the terms and provision of this Arena Use Agreement (each a "Force Majeure Event"). The existence of an Unavoidable Delay shall excuse the affected Party from performing its obligations for the duration of the Unavoidable Delay except that such Unavoidable Delay shall not excuse or delay the payment of any monetary obligations due hereunder. The Parties shall make all reasonable efforts to prevent and mitigate the effects of any interruption in service regardless of its cause.

22.6 Interpretations. To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, and (b) words in the masculine gender shall include the feminine and neuter, and vice versa.

22.7 Binding Effect. This Arena Use Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

22.8 Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Arena Use Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Arena Use Agreement.

22.9 Entire Agreement. This Arena Use Agreement and the referenced Exhibits, each of which is incorporated herein, and the Construction Agreement between ArenaCo and the City set forth the entire agreement of the Parties as to the subject matter hereof and supersede all prior discussions and understandings between them.

22.10 Amendment; Waiver. No alteration, amendment or modification hereof (including this Section 23.4) shall be valid unless executed by an instrument in writing by the City and ArenaCo with the same formality as this Arena Use Agreement. Without limiting the generality of the preceding sentence, no course of conduct among the Parties shall constitute an alteration, amendment or modification of this Arena Use Agreement. The failure of the City or ArenaCo to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Arena Use Agreement or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall

continue and remain in full force and effect. No waiver by the City or ArenaCo of any covenant, agreement, term, provision or condition of this Arena Use Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of ArenaCo or the City.

22.11 Applicable Law and Venue. The laws of the State of Washington shall govern the interpretation and enforcement of this Arena Use Agreement. Venue for any action under this Arena Use Agreement, including any bankruptcy proceeding, will be in King County, Washington.

22.12 Survival. All representations, warranties and indemnification contained herein shall survive the expiration or earlier termination of this Arena Use Agreement.

22.13 Consent. Unless otherwise specifically provided herein, no consent or approval by the City, the County or ArenaCo permitted or required under the terms of this Arena Use Agreement shall be valid or be of any validity whatsoever unless the same shall be in writing, signed by the Party by or on whose behalf such consent is given.

22.14 Counterparts. This Arena Use Agreement may be executed in two or more counterparts, and executed copies hereof may be delivered by facsimile, public document format or other electronic means, each of which shall be deemed for all purposes to be an original but all of which together shall constitute one and the same instrument.

22.15 Successors and Assigns. This Arena Use Agreement shall inure to and be binding upon the representatives, successors and permitted assigns of the respective Parties hereto.

22.16 Cooperation. If, in order to respond to a specific request or concern of a constituent, the City reasonably determines that they require information regarding such matter that can only be obtained from ArenaCo, then upon written request from the City-County Representative, ArenaCo will act reasonably to respond to the City's request for information.

22.17 Fair Construction. The provisions of this Arena Use Agreement shall be construed as a whole according to their common meaning not strictly for or against either Party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Arena Use Agreement. Each Party hereto and its counsel has reviewed and revised this Arena Use Agreement and agrees that the normal rules of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Arena Use Agreement.

22.18 No Waiver of Governmental Authority. No action of the Director pursuant to or in implementation of this Agreement shall constitute any official action by any other City department or official that may be required by law, City Charter, ordinance, rule or regulation before ArenaCo may rightfully commence, suspend, enlarge or terminate any particular

undertaking hereunder. No permission, consent, or approval of the City contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

22.19 Exhibits.

Exhibit A:	Depiction of Authorized Arena Use Areas
Exhibit B:	Other Agreements
Exhibit C:	City's Capital Maintenance and Repairs
Exhibit D:	Depiction of City-Managed Portion of the West Court Building
Exhibit E:	Insurance Requirements

IN WITNESS WHEREOF, the Parties hereto have entered in this Arena Use Agreement as of the day and year first hereinabove written.

Executed as of the date first written above

ARENACO:

HORTON STREET, LLC, a Delaware limited liability company
By: SK Sports, LLC, a Delaware limited liability company, its Manager

By: _____
Name: _____
Title: _____

Date: _____, 2013

THE CITY OF SEATTLE, a Washington municipal corporation

By: _____
Name: _____
Title: _____

Date: _____, 2013

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ____ signed this instrument, on oath stated that ____ was authorized to execute the instrument and acknowledged it as the _____ of Horton Street, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 20___.

