

Meeting Date: 9/24/2013

Report Type: Consent

Report ID: 2013-00689

Title: Event Fee Agreement for Sleep Train Arena Events

Location: Sleep Train Arena/1 Sports Parkway, District 1

Issue: On March 26, 2013, City Council approved a preliminary term sheet for development of the Entertainment and Sports Center (ESC) project. In the term sheet, the Sacramento Kings owners agreed to levy a five percent fee on tickets for all events at Sleep Train Arena after June 1, 2013. The proceeds from this fee are to be provided to the City to be used to retire a portion of the 1997 lease revenue bonds that are secured by the land and improvements at Sleep Train Arena.

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute the Sleep Train Arena Event Fee Agreement with Sacramento Basketball Holdings, LLC.

Contact: Desmond Parrington, ESC Project Manager, (916) 808-5704; John Dangberg, Assistant City Manager, (916) 808-5704, Office of the City Manager

Presenter: None

Department: City Manager

Division: Executive Office

Dept ID: 02001011

Attachments:

1-Description/Analysis

2-Event Fee Agreement

City Attorney Review

Approved as to Form

Matthew Ruyak

9/18/2013 5:08:38 PM

Approvals/Acknowledgements

Department Director or Designee: John Dangberg - 9/18/2013 11:59:50 AM

Description/Analysis

Issue Detail: In 1997, the Sacramento City Financing Authority issued \$74 million in lease-revenue bonds, referred to as the 1997 Lease Revenue Bonds (Arco Arena Acquisition), in order to refinance existing debt on Sleep Train Arena – then known as ARCO Arena. On March 26, 2013, the City Council approved a non-binding term sheet to develop a proposed new ESC in downtown Sacramento in order to replace Sleep Train Arena. As part of the term sheet, the prospective owners of the Kings, which later became Sacramento Basketball Holdings LLC (SBH), agreed to impose and collect a five percent event fee (also known as a ticket surcharge) on every ticket sold for events at Sleep Train Arena effective June 1, 2013. The collected revenue would be sent to the City and set aside in an account to be used to retire a portion of the 1997 lease revenue bonds that are secured by the land and improvements at Sleep Train Arena. The 1997 lease revenue bonds are due and payable once the Kings are no longer playing at Sleep Train Arena.

While the term sheet refers to June 1, 2013 as the start date for the event fee, there were some events where SBH was not able to put the fee in effect on June 1 because of outstanding contractual arrangements with ticket selling companies that handle tickets for Sleep Train Arena. These events are listed in Exhibit A of the agreement. SBH remains responsible for the repayment of the 1997 bonds regardless of the amount collected through the Sleep Train Arena event fee.

This agreement only applies to events at Sleep Train Arena and will sunset upon the first ticketed event at the ESC. As set forth in the term sheet, a new five percent event fee will apply to tickets for events at the proposed ESC if the ESC project is approved by Council and only when the ESC is completed and operational. That event fee will be established in the definitive agreements for the ESC, which will be submitted to Council in mid-2014. If approved by Council, proceeds from the ESC event fee will be provided to the City.

Policy Considerations: This agreement is consistent with the preliminary term sheet approved by Council on March 26, 2013. This agreement does not commit the City to any future action regarding the development of the proposed ESC.

Economic Impact: None at this time.

Environmental Considerations: This report involves an event fee agreement between the City and SBH. The action in this report does not have any potential for significant effect on the environment and is exempt under CEQA

Guidelines section 15061(b)(3). The future development and financing of a new ESC is subject to review pursuant to the California Environmental Quality Act (CEQA).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The recommendation contained in this report implements and is consistent with the term sheet between the City and SBH, which was approved by Council on March 26, 2013.

Financial Considerations: This report does not affect the General Fund. The agreement between the City and SBH provides that SBH agrees to impose and collect an event fee of five percent on all tickets for events booked after June 1, 2013 at Sleep Train Arena and that those funds will be remitted to the City to help retire a portion of the 1997 Lease Revenue Bonds (Arco Arena Acquisition).

