

Meeting Date: 10/22/2013

Report Type: Consent

Report ID: 2013-00788

Title: Predevelopment Process Agreement for the Entertainment and Sports Center

Location: Downtown Plaza, District 4

Issue: As set forth in the Term Sheet approved by Council on March 26, 2013, development of the Entertainment and Sports Center project is a public-private partnership with a significant City investment. This agreement is necessary to clearly identify the nature and extent of the City's rights and role in the development of this critical project.

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute the Sacramento Entertainment and Sports Center (ESC) Predevelopment Process Agreement with Sacramento Basketball Holdings LLC.

Contact: Desmond Parrington, ESC Project Manager, (916) 808-5044, Office of the City Manager

Presenter: None

Department: City Manager

Division: Executive Office

Dept ID: 02001011

Attachments:

1-Description/Analysis

2-Predevelopment Process Agreement

City Attorney Review

Approved as to Form

Matthew Ruyak

10/17/2013 11:51:17 AM

Approvals/Acknowledgements

Department Director or Designee: Mark Prestwich - 10/17/2013 11:44:36 AM

Description/Analysis

Issue Detail: In accordance with the Term Sheet, development of the Entertainment and Sports Center project is a public-private partnership between Sacramento Basketball Holdings, LLC (SBH) and the City of Sacramento. While SBH has the lead role for the design and development of the ESC, the City is a major investor and the eventual owner and as such also has an important stake in the design and development. The attached Predevelopment Process Agreement between the City and SBH describes the process for the development of the designs, plans, and specifications.

This agreement sets forth the City's role, rights and responsibilities during the predevelopment phase of the project. It also achieves the following objectives: 1) it establishes a collaborative and cooperative process between the City and SBH; 2) sets forth key milestones and a review process; 3) provides for City input and preliminary design approvals in accordance with the Quality Standard described in the Term Sheet. Examples of specific issues covered in the agreement include collaboration and coordination between the City and SBH, City participation in meetings, information sharing, City review of plans and work products, schedule, and mediation in the event of disagreements. This is a companion to the Predevelopment Expenses Reimbursement Agreement that was approved by City Council on September 24, 2013.

Policy Considerations: This agreement is consistent with the 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 a predevelopment process agreement between the City and SBH for the ESC project. 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 impact the General Fund.

Emerging Small Business Development (ESBD): Not applicable.

SACRAMENTO ESC PREDEVELOPMENT PROCESS AGREEMENT

This Agreement, dated October 22, 2013, 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

SBH is the parent company of the Sacramento Kings, a National Basketball Association professional basketball team (the "Team").

The City Council approved a non-binding Term Sheet dated March 23, 2013 (the "Term Sheet"), setting forth the City's and SBH's desire to develop a proposed Entertainment and Sports Center ("ESC") on certain real property located in the City of Sacramento, California, as described therein. The Term Sheet sets forth the Parties' intentions regarding the ownership, financing, design, development, construction, occupancy, use, and operation of the ESC (the "ESC Project"), which will in part be used for the Team's home games, as well as the redevelopment of the area commonly known as the Downtown Plaza. Pursuant to the Term Sheet, the City proposes a contribution of \$258 million to the ESC Project, and SBH will otherwise be responsible for the costs of the development, construction, and operational components of the ESC Project.

The ESC is proposed to be located at Sacramento's Downtown Plaza, generally located between 5th and 7th Streets and J and L Streets.

To meet the construction schedule and other funding commitments associated with the ESC Project, the Parties enter into this Agreement to govern certain predevelopment activities for the ESC Project, including preliminary planning, site location, and development of the designs, plans, and specifications.

The Parties desire to allow SBH to efficiently maintain its lead role in the design and development of the ESC Project, while at the same time providing the City with a meaningful amount of involvement and oversight throughout the process in recognition of the City's ownership of the ESC and significant economic commitment. Towards that end, the City and SBH intend to (a) work together collaboratively and cooperatively to develop the ESC Project in a fiscally responsible manner, (b) set forth a reasonably detailed set of milestones and process for review at the various stages of completion of the ESC Project documents, and (c) at certain key document milestones (e.g., review of the construction documents), provide the City with the right to confirm that the ESC Project complies with the Quality Standard and ESC Preliminary Program (as such terms are defined below).

The Parties recognize that having the City involved throughout the process is essential to avoiding any delays in obtaining the approvals of the City agencies (including the Planning and Design Commission) and City Council that will be legally required for the ESC Project.

In connection with this Agreement, the Parties have entered into a Sacramento ESC Predevelopment Expenses Agreement dated September 24, 2013 ("Predevelopment Expenses Agreement"), which agreement provides a mechanism for reimbursing the City for its costs and expenses incurred with its predevelopment activities.

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. Collaborative and Cooperative Process

1.1 *SBH Responsibilities.* SBH shall be responsible for, and shall lead all phases of, the Predevelopment Activities, including design, land acquisition (except as set forth below), and development of the ESC Project, and all related infrastructure. SBH shall have the right to retain such consultants and professionals as SBH shall deem reasonably necessary in connection with its lead role in the development of the ESC Project. As SBH is responsible for timely delivering the ESC project and paying for cost overages, SBH shall make all final design and development decisions regarding the ESC Project, provided that the ESC Project adheres to the Quality Standard and the ESC Preliminary Program. SBH shall also be responsible for causing the City to be invited to all Meetings (defined below). In each review of City's comments as provided herein, SBH shall consider the City's input in good faith, but shall retain its right to lead all phases of the planning, design, land acquisition, development and construction of the ESC Project.