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ____ signed this instrument, on oath stated that ____ was authorized to execute the instrument and acknowledged it as the _____ of THE CITY OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

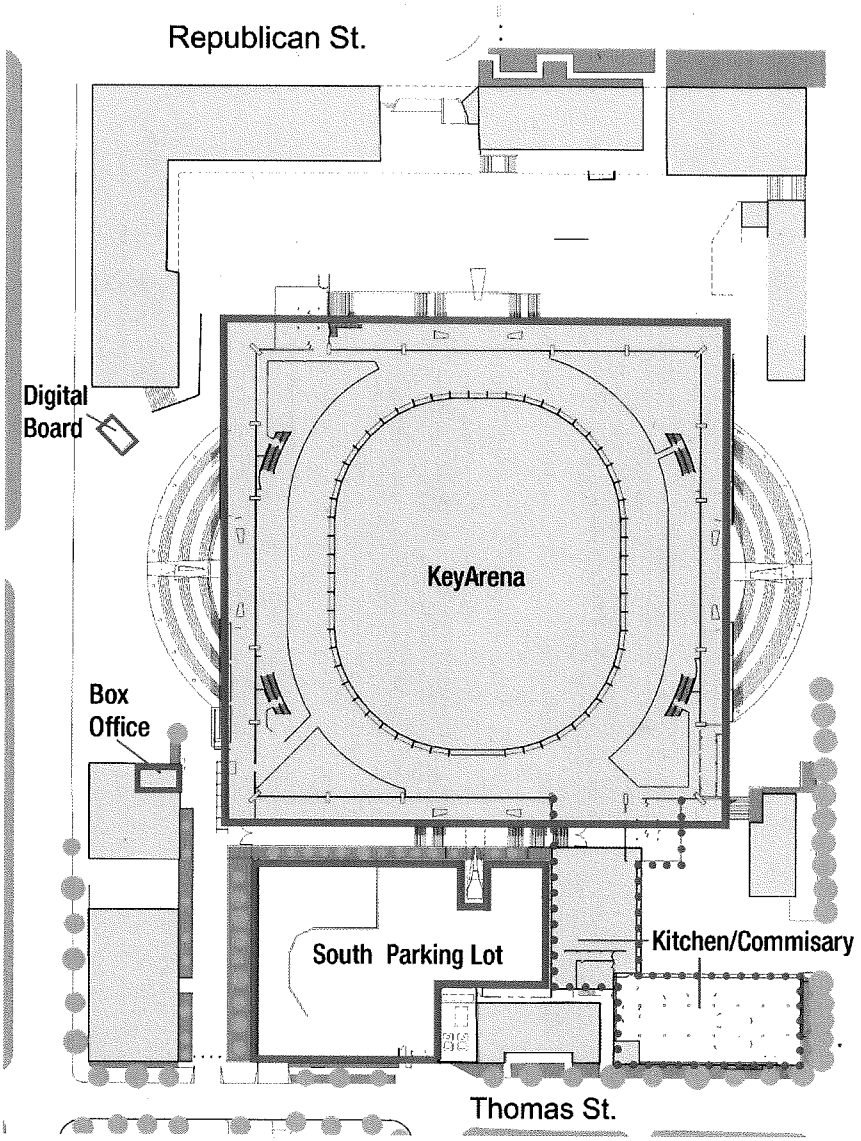
GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 20___.

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

Ned Dunn
CEN ArenaCo ORD Exhibit A to Att. 1
April 15, 2013
Version 1

Exhibit A



LEGEND

KeyArena Premises

KeyArena Premises Sub Surface

*DRAFT
Exhibit B

Arena Agreements

*These are the Arena Agreements as of April 15, 2013. The City will continue to enter into Facility Use and Licensing Agreements between April 15, 2013 and July 1, 2013 and any such agreements entered into during that period will be included in this Exhibit B. The City will not enter into any Facility Use or Licensing Agreement for dates which have been provided to the NBA as potential NBA game days.

1. SPONSORSHIP AGREEMENTS		
Agreement	**Contracting Party**	**Effective Date**
	Coca Cola	7/1/2009
	Ivar's Inc.	2/15/2011
	Anheuser-Busch	7/1/2012
	Geico	7/1/2011
	Treasury Wine Estates	10/15/2011
	Tulalip Resort Casino	2/15/2011

2. SUITE LICENSES		
Agreement	**Contracting Party**	**Execution Date**
	Anheuser-Busch	7/1/2012
	Tulalip Resort Casino	2/15/2012
	Verizon	9/1/2012
	Wells Fargo	1/23/2012
	UPS	11/1/2011
	Gunnar Ildhuso	12/13/2011
	Jeff McCannon	2/7/2012

3. ENCORE CLUB LICENSES	
Contracting Party	**Effective Date**
Geico	7/1/21011
Kevin Krieger	7/1/2011
Price Waterhouse Coopers (Debbie Coxey)	1/1/2013
Chaun Mackey	1/1/2013
Paul Lee	1/1/2013
Joel Jackson	1/1/2013
Paul Casey	1/1/2012
Puget Sound Advisors (Bill Chao)	7/1/2010

4. FACILITY USE AGREEMENTS				
Agreement	**Contracting Party**	**Effective Date**	**Date of Event Confirmation**	**Event Date**
Live Nation - Seattle Center 2013 Agreement	Live Nation Worldwide, Inc.	12/02/2012	n/a	n/a
Live Nation 2013 Master Facility Use Agreement	Live Nation Worldwide, Inc.	1/30/2013	n/a	n/a
Agreement between the City of Seattle and Seattle University Regarding Use of KeyArena	Seattle University	10/21/2009		Multi-Year, Multi-Date

