

## EXCLUSIVE RIGHT TO NEGOTIATE A PREDEVELOPMENT AGREEMENT

This agreement, dated September 27, 2011, for purposes of identification, is between the **City of Sacramento**, a California municipal corporation (the “**City**”); **ICON Venue Group, LLC**, a Delaware limited-liability company (“**ICON**”); and **David S. Taylor Interests, Inc.**, a California corporation (“**Taylor**”).

### Background

On May 26, 2011, the Sacramento City Council received a presentation by ICON and Taylor (the “**ICON-Taylor Report**”) on the feasibility of developing an entertainment-and-sports complex (the “**ESC Project**”) on the City-owned Railyards site (the “**Site**”). A map showing the general location of the Site is attached to this agreement as Exhibit A. The City Council directed staff to conduct a technical review of the ICON-Taylor Report and report back on its viability. That Technical Review was presented to City Council on September 13, 2011. When the presentation concluded, the City Council directed the City Manager to negotiate an agreement that obligates the City to negotiate exclusively with ICON and Taylor for a predevelopment agreement covering the ESC Project (the “**Predevelopment Agreement**”). This agreement specifies the provisions of that exclusive right to negotiate. The City, ICON, and Taylor intend to work together in a collaborative and cooperative manner to explore opportunities and approaches that will allow for the development of the ESC Project in a fiscally responsible manner.

***With these background facts in mind, the City, ICON, and Taylor agree as follows:***

1. **Exclusive Right to Negotiate.** During the term of this agreement, and in return for the consideration described in section 2, the City shall negotiate exclusively with ICON and Taylor for the Predevelopment Agreement.
  - (a) *Term.* The term of this agreement expires at 5:00 p.m. on March 1, 2012, except as follows:
    - (1) Any party may terminate this agreement by giving 15 days’ advance written notice to the other parties if the terminating party reasonably determines that the negotiations will not result, before March 1, 2012, in a Predevelopment Agreement acceptable to all parties.
    - (2) The parties may, by written agreement, extend the term by up to three 30-day periods.
  - (b) *Rights and Obligations.* The parties have the following rights and obligations during the term of this agreement:

- (1) **Predevelopment Agreement.** The City, ICON, and Taylor shall negotiate with the goal of coming to terms on the Predevelopment Agreement that can be presented to the City Council for consideration and possible approval. The Predevelopment Agreement is to set forth the general terms and conditions for the financing, development, ownership, and operation of the ESC Project. In cooperation with the City, ICON and Taylor shall identify for the City the third parties who will be involved in negotiations regarding the ESC Project and may potentially be parties to the Predevelopment Agreement. Those third parties to be involved in the negotiations must include the National Basketball Association (the “**NBA**”) and the Sacramento Kings (the “**Kings**”) and may include equity, operating, or other parties who will invest in, operate, or otherwise participate in the ESC Project (the “**Private Participants**”). Those parties who may potentially be parties to the Predevelopment Agreement include the NBA, the Kings, and the Private Participants.
- (2) **Information Sharing.** To facilitate informed decision making, the City, ICON, and Taylor shall share non-confidential and non-proprietary information relevant to the ESC Project. ICON and Taylor shall not disclose such shared information to any third parties other than the Private Participants without the City’s express written consent, which the City shall not unreasonably withhold, delay, or condition.
- (3) **Negotiations with the Private Participants.** As appropriate, ICON and Taylor shall negotiate on behalf of the Private Participants with the City, the NBA, or the Kings, or with any combination of them, concerning the Predevelopment Agreement. The City, ICON, and Taylor shall approach negotiations in a collaborative and cooperative manner and shall communicate on regular basis. ICON and Taylor shall keep the City informed about any negotiations with the NBA, the Kings, or the Private Participants and shall consult regularly with the City’s designated representatives regarding the negotiations. The City is entitled to participate in the negotiations through its designated representatives and its Consultants, subject to the following: ICON and Taylor may conduct discussions or negotiations with the NBA, the Kings, or the Private Participants without the participation of the City’s designated representatives and Consultants if ICON, Taylor, and the City agree that such discussions or negotiations would be advantageous.
- (4) **Exclusivity.** The City shall not negotiate or contract for the predevelopment, development, or operation of the ESC Project with any person or entity other than ICON and Taylor without ICON’s and Taylor’s express written consent, which ICON and Taylor shall not unreasonably withhold, delay, or condition, except that the City may negotiate and enter into contracts with business and financial advisors, attorneys, and other professionals whose services the City

desires for its investigation of the ESC Project and negotiation of the Predevelopment Agreement (“**Consultants**”). In cooperation with ICON and Taylor, the City may conduct its own due diligence and pursue various financing mechanisms and sources to fund the ESC Project.