1.2 *City Responsibilities.* City shall be responsible for collaborating with and assisting SBH in all phases of the ESC Project and redevelopment of the portion of the Downtown Plaza surrounding the ESC Project, attending the Meetings and responding timely to SBH correspondence and requests for City input, including reasonably making available City staff and resources, all as necessary to achieve the ESC Project as set forth in the Term Sheet in the timeframes set forth therein and in updated project schedules developed by the Parties from time to time.

1.3 *Intent.* The Parties intend for the design and development of the ESC Project to be a cooperative, mutual endeavor in which the City and SBH actively participate and work together with due diligence and good faith to agree upon the conceptual, preliminary, and final designs for the ESC Project that are acceptable to the Parties, comply with the Quality Standard and ESC Preliminary Program and are within the Approved Budget and Schedule. City endeavors to expedite all matters before it in order to keep the ESC Project on schedule.

1.4 *Information Sharing and Meetings.*

(A) *Contact by City Representatives.* The Designated City Representatives shall have the right, from time to time, to contact directly the Designated SBH Representatives with regard to the design and development of the ESC Project for the limited purpose of reasonably requesting clarifications regarding the ESC Project.

(B) *Meeting Participation.* For purposes of participating in the predevelopment process and continuing to be involved and informed during the design of the ESC Project, both Parties will be given reasonable advance notice of and the opportunity to be present at all Meetings. Neither Party shall have any obligation to postpone or delay any meeting that the other Party, after receiving reasonable notice, is unable to attend.

(C) *Information Sharing.* The Parties shall collaborate, participate in joint meetings (including the Meetings), and share information so that both Parties are reasonably informed during the Term. Specifically, SBH shall share with City all documents required to be provided herein (including any documents to be discussed at any Meetings), together with all plans, drawings, budgets, schedules, analyses, studies, and design documents that have (or will have) a material impact on the design or development of the ESC Project, or are otherwise necessary for the City to be able to collaboratively participate in the process and provide the assistance, input, and comment required herein; provided nothing herein shall be deemed to

require SBH to share any materials that are protected by attorney-client privilege.

1.5 City Review of Plan Submittals; SBH Response.

- (A) *Generally.* Subject to SBH's authority set forth in Section 1.1 above, the City shall have the right to review and comment at each step of the ESC design process as set forth herein. The City shall also have the right to approve various items at points in the design process to the extent provided by contract or by existing law.
- (B) *Review and Response.* After the City's receipt of a Plan Submittal, the City shall provide SBH with written notice of any comments. The amount of time available for the City's review of each Plan Submittal shall be established in the Schedule and shall take into consideration the content and substance of each such Plan Submittal. As part of the review of the budget, the City shall have the right to confirm that the funds contributed by the City are being spent solely on the ESC Project. If the Plan Submittal is the (1) schematic design documents, (2) design development documents, (3) the plans and specifications, or (4) the GMP documents, the City shall also provide SBH with written notice of whether the City has reasonably determined that such documents comply with the Quality Standard and the ESC Preliminary Program. Any such notice shall detail the reasons for any such failure to comply. If the City fails to timely respond (absent an extension agreed upon by the Parties) to a Plan Submittal, the City shall be deemed to have approved such Plan Submittal.
- (C) *SBH Response.* SBH shall consider every City comment and incorporate into any future Plan Submittals those comments that SBH approves after reasonably considering such comments in good faith. If SBH receives written notice from City that the (1) schematic design documents, (2) the design development documents, (3) the plans and specifications or (4) the GMP documents, do not comply with either the Quality Standard or the ESC Preliminary Program, SBH shall cause the Architect to revise the documents to bring the same into compliance with the Quality Standard and the ESC Preliminary Program prior to its approving such Plan Submittals. Any dispute regarding Quality Standard or ESC Preliminary Program compliance will be mediated as set forth in Section 23 below.

1.6 City Input. Subject to SBH's authority set forth in Section 1.1 above, the City shall have direct input and will participate in assisting SBH with the development of a design for the ESC Project that achieves the best possible project within the Quality Standard, ESC Preliminary Program, and Preliminary Budget, as approved by the Parties herein. However, any City input, participation, or approvals related to any design review or budget under this Agreement shall in no way obligate it to pay for any cost overruns for the ESC Project.

2. Term

2.1 Commencement. This Agreement commences on the Effective Date, October 22, 2013.

2.2 Termination. This Agreement terminates on the earlier of:

(A) December 31, 2014; or

(B) The Parties' execution of the Comprehensive Project Agreement (or similar agreement) contemplated by the Term Sheet (the "Comprehensive Agreement").

3. Location of ESC

3.1 Downtown Location. The Parties propose the ESC to be located between 5th and 7th Streets and J and L Streets.

3.2 Additional Real Estate. If the Parties mutually determine that additional real property beyond the location described in 3.1 above is needed to accommodate construction of the ESC Project in accordance with the Conceptual Design Documents, Schematic Design, or Final Design (as applicable); ESC Preliminary Program; the Quality Standard; or applicable law, SBH shall be responsible for the timely acquisition of that real property, at its sole cost and expense, in accordance with the Schedule. Such acquisition costs shall be included in or added to the Approved Budget.