Facility Use Agreement between the City of Seattle and the Women's Basketball Club of Seattle, LLC for the Use of KeyArena for Professional Women's Basketball	Womens' Basketball Club of Seattle (Seattle Storm)	1/1/2009		Multi-Year, Multi-Date
Facility Use Agreement – Spectator, Rat City Roller Girls, LLC	Rat City Roller Girls, LLC	11/06/2012	3/09/2012	1/19/2013 2/09/2013 3/16/2013 4/13/2013 5/11/2013 6/08/2013 7/13/2013 8/10/2013
Facility Use Agreement – Spectator, Rat City Roller Girls, LLC	Rat City Roller Girls, LLC	In Progress	12/02/2012	1/18/2014 2/15/2014 3/15, 16/2014 4/12/2014 5/10/2014 6/07/2014 7/12/2014 8/09/2014
Facility Use Agreement – Spectator, NCAA Division 1 Men's Basketball Championship "Preliminary Round" Venue Lease Agreement	TBD	In Progress	11/12/2012	3/17-22/2015
Facility Use Agreement – Spectator, Pac 12 Conference Women's Basketball Tournament	Pac 12 Conference	3/06/2013	3/05/2012	3/5-10/2014 3/4-9/2015
Facility Use Agreement – Concert - TBA	AEG Live LLC	In Progress	03/25/2013	07/18/2013

Facility Use Agreement – Spectator, Bruno Mars	AEG Live LLC	In Progress	12/19/2012	07/21/2013
Facility Use Agreement – Spectator, Ultimate Fighting Championship (UFC)	Ultimate Fighting Championship	In Progress	03/20/2013	07/22-27/2013
Endorsement C to 2013 Master Facility Use Agreement Live Nation Worldwide, Inc., One Direction	Live Nation Worldwide, Inc.	In Progress	04/12/2012	07/28/2013
Facility Use Agreement – Standard, All Hands Meeting	Private Meeting	In Progress	09/12/2012	08/24-27/2013
Facility Use Agreement – Spectator, UW Volleyball	University of Washington	In Progress	02/20/2013	09/13/2013
Facility Use Agreement – Standard, Company Meeting 2013 & 2014	Private Meeting	04/01/2013	12/21/2012	09/18-28/2013 09/15-25/2014
Endorsement E to 2013 Master Facility Use Agreement Live Nation Worldwide, Inc., P!NK	Live Nation Worldwide LLC	In Progress	12/18/2012	10/20/2013
Facility Use Agreement – Concert - TBA	Beaver Productions	In Progress	02/01/2013	11/15/2013
Endorsement D to 2013 Master Facility Use Agreement Live Nation Worldwide, Inc., Concerts - TBA (2 shows)	Live Nation Worldwide LLC	In Progress	02/15/2013	11/23/2013
Facility Use Agreement – Concert - TBA	AEG Live LLC	In Progress	02/20/2013	12/03/2013
Facility Use Agreement – Spectator Event	Spectator Event	In Progress	06/14/2012	12/8-9/2013
Facility Use Agreement – Spectator, NCAA Volleyball Championships	Seattle Sports Commission	In Progress	06/25/2010	12/16-21/2013
Facility Use Agreement – Standard, Seattle University School of Law Graduation	Seattle University School of	02/28/2013	08/20/2012	05/17/2014 05/16/2015

	Law			
Facility Use Agreement – Standard, Seattle University Commencement	Seattle University	12/21/2011	12/09/2010	06/14-15/2014
Facility Use Agreement – Standard, City University Commencement	City University	In progress	02/22/2012	06/21/2014
Facility Use Agreement – Standard, Seattle University Commencement	Seattle University	In progress	01/13/2012	06/13-14/2015 06/11-12/2016
Facility Use Agreement – Standard, City University Commencement	City University	In progress	02/04/2013	06/21/2015
Facility Use Agreement – Spectator, Pac-12 Women's Tournament 2016-2017	Pac-12 Conference	In progress	03/05/2012	03/02-7/2016 03/01-6/2017

5. LICENSING AGREEMENTS		
Agreement	**Contracting Party**	**Effective Date**
Wireless Communications Site Agreement	Seattle SMSA Limited Partnership d/b/a Verizon Wireless	9/1/2000
KeyArena Lease Agreement	New Cingular Wireless PCS, LLC (was Interstate Mobilephone Company, d/b/a/ AT&T Wireless Services, Inc.)	11/17/1995

6. VENDOR AGREEMENTS		
Agreement	**Contracting Party**	**Effective Date**
Vendor Contract	Staff Pro Inc.	4/17/2009

7. SERVICE PROVIDER AGREEMENTS		
Agreement	**Contracting Party**	**Effective Date**
Agreement for Booking, Marketing, Sales and Technical Operations Services for	AEG	1/31/2009