Emerging Small Business Development (ESBD): Not applicable.

SLEEP TRAIN ARENA EVENT FEE AGREEMENT

This agreement, dated September 24, 2013 for identification purposes, is between the City of Sacramento (“**City**”) and Sacramento Basketball Holdings LLC, a Delaware Limited Liability Company (“**SBH**”). City and SBH are also referred to as the “**Parties.**”

Background

The City Council approved a non-binding Term Sheet dated March 23, 2013 (“**Term Sheet**”), setting forth the City’s and SBH’s desire to develop a proposed Entertainment and Sports Center (“**ESC**”) in downtown Sacramento. The proposed ESC will replace Sleep Train Arena as the home of the Sacramento Kings. Although no re-use has yet been identified for the Sleep Train Arena, the Term Sheet provides that SBH shall not operate it in competition with the ESC.

In 1997 the Sacramento City Financing Authority (“**Authority**”) issued lease revenue bonds (“**1997 bonds**”) to refinance existing debt on Sleep Train Arena – then known as ARCO Arena – and approximately 83 acres of surrounding land, including parking improvements (collectively the “**Facility**”). To accommodate the Sacramento Kings, the City entered into a lease-financing transaction with the Authority. The Authority raised \$74 million by issuing the 1997 bonds; the City leased the Facility to the Authority for a lump-sum rental payment of \$74 million; the Kings transferred title to the Facility to the City in exchange for \$74 million; the Authority subleased the Facility back to the City for semi-annual rental payments equal to the debt service on the 1997 bonds; and the City sub-subleased the Facility to the Kings for semi-annual rent equal to the debt service on the 1997 bonds. When the 1997 bonds are fully paid, title to the Facility vests in SBH.

The Term Sheet provides that the City, in coordination with SBH, shall retire the 1997 bonds when the Kings vacate Sleep Train Arena. Nothing in this agreement relieves SBH of its obligations to retire the 1997 bonds when the Kings vacate Sleep Train Arena.

The Parties intend by this agreement to set forth SBH’s voluntary obligations to collect an event fee on every ticket sold for entrance to events at City-owned Sleep Train Arena, and the City’s responsibilities for maintaining an account to hold event fees remitted by SBH to the City. The Parties intend the collected event fee moneys be used to retire a portion of the 1997 bonds and to potentially reduce the principal amount of any new bonds to be issued. The Parties also intend to execute a separate event fee agreement for events at the proposed ESC. The terms of this agreement do not restrict or direct the terms of that future agreement.

The Parties acknowledge this agreement does not commit the City to approve the ESC project. Any potential decision ultimately to approve the ESC project is a legislative decision to

be made by and at the sole and exclusive discretion of the City Council in compliance with all statutory prerequisites under California law, including the California Environmental Quality Act. By entering into this agreement, the City does not limit, delegate, or assign any of its discretion to proceed with, or not proceed with, the ESC project.

With these background facts in mind, the City and SBH agree as follows:

1. Event Fee

1.1 *Imposition of Event Fee.* SBH shall impose and collect, or cause to be imposed and collected, an Event Fee (as defined in Section 7.1) on each ticket sold (including tickets used for fulfillment, trade, and barter) for events at Sleep Train Arena other than fundraising events and other non-ticketed or free admission events from which SBH does not generate revenue. The date of imposition and collection shall be the date each ticket is sold, regardless of the date of the event; however, SBH may later deduct any Event Fee from refunded tickets from the amounts disbursed to City.

1.2 *Event Fee Scope and Period.* The Event Fee applies to all tickets sold from June 1, 2013 until the first ticketed event at the proposed ESC (the “**Event Fee Period**”), except for the tickets and events identified in Exhibit A.

2. Disbursement of Event Fees to City

2.1 *Time of Disbursement.* By the 15th day of each month, SBH shall disburse to the City all Event Fees from the previous month. Disbursement shall be by electronic funds transfer to an account identified by the City or as otherwise agreed by the Parties.