3.3 Alternative Location. SBH may explore alternative locations for the ESC not at the location detailed in Section 3.1 that are within the downtown area of the City; provided, however, that SBH shall take into consideration operational and financial implications on the Schedule and the Outside Completion Date, and obtain the prior written approval of the City, as determined in its sole discretion, for any such alternative ESC location.

3.4 Discretion. City retains full discretion under the California Environmental Quality Act (CEQA), to select a full range of alternatives to the ESC Project, including selecting the alternative of no project, and nothing herein is intended or shall be deemed to waive such discretion.

4. Architect. SBH has selected AECOM as the Architect. SBH is responsible for securing the engagement with the Architect and is responsible for all Architect costs and expenses, whether incurred before or after the Effective Date.

5. Owner's Representatives. SBH has retained ICON, to provide owner's representative and related services for the ESC Project pursuant to that certain Owner's Representative and Project Management Agreement, dated as of June 1, 2013. The City has also retained Weston Sports and Entertainment, as the City's separate representative, which shall be an ESC Project expense.

6. Independent Engineer. City may request that SBH retain an outside engineer to conduct an independent check and/or peer review of the structural systems of the ESC, which shall be an ESC Project expense.

7. Initial Schedule. Within 14 days after the Effective Date, SBH shall prepare and the Parties shall meet to discuss and agree upon a detailed entitlements, design, and preliminary construction schedule for the ESC Project, which schedule shall be consistent with the key delivery dates for the design and construction the ESC Project included below:

Terms	Date
Conceptual Design Delivery Date	October 21, 2013
Preliminary Budget Delivery Date	October 21, 2013
Schematic Design Delivery Date	January 20, 2014
50% Design Development Delivery Date	May 15, 2014
100% Design Development Delivery Date	September 11, 2014
GMP Delivery Date	November 13, 2014
Final Design Delivery Date	December 25, 2014
Plans and Specifications Delivery Date	December 15, 2014
Budget Delivery Date	January 22, 2015
Contractor Selection Date	January 22, 2015
Outside Completion Date	September 26, 2016

It is the intent of the Parties that the schedule dates are subject to change, and that no contractual liability is intended between City and SBH for adjusting the schedule dates from time to time, provided that each Party is working diligently and using commercially reasonable efforts hereunder to meet the Outside Completion Date.

8. Conceptual Design

8.1 Delivery. By the Conceptual Design Delivery Date, SBH shall cause the Architect to deliver to SBH and the City the conceptual drawings and conceptual Design Documents for the ESC Project. The conceptual drawings and conceptual Design Documents shall comply with the Quality Standard and shall include the ESC Preliminary Program at a level of detail consistent with the conceptual drawings and conceptual Design Documents, and shall contemplate that the ESC Project and related work be completed by the Outside Completion Date.

9. Budget and Schedule

9.1 Delivery. By the Preliminary Budget Delivery Date, and again on the Budget Delivery Date, SBH shall deliver to the City a budget. In the event of schedule modifications or delays, SBH will promptly update and deliver to the City the then-current schedule. The City shall have the right to review and approve any changes to the schedule that modify the City's obligations regarding the ESC Project, including without limitation the City's review and comment obligations set forth herein (as agreed upon by the Parties from time to time, the "Schedule"). Any updates to the budget or schedule shall reflect the current submittals; be consistent with the Quality Standard and the ESC Preliminary Program; and reflect that the ESC Project and related work be completed by the Outside Completion Date. The budget provided on the Budget Delivery Date shall include costs for the following: (A) the predevelopment expenses (e.g., third party design and pre-construction expenses); (B) demolition and removal of any existing facilities; (C) site preparation and grading; (D)

environmental sampling, mitigation, and remediation (including compliance with CEQA requirements); (E) permits; (F) insurance; (G) utility relocations; (H) land acquisitions; (I) project representatives of the City and SBH; (J) materials and labor for the design, development, and construction of the ESC Project; (K) the ESC Preliminary Program; and (L) a contingency amount that shall not be less than 4% of the total budgeted costs, all of which shall be based on and consistent with the Approved Plans and Specifications.

9.2 Current Estimate. As of the Effective Date, the current draft of the budget is estimated to be \$447,000,000 (“**Estimated Project Costs**”).

10. Schematic Design

10.1 Delivery. By the Schematic Design Delivery Date, SBH shall cause the Architect to prepare the schematic design for the ESC Project.

10.2 Contents. The schematic design shall be based on the Conceptual Design and Preliminary Budget and Schedule, and shall be in compliance with the ESC Preliminary Program, the Quality Standard, and applicable law. The schematic design shall include, but not be limited to, the Design Requirements.

11. 50% Design Development

11.1 Delivery. By the 50% Design Development Delivery Date, SBH shall cause the Architect to prepare design development documents for the ESC Project.

11.2 Meeting with Architect. Without limiting SBH’s lead role in the ESC Project, the Parties shall collaborate and cooperate jointly with the Architect prior to the 50% Design Delivery Date to assist with the Architect’s preparation of the 50% level of drawings.