KeyArena at Seattle Center by and between the City of Seattle and AEG Management WA, LLC		
Concession Agreement between the City of Seattle, Seattle Center Department and Facility Merchandising, Inc.	FMI	5/17/2012
Event Technology Services Agreement with Convention Communication Provisioners Inc. (CCPI)	CCPI	4/1/2003
Ticketmaster Licensed User Agreement	Ticketmaster	1/31/2013

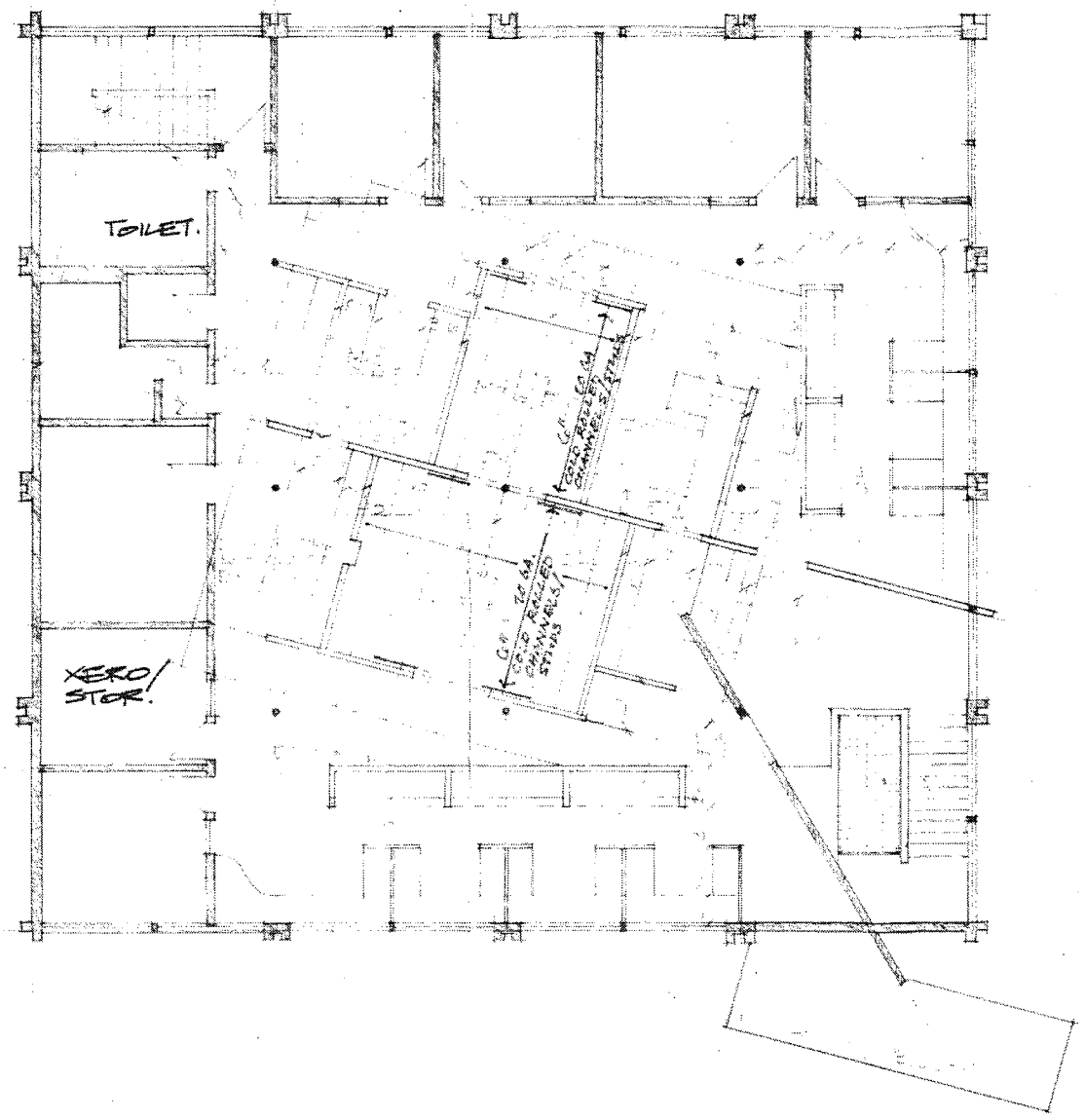
Exhibit C
City's Capital Maintenance and Repairs

1. Arena Systems/Infrastructure
Building Envelope & Perimeter
Roof
Edgebeam and Soffit
Glazing
Exterior Doors and Door Hardware
Building Structural
Concrete Structural Members
Steel Superstructure
MEP (Mechanical, Electrical, Plumbing)
Electrical
Elevators
Heating, Ventilation and Cooling (HVAC)
Ice Making/Cooling Towers
Plumbing
Safety & Security
Fire Alarms
Access Control, Security Cameras