2.2 *Failure to Impose or Collect Event fee.* If SBH does not collect, or cause to be collected, Event Fees on any or all tickets or events, SBH shall nonetheless disburse to the City the full amount of Event Fees that would have been disbursed had the Event Fees been imposed and collected as required by Sections 1.1 and 1.2.

2.3 *Supporting Documentation.* SBH shall maintain, for a period of at least three years, records supporting the information provided to the City (and City shall have the right to inspect these detailed records, as well as other records in SBH’s possession that may be reasonably requested to verify the Event Fee revenue calculation, upon written request under Section 4.1), including for each ticketed event during the Event Fee Period:

- (A) dates of ticket sales;
- (B) number of tickets sold and total revenue generated;
- (C) the total Event Fees imposed;
- (D) the date of the event;
- (E) all Event Fee refunds; and
- (F) a description of the event.

3. City's Handling and Use of Received Event Fees

3.1 *Deposit into Fund.* City shall deposit all received Event Fees into a restricted cash account in the Debt Service Fund used by City to account for the 1997 bonds, until used according to Section 3.3 or returned according to Section 6.

3.2 *Investment.* The City shall invest deposited Event Fees in City's Investment Pool A (as defined in Section 7.1).

3.3 *Use.* Except as provided in Section 6, the Event Fees received by the City, with all accrued earnings or interest, shall be used to retire the 1997 bonds in the manner agreed to by the City and SBH. SBH and City shall, during the 1997 bond retirement process, negotiate in good faith the appropriate procedure for using the Event Fee moneys to retire a portion of the 1997 bonds, or to reduce the principal amount of any new bonds to be issued. Except for investment and reimbursement to SBH as expressly set forth herein, they shall not be removed or distributed from the restricted cash account until both parties agree on such a procedure for use of the funds.

4. Access to Records

4.1 *Right of Inspection.* Each party shall have the right to inspect the books and records of the other party, during business hours upon reasonable written notice (given not less than 48 hours in advance), for the purpose of determining the other party's compliance with its obligations under this agreement. The right of inspection does not reach records that are privileged or otherwise protected by law.

4.2 *Disclosure of Records.* All documents submitted to the City may be subject to disclosure pursuant to the California Public Records Act. However, if

any documents, in whole or in part, are set apart and clearly marked “trade secret” or “confidential” when provided to the City, the City shall give notice to SBH of any request for the disclosure of those documents. SBH shall then have five days from the date it receives that notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff’s attorney fees) incurred by City in any legal action to compel the disclosure of those documents under the California Public Records Act. SBH shall have sole responsibility for defense of the actual “trade secret” or “confidential” designations.

5. Indemnification and Hold Harmless. SBH agrees to fully and completely, without reservation or limitation, defend, indemnify, and hold the City harmless, with counsel selected by the City, from any and all potential legal or monetary claims of any nature brought whatsoever by any third party against the City arising out of, or as a result of, SBH’s actions under this agreement. City agrees to fully and completely, without reservation or limitation, defend, indemnify, and hold SBH harmless, with counsel selected by SBH, from any and all potential legal or monetary claims of any nature brought whatsoever by any third party against the SBH arising out of, or as a result of, City’s actions under this agreement. It is the Parties’ intention that the provisions of this section be interpreted to impose on each party responsibility to the other for their respective acts and omissions, and where fault is determined to have been contributory, principles of comparative fault apply.

6. ESC Completion Delay. If for any reason the Sacramento Kings are not playing their regular home games in the proposed ESC by December 31, 2017, City shall return all Event Fee moneys deposited in the Debt Service Fund for the 1997 bonds to SBH, including accrued interest and earnings.

7. Miscellaneous Provisions

7.1 Certain Terms. In addition to the highlighted terms incorporated elsewhere in this agreement, the following definitions apply:

- (A) “City” includes its agents, officers, consultants, contractors, and employees.
- (B) “City’s Investment Pool A” is a short-term investment vehicle for the cash balance of all operating funds of the City. Investments purchased for this pool are invested according to the investment guidelines of Government Code sections 53601 and 53645 and may be expanded to include investments deemed prudent by the City

Treasurer.