11.3 Contents. The 50% design development documents shall be based on the Schematic Design, Conceptual Design, and Preliminary Budget and Schedule, and shall be in compliance with the ESC Preliminary Program, the Quality Standard, and applicable law. The design development documents shall consist of development to a 50% level of drawings, specifications and other documents to fix and describe the size and character of the entire ESC Project as to structural, mechanical and electrical systems, materials and other essential systems, which shall include, but not be limited to, the Design Requirements.

12. 100% Design Development

12.1 Delivery. By the 100% Design Development Delivery Date, SBH shall cause the Architect to prepare the design development documents for the ESC Project.

12.2 Meeting with Architect. Without limiting SBH’s lead role in the ESC Project, the Parties shall collaborate and cooperate jointly with the Architect prior to the 100% Design Development Delivery Date to assist with the Architect’s preparation of the 100% design development documents.

12.3 Contents. The 100% design development documents shall be based on the 50% Design Development Documents and Preliminary Budget and Schedule, and shall be in compliance with the ESC Preliminary Program, the Quality Standard, and applicable law. The 100% Design Development Documents shall consist of development to a 100% characterization of the ESC Project through the use of drawings, specifications and other documents sufficient to fix and describe the size and character of the entire ESC Project as to structural, mechanical and electrical systems; materials; and other essential systems, which shall include, but not be limited to, the Design Requirements.

13. GMP Documents

13.1 Delivery. By the GMP Delivery Date, SBH shall cause the Architect to prepare the GMP documents for the ESC Project.

13.2 Meeting with Architect. Without limiting SBH's lead role in the ESC Project, the Parties shall collaborate and cooperate jointly with the Architect prior the GMP Delivery Date to assist with the Architect's preparation of the GMP documents.

13.3 Contents. The GMP documents shall be based on the 100% Design Development Documents and Preliminary Budget and Schedule, and shall be in compliance with the ESC Preliminary Program, the Quality Standard, and applicable law. The GMP documents shall cover all work included in the ESC Project and include in complete detail the requirements for the construction of the entire ESC Project, including without limitation the Design Requirements.

14. Final Design

14.1 Delivery. By the Final Design Delivery Date, SBH shall cause the Architect to prepare the final design for the ESC Project.

14.2 Contents. The final design shall be based on the GMP Documents, 100% Design Development Documents, as well as all preceding design documents and the Preliminary Budget and Schedule, and shall be in compliance with the ESC Preliminary Program, the Quality Standard, and applicable law. The final design shall include the same information as in the GMP Documents, but in complete, total, and final detail for construction of the ESC Project, including, but not limited to:

- (A) the Design Requirements;
- (B) utility and other infrastructure modification plans (including any street or other public right of way relocations, closings, or vacations);
- (C) lighting plans;
- (D) plans to incorporate shading devices and other design elements to mitigate direct sunlight in key areas of the ESC;
- (E) designs for public seating areas, suites, party suites, loge seats, club seats, courtside club seats, offices, concessions and merchandise spaces, scoreboards, video boards, sound systems, press and team areas, and public areas;
- (F) a comprehensive digital signage plan;
- (G) parking and access plans;
- (H) the ESC Preliminary Program;
- (I) the construction schedule and process;
- (J) detailed cost estimates for construction that shall be consistent with the Approved Budget; and
- (K) any and all additional drawings, renderings reports, tabulations, or narratives that may be needed to fully characterize and describe design.

15. Signage Plan

15.1 *Included in Designs.* SBH shall cause the Architect to prepare a comprehensive signage plan for the ESC, which signage plan shall be included in each Plan Submittal.

15.2 *Digital Signs Offsite.* The Parties shall work cooperatively on developing a plan for up to six digital signs, with the goal of having three digital signs located on City property and the additional three signs on properties other than City property.

15.3 *City Discretion.* City staff shall prepare a recommendation to the Sacramento City Council for consideration of the proposed signage plan and determine if the City's sign code will need amendment. SBH acknowledges that the City Council's decision to amend the City Code is legislative and discretionary. This Agreement cannot and does not bind the City to amend the City Code.

16. Plans and Specifications

16.1 *Delivery.* By the Plans and Specifications Delivery Date, SBH shall cause the Architect to prepare and deliver to the City a set of construction documents for the ESC Project (the "**Construction Documents**").

16.2 *Contents.* The Construction Documents shall:

(A) be based on the Final Design and the Approved Budget;

(B) include detailed construction drawings and other construction documents setting forth in detail the requirements for construction of the ESC Project and shall be sufficient to communicate to a contractor the specifications for completing the ESC Project, including the quality of required materials and systems; and

(C) be in compliance with the ESC Preliminary Program, the Quality Standard, and applicable law.

17. Construction Contractor

17.1 *Selection of Contractor.* Within 30 days after the Effective Date, the Parties shall meet in good faith to discuss the selection of a contractor for the construction of the ESC (the "**Contractor**"). The Contractor must be approved by both Parties. Contractor selection shall be made by the Contractor Selection Date.

17.2 *Minimum Qualifications.* The Contractor must have a California general contractor's license. The Contractor must be qualified to handle a project of the scope, budget, type, and size of the ESC Project. The Contractor must also have a valid business operations tax certificate from the City, as required by the Sacramento City Code.