2. Anticipated Capital Improvement Program (CIP) Projects 2013-14
Roof Deep Cleaning
Edgebeam and Soffit Concrete Repairs
Replace double doors to Recycle/ Composting/Waste Loading Dock
Restripe, lighting upgrades, gate repairs - south end
Structural separation repair - north end
Replace failing expansion joint covers
Elevator systems overhaul
Replace Variable Frequency Drives (VFDs)
Restroom Tile Repair, Replacement
Phased replacement of seat fabric
Rehabilitation of retractable risers
Recycling and Compost area upgrades to enhance waste diversion
Replace Aisle Curtains
Carpet replacement, painting, and restroom improvements

Ned Dunn
CEN ArenaCo ORD Exhibit D to Att. 1
April 15, 2013
Version 1

Exhibit D



WEST COURT BUILDING 2nd FLOOR

Exhibit E

Insurance Requirements

1. **ArenaCo Insurance**. ArenaCo shall obtain and maintain continuously throughout the term of this Arena Use Agreement the following insurance covering its operations and activities at the Arena:

1.1. **Commercial General Liability("CGL")**. CGL Insurance shall be written on Insurance Services Office ("ISO") form number (CG00 01) or equivalent, including coverage for (i) premises/operations; (ii) completed operations/product liability; (iii) personal/advertising injury; (iv) independent contractors; (v) contractual liability; (vi) Fire/Tenant Legal with a limit of not less than $1,000,000.00 combined single limit per occurrence, $2,000,000.00 general aggregate per project/location.

1.2. **Liquor Liability** for the serving and selling of alcoholic beverages with a limit of not less than $1,000,000 per occurrence, $2,000,000.00 annual aggregate, covering personal injury (including bodily injury and death) and property damage which may arise from or in connection with the sale or service of alcoholic beverages by any Concessionaire or other person pursuant to this Arena Use Agreement..

1.3. **Business Automobile Liability** on ISO form number (CA 00 01) or equivalent for owned, hired, leased, and non-owned vehicles used by ArenaCo in connection with the management and operation of the Arena, including the parking areas, or on public streets in conjunction with work under this Arena Use Agreement, with a limit of not less than $1,000,000.00 each accident, combined bodily injury and property damage, written on an occurrence form.

1.4. **Workers' Compensation.** Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, or any other applicable State Worker's Compensation Law at statutory limits.

1.5. **Employer's Liability or "Stop Gap."** The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability Policy in the amount of at least $1,000,000 per accident.

1.6. **Umbrella/Excess Liability Insurance** in excess of the coverage amounts set forth in clauses 1.1, 1.2 and 1.3 above, with limits of not less than $10,000,000 per occurrence and $20,000,000 annual aggregate, written on an occurrence form.

1.7. **Garage Keepers Liability Insurance.** ArenaCo shall maintain **Garage Keepers Direct Primary Legal Liability** covering any valet parking services it provides, written on an occurrence form with adequate limits to cover fire and theft to all automobiles, or any portion or the contents thereof, including, without limitation, loss caused by riot, civil commotion, vandalism, malicious mischief and collision. If ArenaCo does not provide valet parking services, but does provide open parking to the public**, Garage Keepers' Legal Liability on a direct excess basis** is required. If both valet and open parking are provided, both coverages above are required.

1.8. **Pyrotechnic Liability Insurance** with a minimum limit of liability of $2,000,000 each occurrence if pyrotechnics are used for an Event.

1.9. **Property Insurance** under which ArenaCo's furniture, fixtures, equipment and inventory and all alterations, additions and improvements that ArenaCo makes to the premises are insured throughout the term of this Arena Use Agreement in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form" (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of ArenaCo's business. The City shall be named as a loss payee under such policy with respect to property insurance covering capital alterations, additions and improvements.

2. <u>Insurance Terms and Conditions</u>.

2.1. The limits of liability required herein are minimum limits only and such requirement shall not be construed to limit in any way the liability of ArenaCo or of any ArenaCo subcontractor or insurer. All insurance policies, with the exception of Workers Compensation, shall include The City of Seattle as an additional insured for primary and non-contributory limits of liability, subject to a separation of insureds clause. The City shall be entitled to coverage for the full valid and collectible limits of liability, whether

such limits are primary, excess, contingent or otherwise and regardless of whether limits maintained by ArenaCo are greater than those required by this Arena Use Agreement.

2.2. Any deductibles or self-insured retentions must be declared to and approved by City. ArenaCo shall be solely responsible for any claims that fall within the deductible and/or self-insured retention of the above-described policies.

2.3. ArenaCo's insurance coverage shall be primary insurance as respects the City of Seattle and its officers, officials, and employees and shall include a severability of interests (cross liability) clause and a waiver of subrogation in favor of the City of Seattle. Any liability insurance and/or self-insurance maintained by the City of Seattle, or its officers, officials, employees and/agents shall not contribute with ArenaCo's insurance nor benefit ArenaCo in any way.