- (C) "SBH" includes its corporate affiliate(s), and their successors and assigns, and their agents, officers, consultants, contractors, and employees.
- (D) "Sleep Train Arena" means the Natomas-area sports and entertainment facility that is the current home court of the Sacramento Kings, by whatever name the facility is otherwise known or labeled.
- (E) "Event Fee" means a fee equal to 5% of the base price of each ticket when first sold by SBH, exclusive of sales taxes, handling charges, the existing User Fee, and all other third party ticket-seller fees and impositions (except to the extent such handling charges or fees are retained by SBH, in which case they will be properly subject to the Ticket Event fee). Therefore, there will be no Event Fee on complimentary tickets, and the Event Fee for a discount or promotional ticket shall be 5% of the discounted or promotional price, if any, as applicable. City acknowledges that ticket buyers entitled to a refund (such as for cancelled events) may be eligible for a refund of the prepaid Event Fee; if there is a refund to the buyer, the refunded Event Fee shall not be due from SBH to City.

7.2 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 7.2 to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. 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 7.2.

<i>If to the City:</i> John Dangberg Assistant City Manager	<i>If to SBH:</i> John Rinehart Sacramento Basketball Holdings, LLC
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<p>City of Sacramento 915 I Street, Fifth Floor Sacramento, California 95814</p> <p><i>With copies to:</i> Matthew Ruyak Assistant City Attorney City of Sacramento 915 I Street, Fourth Floor Sacramento, California 95814</p>	<p>One Sports Parkway Sacramento, CA 95834</p> <p><i>With copies to:</i> Mark Friedman, Owner 1530 J Street, Suite 200 Sacramento, CA 95814</p> <p>Jeffrey K. Dorso, Esq. Pioneer Law Group, LLP 431 I Street, Suite 201 Sacramento, CA 95814</p>
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7.3 Assignments. A party may not assign or otherwise transfer this agreement or any interest in it without the other party’s prior written consent, which the other party may withhold in its sole discretion. An assignment or other transfer made contrary to this section 7.3 is void. However, this agreement will be binding upon and inure to the benefit of SBH’s successors-in-interest as set forth in section 7.4. SBH shall promptly notify the City of any such successors-in-interest.

7.4 Binding effect. This agreement binds and inures to the benefit of the Parties’ successors and assigns.

7.5 Time of Essence. Time is of the essence in the performance of this agreement.

7.6 Severability. If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

7.7 Waiver. A party’s failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party’s waiver of another party’s breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

7.8 Interpretation. This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.

7.9 Attorneys' fees. The Parties shall bear their own costs and attorneys' fees incurred in connection with this agreement.

7.10 No Third-Party Beneficiaries. This agreement is solely for the benefit of the City and SBH. It is not intended to benefit any third parties.

7.11 Effective date. Except as outlined herein, this agreement is effective on the date both Parties have signed it, as indicated by the dates in the signature blocks below.

7.12 Counterparts. The Parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

7.13 Recordation. Either party may record this agreement with the Sacramento County Clerk/Recorder.

7.14 Integration and modification. 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 may be modified only by another written agreement signed by both Parties.

7.15 Relationship of the Parties. The Parties do not intend to create any agency, partnership, joint venture, trust, or other relationship with duties or incidents different from those of parties to an arm's-length contract.

7.16 Survival of Indemnification, Defense, and Waiver. Indemnification, defense, hold harmless, and waiver obligations survive completion of this agreement and termination of this agreement.

7.17 No Effect on Term Sheet. This agreement does not affect the Term Sheet.

7.18 Specific Performance. The Parties agree that specific performance is an available remedy in any proceeding to enforce the obligations of this agreement.