17.3 *Construction Method.* SBH shall collaborate with the City and consider in good faith the City's input on choosing the construction method that minimizes the likelihood of exceeding the Approved Budget while at the same time ensuring completion of the ESC by the Outside Completion Date.

17.4 *Requests for Proposals.* SBH shall comply with all applicable laws regarding selection and hiring of the Contractor. All requests for proposals shall be consistent with the Final Design and the Approved Plans and Specifications (if then approved), and SBH shall not send out such requests for proposal or otherwise engage the Contractor unless and until receiving prior written approval from the City.

17.5 *SBH Responsible.* After the Parties agree upon a Contractor, SBH shall be responsible for contracting with the Contractor and SBH shall be responsible for all costs and expenses

payable to the Contractor in connection with the ESC Project. Depending on the construction method selected, the Contractor may be selected before or after the approval of Approved Plans and Specifications (e.g., before the approval of the Approved Plans and Specifications if the Parties agree to utilize a design-build or similar construction method and after the approval if the Parties agree to a design-bid-build or similar construction method). Without limiting SBH's responsibilities described in this Section, pursuant to the Term Sheet the City proposes a contribution of \$258 million to the ESC Project to fund ESC Project expenses, which contribution is subject to City's sole and absolute discretion to approve the ESC Project and entering into the Comprehensive Agreement and other agreements related thereto. Such contribution, if any, shall be applied to ESC Project expenses, including the Contractor costs described herein, as may be agreed by the Parties.

18. Permits

18.1 SBH Responsibility. SBH, at its sole cost and expense, shall obtain or cause to be obtained all development entitlements, fees, and building permits required for the development and construction of the ESC Project, including EIR mitigation measures.

18.2 City Staffing. The City shall assign the appropriate and sufficient planning, engineering, building, safety, and other staff to enable the ESC Project to be completed by the Outside Completion Date.

19. Insurance

19.1 Liability Insurance. SBH, at its sole expense, shall obtain and maintain (and require each of SBH's contractors and agents to obtain and maintain, including requiring Architect to maintain a project specific errors and omissions policy) public liability insurance beginning on the Effective Date and at all times during the Term of this Agreement, with limits of at least \$2,000,000 for one person and \$5,000,000 for one accident for personal injury to or death of any person or persons and \$500,000 property damages, protecting the City and SBH against any liability, damage, claim, or demand in any way arising out of or connected with the predevelopment and construction of the ESC.

19.2 Casualty Insurance. SBH, at its sole expense, shall obtain and maintain (and require each of SBH' contractors and agents to obtain and maintain) casualty insurance beginning on the Effective Date and at all times during the Term of this Agreement, insuring all buildings and structures comprising the ESC Project against loss or damage by fire, with extended coverage (if obtainable), to include direct loss by fire, windstorm, hail, explosion (other than boiler explosion), riot, civil commotion, aircraft, vehicles and smoke. Said insurance shall be in an amount sufficient to prevent co-insurance. In addition, SBH's insurance shall include full replacement cost coverage.

19.3 Additional Property Insurance. SBH shall cause the general contractor constructing the ESC Project to maintain additional property insurance written on the so-called "Builder's Risk Completed Value Non-Reporting Form" during any period in which any work is being performed at the ESC Project, with no coinsurance requirement, and containing a provision granting the insured permission to complete.

19.4 Excess Policies. SBH shall also maintain excess policies in amounts at least equal to any policies that it requires to be maintained by any of its contractors or agents consistent with Section 19.1.

19.5 Policy Requirements. All insurance policies of SBH required by this Section (including endorsements thereto) must:

(A) be issued by insurance companies authorized to do business in the State of California, and rated "AVI" or better by A.M. Best Company (or equivalent);

(B) name the City and, to the extent communicated by the City to SBH in writing, any other party reasonably required by the City, as "additional insureds";

(C) be in a form reasonably satisfactory to the City;

(D) be noncontributing with, and apply only as primary and not as excess to, any other insurance available to the City;

(E) contain a provision that the City and all additional insureds shall be entitled to recovery under the policy for any loss occasioned to the City by reason of the negligence of SBH or its respective agents, employees or representatives; and

(F) require the insurer to notify the City, in writing, not less than 30 days prior to any cancellation or termination thereof, to the extent the insurer agrees to provide such notices.

19.6 Certificates. SBH shall prior to execution of this Agreement and from time to time upon reasonable request by the City provide certificates of insurance evidencing that all insurance required hereunder is in place and fully paid for in advance. In the same manner, SBH shall also provide the City with general liability additional insured endorsements. The general liability additional insured endorsements must be signed by an authorized representative of the appropriate insurance company. If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

19.7 Premium Payments. SBH shall timely pay all premiums due for all insurance policies required hereunder and shall not do anything at the ESC Project that would impair or invalidate any material obligations of any insurer thereunder. If SBH fails to obtain and pay for any of the insurance policies required hereunder, and such failure continues for ten days after written notice thereof from the City, then, in addition to all other rights and remedies of the City, the City shall have the right, but not the obligation, to secure the appropriate insurance policies. Any amounts paid by the City in connection with obtaining such insurance shall be immediately due and payable from SBH, and SBH shall pay all such amounts to the City upon demand therefor.

