

## **RESOLUTION NO. 2011-540**

Adopted by the Sacramento City Council

September 27, 2011

### **APPROVING AN EXCLUSIVE RIGHT TO NEGOTIATE WITH ICON-TAYLOR FOR THE ENTERTAINMENT AND SPORTS COMPLEX**

#### **BACKGROUND**

- A. The City owns real property in the City of Sacramento that is adjacent to the Union Pacific Rail Depot and the future site of the Sacramento Intermodal Transportation Facility (the "Intermodal Facility").
- B. The City desires to investigate the possibility of developing an entertainment-and-sports complex ("ESC") co-located with the Intermodal Facility.
- C. On February 8, 2011, the City selected ICON Venue Group, LLC and David S. Taylor Interests, Inc. (collectively, "ICON-Taylor"), who between them have successfully developed numerous projects, including arenas, to analyze the feasibility of developing the ESC. On May 26, 2011, ICON-Taylor presented its feasibility study to the City Council, along with a proposal for the development of the ESC.
- D. City staff and City consultant Dan Barrett conducted a technical review of the ICON-Taylor study and proposal, identifying site and planning requirements as well as potential revenue streams to support debt financing for the ESC. Staff and Barrett presented its technical review to the City Council on September 13, 2011.
- E. ICON-Taylor and the City desire to enter into an exclusive right to negotiate an agreement to further explore the possible development of the ESC (an "ERN"), and, on September 13, 2011, the City Council authorized the City Manager to negotiate the ERN with ICON-Taylor and bring it back to the City Council for consideration and possible approval. A copy of the ERN that was negotiated is attached to this resolution as Exhibit A.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Council hereby approves the ERN attached as Exhibit A and authorizes the City Manager or his designee to sign the ERN on the City's behalf.
- Section 2. The City Council's approval of the ERN is exempt from environmental review under the CEQA Guidelines (14 Cal. Code Reg. § 15000 et seq.) because it concerns only feasibility or planning studies for possible future actions that the

City Council has not approved, adopted, or funded. It thus will not have any significant effect on the environment and does not constitute a "project." (CEQA Guidelines, §15061(b)(3) and §15262.)

Adopted by the City of Sacramento City Council on September 27, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, R Fong, McCarty, Pannell, Schenirer, and Mayor Johnson.

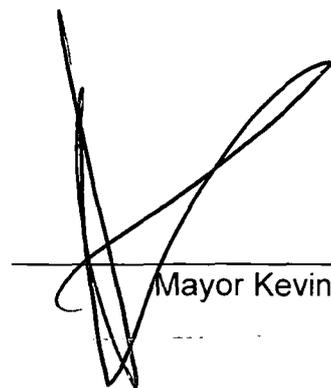
Noes: Councilmembers Sheedy and D Fong.

Abstain: None.

Absent: None.

Attest:

  
Shirley Concolino, City Clerk

  
\_\_\_\_\_  
Mayor Kevin Johnson

## EXCLUSIVE RIGHT TO NEGOTIATE A PREDEVELOPMENT AGREEMENT

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

### Background

On May 26, 2011, the Sacramento City Council received a presentation by ICON-Taylor (the “**ICON-Taylor Proposal**”) 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 as to this agreement as Exhibit A. The City Council directed staff to conduct a technical review of the ICON-Taylor Proposal 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-Taylor for a predevelopment agreement covering the ESC Project. This agreement specifies the provisions of that exclusive right to negotiate.

*With these background facts in mind, the City and ICON-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-Taylor for an agreement covering predevelopment work on the ESC Project.
  - (a) *Term.* The term of this agreement expires at 5:00 p.m. on \_\_\_\_\_, 2012.
  - (b) *Rights and Obligations.* The parties have the following rights and obligations during the term of this agreement:
    - (1) **Predevelopment Agreement.** The City and ICON-Taylor shall negotiate with the goal of coming to terms on a predevelopment agreement for the ESC Project that can be presented to the City Council for consideration and possible approval. The predevelopment agreement must include the tasks and milestones set out in Exhibit B to this agreement. It is understood that third parties—including the National Basketball Association, the Sacramento Kings, and prospective ESC operators—may participate in the negotiations on the predevelopment agreement.
    - (2) **Information Sharing.** To facilitate informed decision making, the City and ICON-Taylor shall share non-confidential and non-proprietary information relevant to

the ESC Project. Icon-Taylor shall not disclose such shared information to third parties without the City's express written consent.

- (3) **Equity Partners.** ICON-Taylor shall work to identify equity or financial partners to invest or participate in the ESC Project.
  - (4) **Exclusivity.** The City shall not negotiate or contract for predevelopment of the ESC Project with any person or entity other than ICON-Taylor, 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 the ESC Project ("**Consultants**").
  - (5) The City may be represented in the negotiations by its Consultants.
  - (6) **Feasibility.** ICON-Taylor shall determine, in good faith, whether the site plan, parking plan, and access plan for the Site are acceptable; whether utilities and infrastructure of adequate capacity are available to the Site; whether the Site will satisfy ICON-Taylor's financial and competitive objectives in the trade area; and whether the Site is feasible for the ESC Project, economically and otherwise.
  - (7) **Studies and Tests.** ICON-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-Taylor must obtain the City's written consent. As a condition for its consent, the City may require that ICON-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-Taylor's activities on the Site, except as follows: ICON-Taylor will not be 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-Taylor's Consideration.** In return for the exclusive right to negotiate described in section 1, ICON-Taylor shall negotiate with the City in good faith and shall pay all costs ICON-Taylor incurs 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-Taylor, nor does it obligate ICON-Taylor to develop the ESC Project.
  4. **Assignment.** ICON-Taylor shall not assign its rights under this agreement.

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 when actually delivered. 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  
Attention: Tim Romaini  
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 and ICON-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. **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.
13. **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: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Tim Romaini, President  
Date: \_\_\_\_\_, 2011

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

Attest:  
City Clerk

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

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

Approved as to Form  
City Attorney

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

**Exclusive Right to Negotiate a Predevelopment Agreement**

**Exhibit A**

**Map of Railyards Site**

**Exclusive Right to Negotiate a Predevelopment Agreement**

**Exhibit B**

**Predevelopment Tasks and Milestones**