2.4. Limits specified for General Liability, Automobile Liability, and Employers Liability or "Stop Gap" can be satisfied with any combination of primary and/or excess insurance

2.5. ArenaCo hereby releases the City of Seattle from any and all claims or causes of action whatsoever in or from or in any way connected with any loss covered or which should have been covered by insurance required to be maintained by ArenaCo pursuant to this Agreement.

3. **Evidence of Insurance.** Except for Workers Compensation insurance, on or before the Commencement Date, ArenaCo. shall deliver proof of insurance meeting the requirements set forth in this Arena Use Agreement to the Director. ArenaCo delivers the signed Agreement. The proof of insurance must include the following:

3.1. An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.

3.2. A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability insurance documenting that the City of Seattle is an additional insured for primary and non-contributory limits of liability and Products and Completed Operations Additional Insured; a statement of additional insured status on an ACORD or other form of certificate of insurance will not satisfy this requirement.

3.3. A copy of each policy's declarations page and schedule of forms and endorsements.

3.4. Any other policy language or endorsements that documents compliance with the requirements herein, including (if required) CA 99 48 and MCS-90 endorsements.

3.5. At any time upon the City of Seattle's request, ArenaCo shall forward to the City of Seattle a true and certified copy of any insurance policy(s).

4. City of Seattle's Acquisition of Insurance. If at any time during the Term, ArenaCo fails to procure or maintain insurance required under this Arena Use Agreement, or to pay the premiums for such insurance, the City of Seattle shall have the right but not the obligation after ten (10) Business Days' prior written notice to ArenaCo to procure the insurance and to pay any and all premiums for such insurance. Any amounts paid by the City of Seattle in connection with the acquisition of insurance shall be immediately due and payable, and ArenaCo shall pay to the City of Seattle upon demand the full amount paid by the City of Seattle.

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Center	Robert Nellams 684-7334	Hall Walker 233-7065

Legislation Title: AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with Horton Street, LLC to operate and manage KeyArena and utilize it for the playing of professional basketball games.

Summary of the Legislation:
This legislation authorizes an agreement with Horton Street, LLC ("ArenaCo") for the playing of National Basketball Association ("NBA") home games in KeyArena and for the use, management, and operation of the building. The agreement is for two years, covering the 2013-14 and 2014-15 NBA seasons.

Background:
ArenaCo has petitioned the NBA to acquire a basketball team and relocate it to Seattle, beginning with the 2013-14 season. If the NBA approves ArenaCo's request, ArenaCo intends to use KeyArena for the Seattle team's home games for a period of two to three years. The NBA will require that ArenaCo make permanent improvements to KeyArena in order for that facility to be suitable for professional basketball.

The agreement authorized by this legislation, execution of which is contingent on ArenaCo securing an NBA franchise that will play in Seattle beginning with the 2013-2014 NBA season and also upon execution of a construction agreement for initial improvements that is satisfactory to the Seattle Center Director, outlines the terms and conditions under which ArenaCo would cause the Seattle team to play its home games in KeyArena and assume overall responsibility for management and operation of the arena.

Agreements Terms:

1. Term – July 1, 2013 – June 30, 2015, with a one year extension through June 30, 2016, at ArenaCo's option. Either party may terminate the agreement after June 30, 2015 with reasonable notice if ArenaCo stops playing NBA home games at KeyArena.

2. Management and Operation – ArenaCo will assume responsibility for management and operation of KeyArena, including exclusive control of all sales, advertising, marketing and operations. It will retain all revenues earned at KeyArena and be responsible for paying all direct KeyArena operating expenses except capital maintenance and repair work on the building shell or the infrastructure of building systems. The City will continue to provide administrative personnel, event services and routine maintenance and repairs at KeyArena and ArenaCo will reimburse the City for the cost of those direct services. The City will continue to provide indirect administrative and operational services for KeyArena and the City staff working in

KeyArena, such as payroll, human resource management, management of the Center's parking facilities, and grounds maintenance. ArenaCo will not reimburse the cost of these indirect services. These indirect services have not been budgeted in or allocated to the KeyArena Operating Fund in prior years and this practice will be continued.

3. City Employees – All KeyArena services currently being performed by City employees will continue to be performed by City employees, and ArenaCo will reimburse Seattle Center for the salary and benefit costs of those employees as well as any increased costs due to the increased work associated with an NBA team. ArenaCo may direct and supervise the day-to-day activities of the City employees assigned to work in KeyArena through coordination with the City's KeyArena Manager. All City employees working in KeyArena will continue to receive the benefits of City employment and ArenaCo will work with the City to ensure that all collective bargaining obligations are fulfilled.

4. Use Fee – ArenaCo will pay an annual Use Fee of $1.5 Million. In addition ArenaCo will collect and pay to the City a Patron Use Fee of $1.00 per ticket sold for all ticketed events, other than NBA,NHL and Seattle Storm events, for tickets priced $25.00 and lower, and $2.00 per ticket for all tickets priced $25.01 and above, with a guaranteed annual minimum payment to the City of $500,000. This type of Patron Use fee is already charged at KeyArena and is collected by event promoters and paid to Seattle Center for ticketed events except the Seattle Storm. In addition, if National Hockey League ("NHL") games are played at KeyArena, ArenaCo will pay an additional Use Fee of $750,000 annually.