20. Waiver of Subrogation. It is the intent of the Parties that the risk of loss or damage arising out of or relating to this Agreement should be borne by insurance to the extent of available coverage. Accordingly, SBH waives all rights against the City (and against the agents, employees, representatives and/or insurers of the City) for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of the City (its agents, employees and/or representatives). This waiver of rights shall only be applicable to the extent of insurance proceeds actually paid to SBH, and this waiver of rights shall in no way diminish the indemnity obligations of SBH as set forth herein. SBH shall give written notice of the terms of this waiver of rights to its insurers and shall have its insurance policies endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of this waiver of rights.

21. Indemnity. Except in the case of the City's sole negligence or willful misconduct, SBH agrees to fully and completely, without reservation or limitation, defend, indemnify, and hold the City and its officers, employees, agents, and contractors 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 arising out of this agreement, including its failure to comply with the terms of this agreement.

22. Defaults.

22.1 SBH Default.

(A) *Default.* SBH defaults if it fails to observe or perform any material obligation, condition, or covenant on its part to be performed or observed in accordance with this Agreement and such failure remains uncured for more than ten days after the City gives written notice of such failure (or a longer period reasonably necessary to effect a cure if a cure cannot be effected within the ten days using reasonable efforts).

(B) *City's Remedies.* Upon the occurrence of a SBH Default, the City is entitled to seek any rights and remedies available to it in law, or at equity including the right to seek monetary damages, seek specific performance, terminate this Agreement, and cure the default on behalf of SBH and bill SBH for all costs incurred by the City to effect such cure.

22.2 Default by the City.

(A) *Default.* City defaults if it fails to perform or observe any material obligation, or condition on its part to be performed or observed in accordance with this Agreement and such failure remains uncured for more than ten days after SBH gives written notice of such failure (or a longer period reasonably required to effect a cure if a cure cannot be effected within ten days using reasonable efforts).

(B) *SBH's Remedies.* Upon the occurrence of a City default, SBH is entitled to seek any rights and remedies available to it in law, or at equity including the right to seek monetary damages, seek specific performance, terminate this Agreement, and cure the default on behalf of City and bill City for all costs incurred by the SBH to effect such cure.

22.3 Remedies Cumulative. Except as expressly limited in this Article V, the remedies described herein are cumulative and are not intended to be exclusive of any other remedies to which the Parties may be entitled at law or in equity. The failure of a Party to insist in any one or more instances upon the strict performance or observance of any of the obligations or conditions of this Agreement by the other Party; or exercise any remedy contained herein for any nonperformance or nonobservance of any obligation or condition by the other Party shall not be considered a waiver of such Party's rights to later insist upon performance of observance or to exercise its remedies. Additionally, the exercise or commencement of the exercise of any right or remedy by either Party shall not preclude the simultaneous or later exercise of any or all other rights and remedies available to such Party.

23. Mediation

23.1 Process. Any dispute relating to matters requiring the mutual agreement of the Parties under this Agreement or to resolve a dispute regarding compliance with the Quality Standard or the ESC Preliminary Program shall be resolved in accordance with this Section.

23.2 Direct Communication. The parties shall first set forth their positions in the dispute in written correspondence. Each Party shall respond within five days after receipt of the other's letter until the earlier of an agreement being reached by the Parties and ten days after the date of the first written correspondence regarding the dispute.

23.3 Non-binding Mediation.

(A) *Resort to Mediation.* If the dispute is not resolved through direct communication, either Party may request appointment of a neutral and properly credentialed

mediator with expert knowledge and practical experience regarding the subject in dispute.

- (B) *Choice of Mediators.* The requesting party shall provide a list of three possible mediators to the non-requesting party. The non-requesting party shall then select the mediator to be used to mediate the dispute from that list.
- (C) *Length of Mediation.* The Parties shall then participate in good faith in a one-day, non-binding mediation session. Notwithstanding the foregoing, the Parties may agree in writing to extend the mediation proceedings.
- (D) *Location.* Any mediation proceedings shall take place in the City, unless otherwise mutually agreed by the Parties.
- (E) *Cost Sharing.* The cost of the mediation shall be divided equally between the Parties.

23.4 Mediation Failure. If the Parties do not resolve the dispute after engaging in this mediation processes, either Party shall be entitled to pursue its rights and remedies under this Agreement.

24. Miscellaneous.

24.1 Approvals. Except for the Final Design and other approvals which by law require City Council approval, all of which shall be subject to the approval of the City Council, all City approvals under this Agreement (including without limitation any amendments to the ESC Preliminary Program and Schedule) may be made by the City Manager’s designee.

24.2 Assignment. 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 is void.

24.3 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 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.

<p><i>If to the City:</i> John Dangberg Assistant City Manager 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><i>If to SBH:</i> John Rinehart, CFO Sacramento Basketball Holdings, LLC 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</p>
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Jeffrey Massey Senior Deputy City Attorney City of Sacramento 915 I Street, Fourth Floor Sacramento, California 95814	431 I Street, Suite 201 Sacramento, CA 95814
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Either Party may from time to time designate a different address or persons for notices by giving notice to that effect to the other Party in accordance with the terms and conditions of this section.

24.4 City's Purpose of Review. The City's review of any designs, plans, specifications, or other documents are performed solely for its own purposes and benefit, and the City is not liable to SBH or any third party for defects in such documents or any other improvements related thereto, or the operations and maintenance standards to be applied thereto.