- (5) **Feasibility.** In the course of negotiating the Predevelopment Agreement, the City, ICON, and Taylor shall cooperate in performing those tasks and investigations necessary and appropriate to determine, in good faith, whether a site plan, traffic and parking plan, and access plan for the Site are mutually acceptable; whether utilities and infrastructure of adequate capacity are reasonably available to the Site; whether an ESC Project on the Site is capable of satisfying the financial and competitive objectives identified by ICON, Taylor, and, as applicable, the Private Participants; and whether the Site is feasible for the ESC Project, economically and otherwise.
- (6) **Studies and Tests.** ICON and Taylor may perform all soils, engineering, environmental, geotechnical, biological-resources, wetlands, and other studies and tests that it determines to be appropriate in connection with the Site and the ESC Project. Before entering the Site for these purposes, ICON and Taylor must obtain the City’s written consent. As a condition for its consent, the City may require that ICON and Taylor, or one or more Private Participants reasonably acceptable to the City and then participating in the negotiations with ICON and Taylor, agree to indemnify, defend, protect, and hold the City and the City’s officers, employees, and agents (including Consultants) harmless against any liabilities, claims, demands, damages, and costs (including attorneys’ fees) that arise from ICON’s or Taylor’s activities on the Site, except as follows: ICON and Taylor and, if applicable, the indemnifying Private Participants will not be so obligated to the extent the liabilities, claims, demands, damages, or costs are caused by the active negligence or willful misconduct of the City or the City’s officers, employees, or agents (including Consultants).

- 2. ICON’s and Taylor’s Consideration.** In return for the exclusive right to negotiate described in section 1, ICON and Taylor (a) shall negotiate with the City in good faith and (b) shall pay all costs they incur to perform under this agreement.
- 3. No Obligation to Develop.** This agreement does not obligate the City to award contracts for development of the ESC Project to ICON or Taylor, nor does it obligate ICON or Taylor to develop the ESC Project.
- 4. Assignment.** ICON may assign its rights and interest under this agreement to a special-purpose entity or partnership that ICON creates for the purpose of performing ICON’s obligations under this agreement so long as ICON maintains full management of, and control over, any such entity or partnership. Taylor may assign its rights and interest

under this agreement to a special-purpose entity or partnership that Taylor creates for the purpose of performing Taylor's obligations under this agreement so long as Taylor maintains full management and control over any such entity or partnership. ICON and Taylor, collectively, may assign their rights and interests under this agreement to a special-purpose entity or partnership they create (which entity or partnership may include one or more Private Participants as a member or partner) for the purpose of performing ICON's and Taylor's obligations under this agreement. An assignment under this section 4 will be valid only after the City confirms in writing that the assignment complies with this section 4 or is otherwise reasonably acceptable.

- 5. Notices.** Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 5 to the persons identified below. A mailed notice or other communication will be effective or will be considered to have been given on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given upon receipt by the applicable party. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section 5.

*If to the City:*

City of Sacramento  
Attention: City Manager  
915 I Street, Fifth Floor  
Sacramento, California 95814

*If to ICON-Taylor:*

ICON Venue Group, LLC  
Attention: Tim Romani  
8101 E. Prentice Ave., Suite 900  
Greenwood Village, CO 80111

and

David S. Taylor Interests, Inc.  
Attention: David Taylor  
1201 K Street, Suite 1840  
Sacramento, CA 95814

- 6. Waiver.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon the other party's breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- 7. Interpretation.** Time is of the essence of this agreement, which is to be interpreted and applied in accordance with California law, except as follows: because the parties

jointly drafted this agreement, the interpretive rule in California Civil Code section 1654 does not apply. As used in this agreement, “include” and its variants are not restrictive. For example, “includes” means “includes but not limited to,” and “including” means “including but not limited to.”

- 8. Effective Date.** This agreement is effective on the date all parties have signed it, as indicated by the dates in the signature blocks below.
- 9. Expenses.** Each party is responsible for its own expenses in connection with any activities under this agreement.
- 10. No Third-Party Beneficiaries.** This agreement is solely for the benefit of the City, ICON, and Taylor, and no other person or entity has any rights under it.
- 11. Authority to Execute.** Each person who signs this agreement represents that he or she is duly authorized to do so for the party on whose behalf he or she signs and that he or she is authorized to perform under this agreement without any further authorization.
- 12. City Manager Authority.** The City Manager is authorized to act on behalf of the City under this agreement for purposes of sections 1(a), 1(b)(2), 1(b)(3), and 4.
- 13. Counterparts.** The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
- 14. Entire Agreement.** This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by all parties.

*(Signature Page Follows)*

**City of Sacramento**

**ICON Venue Group, LLC**

By: \_\_\_\_\_  
John F. Shirey, City Manager  
Date: September \_\_\_\_, 2011

By: \_\_\_\_\_  
Tim Romani, President  
Date: September \_\_\_\_, 2011

**David S. Taylor Interests, Inc.**

Attest:  
City Clerk

By: \_\_\_\_\_  
David S. Taylor, President  
Date: September \_\_\_\_, 2011

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

Approved as to Form  
City Attorney

By: \_\_\_\_\_  
Joseph P. Cerullo  
Senior Deputy City Attorney

## Exhibit A

### Exclusive Right to Negotiate a Predevelopment Agreement

#### Map of Railyards Site