5. Capital Investment – ArenaCo will invest a minimum of $3 Million in capital improvements in KeyArena and upon their departure, will leave behind improvements with an original cost of at least $3 Million. The specific improvements will be identified in a separate Construction Agreement. To the extent possible, the parties will agree at the time of installation which improvements will remain with KeyArena and which will be removed, with the intent that KeyArena be left in an intact, fully functional state, suitable for its future intended use. If ArenaCo wants to make additional capital improvements during the term of this Agreement, ArenaCo would pay for them and the capital improvements would be subject to the Seattle Center Director's approval.

6. City's Responsibility/City Costs for Capital Maintenance and Repair Work – The City will continue to be responsible, at City cost, for maintaining the KeyArena building shell, including the roof, walls, rafters and structural supports of the building, the permanent risers and the infrastructure for all mechanical electrical, plumbing, HVAC, fire alarm and other systems and components. ArenaCo will be responsible for maintaining any portions of the building or building systems that they upgrade or replace as part of their capital improvements. The City's anticipated capital maintenance and repair responsibilities during the term are consistent with the adopted Seattle Center 2013 and 2014 CIP.

7. City's Responsibility/ArenaCo's Reimbursement of Routine Maintenance and Repairs – The City will continue to be responsible for, and ArenaCo shall reimburse the City for all costs associated with routine maintenance and repair of KeyArena.

8. Advertising/Sponsorship and Naming Rights – ArenaCo will have exclusive control of advertising, sponsorship and naming rights for the Arena, including the right to rename KeyArena. Unless otherwise agreed, at the end of the term, ArenaCo will remove the new name and all associated signage from the building.

9. Existing Agreements – There are a number of existing agreements related to KeyArena. They include sponsorship, suite, club, facility use, licensing, and vendor and service provider agreements. ArenaCo will assume all of the City's liability under these agreements. The City, where possible, will assign the agreements to ArenaCo. ArenaCo will honor all of the event agreements the City has for events scheduled to occur after July 1, 2013, or, with the agreement of the other party, may renegotiate the terms of those agreements. Event agreements include the current contracts with the Seattle Storm, Seattle University, 2013 and 2014 Rat City Roller Girls LLC, the NCAA, PAC 12, Live Nation, and the Seattle Sports Commission as well as a variety of other events. ArenaCo may terminate the other (non-event) agreements, unless the agreements also address other facilities at Seattle Center, in which case Seattle Center and ArenaCo will work together to ensure that services continue to be provided at the Center. ArenaCo cannot enter into any new agreements whose term will extend past ArenaCo's occupancy of KeyArena without written approval of the City.

10. Americans with Disabilities Act. The City is responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") for the permanent structural features of KeyArena and for all improvements, other than those improvements made by ArenaCo. ArenaCo is responsible for ensuring that all non-structural and non-permanent ADA requirements comply with the applicable ADA provisions.

11. Parking – Seattle Center will provide 500 parking permits for the First Avenue North Parking Garage for each NBA or NHL game and up to 500 parking permits each for other NBA and NHL events.

12. Bumbershoot – The City will continue to use KeyArena rent free for Bumbershoot and will receive the net concession revenues earned in the building during the festival. Bumbershoot will continue to be responsible for reimbursement of the event expenses related to production of the festival.

In 2012 KeyArena operating revenues exceeded expenses by $637,658. In 2013 KeyArena is budgeted to generate net revenue of $711,044. Assuming that the City's responsibility for capital maintenance and repair of the Arena continues to be addressed by the adopted 2013 and 2014 CIP as planned, and that the annual Patron Use Fee is only the $500,000 minimum and there are no NHL games, under the terms of this agreement, the annual net revenue earned by KeyArena would increase by at least $1.3 Million over budget on an annual 12 month basis. Note that the Agreement term is based on the NBA season and runs from July 1 to June 30 of the following year rather than the calendar year used for the City's accounting, so the financial impact shown on the chart below is based on a conceptual twelve month period. Since the Agreement will not commence until July 1, 2013, the actual net financial impact in 2013 will be less, but over the 12 month period beginning July 1, 2013 the annual net financial impact of the Agreement would be in the range estimated. It should also be noted that the operating expenses

included in the conceptual chart below do not reflect the anticipated addition of Seattle Center expenses related to 41 or more NBA games per season, but those expenses, when determined, will be reimbursed by ArenaCo and will not impact the estimated net revenue to the City.