24.5 Force Majeure. When this Agreement provides a time for the performance of any obligation other than the payment of a sum certain, the time provided is extended if compliance is not possible due to a Force Majeure Event. The extension lasts only as long as the Force Majeure Event prevents compliance. "Force Majeure Event" means any of the following events, it prevents a Party from performing any obligation under this Agreement: any act of public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; landslide, earthquake, fire, storm, flood, or washout; any other act of God; lockout or other industrial disturbance; title dispute; or other litigation.

24.6 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.

24.7 Obligations of the City and SBH. The obligations and undertakings of the City and SBH under or in accordance with this Agreement are obligations solely of the City and SBH. Except as otherwise expressly stated in this Agreement, no recourse shall be had, whether in contract, in tort, or otherwise against any officer, director, employee, agent, member, volunteer, or representative of the City or SBH in his or her individual capacity on account of any obligation or undertaking of or any act or omission by the City or SBH under or pursuant to this Agreement.

24.8 Time of the Essence. Time is of the essence in the performance of this Agreement.

24.9 Binding effect. This Agreement binds and inures to the benefit of the Parties' successors and assigns.

24.10 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.

24.11 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.

24.12 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.

- 24.13 *No Effect on Term Sheet.*** This agreement does not affect the Term Sheet.
- 24.14 *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.
- 24.15 *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
- 24.16 *Representations.*** Each Party hereby represents and warrants to the other that it has all necessary right, power, and authority to enter into this Agreement. Additionally, each Party represents and warrants that the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by each Party hereunder have been duly authorized by all necessary action of SBH and the City. This Agreement, when fully executed and delivered by the City and SBH, shall constitute the legal, valid, and binding obligation of the City and SBH, enforceable in accordance with the terms hereof.
- 24.17 *Attorney's Fees.*** The Parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.
- 24.18 *Review by NBA.*** The Parties acknowledge and agree that the NBA may be required or permitted, pursuant to SBH's franchise agreement or related agreements, constitutions, bylaws, rules or regulations, to review and approve this Agreement. To the extent the NBA has the right to approve this Agreement (or any provision thereof), SBH shall promptly and diligently pursue such approval. If the NBA exercises or threatens to exercise any right it may have to withhold its approval of this Agreement, then the City and SBH shall use commercially reasonable efforts to cooperate in good faith with the NBA to amend this Agreement as may be necessary to obtain such approval. If, despite the Parties' cooperation and commercially reasonable efforts, the Parties do not amend this Agreement as required to obtain approval from the NBA, then this Agreement is voidable by either Party.
- 24.19 *Alternative Delivery.*** When a Party is obligated to deliver a document or similar item to the other Party, the recipient may, in its sole discretion, opt for a review of that item without taking physical or electronic delivery.
- 24.20 *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. Facsimile signatures or signatures transmitted by e mail or other electronic means shall be effective to bind the Parties.
- 24.21 *Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of California located in Sacramento County or the U.S. District Court for the Eastern District of California.
- 24.22 *Counting of Days.*** Days are calculated using days the Sacramento City Attorney's Office is open. California Code of Civil Procedure section 12a applies to this Agreement.
- 24.23 *Disclosure of Records.*** All non-public documents shared by the Parties hereunder shall be treated as confidential to the extent permitted by law. 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.

25. Definitions and Terms. Capitalized terms in this Agreement have the definitions set forth in this section.

"50% Design Development" means the 50% design development documents described in Section 11 as approved by SBH.

"100% Design Development" means the 100% design development documents described in Section 12 as approved by SBH.

"Agreement" has the meaning given to that term in the introductory paragraph of this Agreement.

"Architect" has the meaning given to that term in Section 4.

"Approved Budget" means the budget described in Section 9 as approved by SBH.

"Approved Plans and Specifications" means the plans and specifications described in Section 16 as approved by SBH.

"Budget Delivery Date" is the date set forth in the Section 7 table.

"CEQA" means the California Environmental Quality Act.

"City" means the City of Sacramento, a California charter city.

"Conceptual Design" means the conceptual designs described in Section 8 as approved by SBH.

"Conceptual Design Delivery Date" is the date for set forth in the Section 7 table.

"Construction Documents" has the meaning given to that term in Section 16.1.

"Contractor" has the meaning given to that term in Section 17.1.

"Contractor Selection Date" is the date for set forth in the Section 7 table.

"Design Documents" means documents that (i) are a further advancement of the drawings, (ii) indicate in substantially greater detail than the drawings the spaces within the Arena, (iii) indicate the elements and functions that affect the site work for the ESC Project, (iv) indicate in substantially greater detail than the drawings the sections and interior and exterior elevations, (v) include more detailed outlined specifications and systems narratives than those in the drawings, and (vi) such other documents, drawings, and information as are customarily included in documents for a project comparable to the ESC Project.

"Design Requirements" means those certain requirements as further defined under the (a) Design Development Phase for the Schematic Design, 50% Design Development, and 100% Design Development, and (b) Construction Documents Phase for the GMP Documents and the Final Phase, in the Agreement for Architectural Services between AECOM and SBH, dated August 27, 2013 including the following: (A) detailed site plan; (B) floor plans; (C) grading; (D) building elevations; (E) building cross-sections; (F) building materials; (G) a comprehensive signage plan, as described in Section 15; (H) Building Code and Energy Conservation (Title 24) analysis; (I) commissioning plan; (J) and sustainability description with LEED score sheet.