<p>City of Sacramento</p> <p>By: _____ John F. Shirey City Manager Date: _____, 2013</p>	<p>Sacramento Basketball Holdings LLC</p> <p>By: _____ Chris Granger President Date: _____, 2013</p>
<p>Approved as to Form Sacramento City Attorney</p> <p>By: _____ Matthew D. Ruyak Assistant City Attorney</p>	<p>Approved as to Form Pioneer Law Group, LLP</p> <p>By: _____ Jeffrey K. Dorso Attorneys for SBH</p>

EXHIBIT A

Shows completed after June 1 but went on sale prior to June 1

Act Name	Event Date	General On Sale
Endurocross	08-Jun-2013	22-Feb-2013
Pitbull	13-Jun-2013	05-Apr-2013
Sesame Street Live: Can't Stop Singing	22-Jun-2013	13-Mar-2013
Sesame Street Live: Can't Stop Singing	22-Jun-2013	13-Mar-2013
SESAME STREET LIVE: CAN'T STOP SINGING	23-Jun-2013	13-Mar-2013
SESAME STREET LIVE: CAN'T STOP SINGING	23-Jun-2013	13-Mar-2013
Fleetwood Mac Live 2013	06-Jul-2013	01-Feb-2013
American Idol	22-Jul-2013	03-May-2013
Bruno Mars Moonshine Jungle World Tour	24-Jul-2013	01-Mar-2013
Taylor Swift: The Red Tour	27-Aug-2013	16-Nov-2012

Upcoming shows that went on sale prior to June 1

Act Name	Event Date	General On Sale
Josh Groban: In The Round	06-Oct-2013	10-May-2013
Monster Jam	17-Jan-2014	18-Jan-2013
Monster Jam	18-Jan-2014	18-Jan-2013
Monster Jam	19-Jan-2014	18-Jan-2013
The Fresh Beat Band Live In Concert	04-Feb-2014	20-Apr-2013

Shows that were already committed prior to June 1 without 5% event fee

Act Name	Event Date	General On Sale
Super Freestyle Music Explosion 2013	27-Jul-2013	14-Jun-2013
WWE Raw	12-Aug-2013	22-Jun-2013
America's Most Wanted Festival 2013 starring Lil' Wayne	28-Aug-2013	28-Jun-2013
Ringling Bros. and Barnum & Bailey: Built To Amaze	13-Sep-2013	26-Jul-2013
Ringling Bros. and Barnum & Bailey: Built To Amaze	14-Sep-2013	26-Jul-2013
Ringling Bros. and Barnum & Bailey: Built To Amaze	14-Sep-2013	26-Jul-2013
Ringling Bros. and Barnum & Bailey: Built To Amaze	14-Sep-2013	26-Jul-2013
Ringling Bros. and Barnum & Bailey: Built To Amaze	15-Sep-2013	26-Jul-2013
Ringling Bros. and Barnum & Bailey: Built To Amaze	15-Sep-2013	26-Jul-2013
Ringling Bros. and Barnum & Bailey: Built To Amaze	16-Sep-2013	26-Jul-2013
Marco Antonio Solis, Lupita D'Alessio	20-Sep-2013	26-Jul-2013
Disney On Ice : Passport To Adventure	09-Oct-2013	26-Aug-2013
Disney On Ice : Passport To Adventure	10-Oct-2013	26-Aug-2013
Disney On Ice : Passport To Adventure	11-Oct-2013	26-Aug-2013
Disney On Ice : Passport To Adventure	12-Oct-2013	26-Aug-2013
Disney On Ice : Passport To Adventure	12-Oct-2013	26-Aug-2013
Disney On Ice : Passport To Adventure	12-Oct-2013	26-Aug-2013
Disney On Ice : Passport To Adventure	13-Oct-2013	26-Aug-2013
Disney On Ice : Passport To Adventure	13-Oct-2013	26-Aug-2013
Zac Brown Band	14-Nov-2013	09-Aug-2013
Drake: Would You Like a Tour	18-Nov-2013	21-Jun-2013
Trans-Siberian Orchestra	27-Nov-2013	13-Sep-2013
Trans-Siberian Orchestra	27-Nov-2013	13-Sep-2013

Sacramento Kings 2013-14 Full Season tickets