Conceptual Financial Impact of Agreement			
KeyArena	**12 Month – Status Quo**	**12 Month - Impact of Agreement**	**Variance**
Operating Revenue	$7,008,000	0	($7,008,000)
Use Fee		$1,500,000	$1,500,000
Patron Use Fee		$ 500,000	$ 500,000
ArenaCo Reimbursement of City Expense		$6,297,000	$6,297,000
Total Revenue	$7,008,000	$8,297,000	$1,289,000
Operating Expense	$6,297,000	$6,297,000	0
Estimated Net Revenue to City	$711,000	$2,000,000	$1,289,000

Please check one of the following:

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes:
No additional appropriation has been requested to implement this legislation. Seattle Center will incur additional expenses related to presentation of the NBA games, but all of these expenses will be reimbursed by ArenaCo. Because information regarding the staffing needed to produce the potential NBA events is not available at this time, no additional appropriation authority is being requested at this time. Additional budget authority will be requested later in 2013 when this information is available.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
11420 KeyArena Operating Fund	Seattle Center	Use Fee	$ 750,000	$1,500,000
11420 KeyArena Operating Fund	Seattle Center	Patron Use Fee	$ 250,000	$ 500,000
11420 KeyArena Operating Fund	Seattle Center	ArenaCo Reimbursement of City Expense	$ 3,148,696	$6,613,284
TOTAL			$ 5,148,696	$8,613,284

Revenue/Reimbursement Notes:
As a result of this legislation, ArenaCo will receive all revenues generated by KeyArena and will pay Seattle Center an annual Use Fee of $1.5 Million and a minimum of $500,000 of the Patron Use Fee earned from ticketed events in KeyArena. If an NHL team is secured by ArenaCo to play at KeyArena, an additional $750,000 would be received annually by the city. The 2013 adopted revenue budget is $7,008,436. ArenaCo will also reimburse all direct KeyArena operating expenses. The 2013 KeyArena adopted expenditure budget is $6,297,392. Assuming ½ of the annual budget will be expensed from July 1, 2013 through year end, ArenaCo would reimburse $3,148,696 in 2013 and in 2014 would fully reimburse the $6,613,284 budgeted expense.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

Position Notes:
This legislation does not create or abrogate positions.

Do positions sunset in the future?
Not applicable

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
NBA events at KeyArena will likely result in additional Seattle Center revenue through increased parking and patronage of the Armory. These additional revenues are not included in the estimates provided above.

b) **What is the financial cost of not implementing the legislation?**

ArenaCo wishes to use KeyArena for NBA games while a proposed new $490 million basketball and hockey arena is being considered and, potentially, constructed. For the NBA to approve acquisition and relocation of an NBA team to Seattle, the team must be able to play their games in the Seattle area while the new arena is being built. Use of KeyArena will achieve ArenaCo's objectives and in addition, will result in increased revenue to Seattle Center and the surrounding community.

c) Does this legislation affect any departments besides the originating department?

While this legislation does not directly impact other departments, NBA events at Seattle Center could require contract services with the Seattle Police Department for traffic control and the Seattle Fire Department for emergency medical personnel. Those costs would be reimbursed separately by ArenaCo.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

If authorized by the NBA, the team could play at an alternate facility in another city in the region.

e) Is a public hearing required for this legislation?

No

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No

g) Does this legislation affect a piece of property?

This legislation authorizes the short term use of KeyArena at Seattle Center by ArenaCo, and requires that at least $3 million in capital improvements funded by ArenaCo remain with the building. KeyArena must be left fully functioning at the end of the term.

h) Other Issues:

List attachments to the fiscal note below:

City of Seattle
Office of the Mayor

April 16, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill authorizing the Seattle Center Director to execute a two-year agreement with Horton Street, LLC ("ArenaCo") to operate and manage KeyArena and use it to play their home basketball games. Execution of the agreement is contingent on ArenaCo securing an NBA franchise that will play in Seattle beginning with the 2013-2014 NBA season and on the parties' agreement regarding the scope of KeyArena improvements.

Under the terms of the agreement, ArenaCo will assume management and operation of KeyArena July 1, 2013. They will be responsible for KeyArena events, make a minimum capital investment of $3 million in the building, and pay an annual use fee of $1.5 million plus a minimum of $500,000 annually in patron use fees, for guaranteed total revenue of $2.0 million annually. The City may receive additional use fees resulting from strong ticket sales. If a National Hockey League team is secured to play at KeyArena, the City would receive an additional $750,000 annually. ArenaCo will retain all KeyArena revenues and pay all operating costs of the building. City employees will continue to staff the facility and ArenaCo will reimburse Seattle Center for the cost of those employees. ArenaCo will also work with the City to ensure that all collective bargaining and other obligations are fulfilled. The City will be responsible for capital repair and maintenance of the building shell and the infrastructure of various building systems. The arrangement will significantly increase Seattle Center net revenue and enliven Seattle Center and the surrounding neighborhoods.

The possibility of the Sonics coming home is exciting and the interim use of KeyArena for the NBA will bring increased revenue, jobs, investment and vibrancy to Seattle Center. Should you have questions please contact Robert Nellams at 684-7334.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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