"Designated City Representatives" means a limited number of individuals with knowledge of one or more aspects of the ESC Project who are identified and designated in writing by the City, from time to time, for

purposes of communicating with the Architect, Preconstruction Consultant, ICON, and any other contractors or consultants engaged with regard to the design and development of the ESC Project, for the purposes set forth in Section 1.4.

“Designated SBH Representatives” means a limited number of individuals, identified in writing by SBH, from the Architect, Preconstruction Consultant, ICON, and other contractors or consultants engaged with regard to the design and development of the ESC Project, with the sufficient design, engineering, construction, or other relevant knowledge and experience to competently respond to the City’s requests under Section 1.4.

“Effective Date” means October 22, 2013.

“ESC” has the meaning given to that term in the Background.

“ESC Preliminary Program” means the intended size and components to be implemented through the design and construction of the ESC that is contained in Exhibit 2 of the Term Sheet. The Parties acknowledge that as the design and development of the ESC Project progresses, the ESC Preliminary Program will likely be amended by the Parties from time to time to adapt to market studies, NBA and Sacramento Kings requirements, City and public input and the demands of the site. SBH shall provide notice to the City of all amendments to the ESC Preliminary Program. Any material changes to the ESC Preliminary Program shall be in writing and mutually agreed upon by the Parties.

“ESC Project” has the meaning given to that term in the Background.

“Estimated Project Costs” has the meaning given to that term in Section 9.4.

“Final Design” means the final design described in Section 14 as approved by SBH.

“Final Design Delivery Date” is the date for set forth in the Section 7 table.

“Force Majeure Event” has the meaning given to that term in Section 24.5.

“GMP Delivery Date” is the date for set forth in the Section 7 table.

“GMP Documents” means the GMP documents described in Section 13 as approved by SBH.

“ICON” means ICON Venue Group, LLC, a Delaware limited liability company.

“Include” or “including” means including without limitation. It is non-exhaustive.

“Meetings” means all meetings and briefings as well as teleconferences or video conferences with the Architect, Preconstruction Consultant, or any other contractors or consultants engaged with regard to the design and development of the ESC Project, where SBH or ICON, as SBH’s representative, will also be present or participating; provided that the Parties do not intend for the City to be involved in the day to day meetings, rather the intent is for the City to be invited to participate in all meetings where material decisions are being made regarding all or any portion of the ESC Project. The term Meetings does not include City meetings solely with Weston Sports and Entertainment, SBH meetings solely with ICON, or any other meetings solely with a Party’s own attorneys, financial advisors or similar confidential consultants, which may only be attended by the other Party by invitation only.

“NBA” means the National Basketball Association.

“Owner’s Representative” has the meaning given to that term in Section 5.

“Outside Completion Date” means October 1, 2016.

“Party” or “Parties” means a party or the parties, respectively, to this Agreement.

“Plan Submittal” means any of the following submittals to the City: conceptual documents, any budget or schedule, schematic design, 50% design development documents, 100% design development, GMP documents, final design, and construction documents for the ESC Project.

“Plans and Specifications Delivery Date” ” is the date set forth in the Section 7 table.

“Preconstruction Consultant” means Turner Construction Company, which was previously selected by SBH to assist with preconstruction services.

“Predevelopment Activities” means any work performed to assist in the completion of the items described and listed in Sections 3-18 of this Agreement.

“Predevelopment Expenses Agreement” has the meaning given to that term in the Background.

“Preliminary Budget and Schedule” means the preliminary budget and schedule described in Section 9 as approved by SBH.

“Preliminary Budget Delivery Date” ” is the date for set forth in the Section 7 table.

“Quality Standard” for the ESC means first-class and state of the art, comparable to other NBA facilities, including Amway Center (Orlando), Barclay’s Center (Brooklyn), Chesapeake Energy Arena (Oklahoma City) and Pepsi Center (Denver). The standard of quality and design of the project shall be comparable, when taken as a whole, to the standard of quality used in the design and construction of the facilities named above. The ESC Project design and construction must also comply with the NBA rules, including without limitation those related to technology and guest experience.

“SBH” includes its corporate affiliate(s), and their successors and assigns, and their agents, officers, consultants, contractors, and employees.

“Schedule” has the meaning given to that term in Section 9.

“Schematic Design” means the schematic designs described in Section 10 as approved by SBH.

“Schematic Design Delivery Date” ” is the date for set forth in the Section 7 table.

“Tentative Schedule” has the meaning given to that term in Section 7.

“Term” means the duration of this Agreement, as described in Section 2.

“Term Sheet” means the Term Sheet dated March 23, 2013 and approved by the Sacramento City Council on March 26, 2013.

“50% Design Development Delivery Date” is the date for set forth in the Section 7 table.

“100% Design Development Delivery Date” is the date for set forth in the Section 7 table.

<p>City of Sacramento</p> <p>By: _____ John F. Shirey City Manager</p> <p>Date: _____, 2013</p>	<p>Sacramento Basketball Holdings LLC</p> <p>By: _____ Chris Granger President</p> <p>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 Legal Form Pioneer Law Group, LLP</p> <p>By: _____ Jeffrey K. Dorso Attorneys for SBH</p>