



## King County

# Metropolitan King County Council Government Accountability and Oversight Committee

### STAFF REPORT

<b>Agenda Item:</b>	7	<b>Name:</b>	Wendy Soo Hoo
<b>Proposed No.:</b>	2016-B0060	<b>Date:</b>	March 22, 2016

### SUBJECT

This briefing provides an update on the proposal to develop a sports and entertainment arena in SODO.

### SUMMARY

In October 2012, the King County Council adopted Ordinance 17433 and the Seattle City Council adopted Ordinance 124019, authorizing the Executive and Mayor to execute agreements related to a sports and entertainment arena in SODO. The Seattle City Council is currently reviewing the proposal to vacate Occidental Avenue S, which is a component of ArenaCo's permit application. No action by the King County Council is needed related to the street vacation or issuance of the permit.

### BACKGROUND

The Seattle Supersonics played professional basketball from 1967 to 2008 at the venue currently known as the Key Arena in Seattle Center. In 2006, the team was purchased by an Oklahoma-based ownership group, which moved the team to Oklahoma City before the 2008-2009 National Basketball Association (NBA) season.

On February 16, 2012, the Seattle Mayor and King County Executive announced that they were working with Chris Hansen, a private investor, (ArenaCo) on a proposal to develop an arena south of Safeco Field and Century Link Field. The proposed arena would have the ability to host an NBA and a National Hockey League (NHL) team.

In October 2012, the King County Council adopted Ordinance 17433 and the Seattle City Council adopted Ordinance 124019, authorizing the Executive and Mayor to execute agreements related to a sports and entertainment arena in SODO. The agreements include:

- (1) a memorandum of understanding (MOU) between the County, City and ArenaCo, the private entity proposing to develop the arena, and
- (2) an interlocal agreement (ILA) between the County and City.

The MOU expires on December 3, 2017.

Following the councils' actions in 2012, ArenaCo applied to the City of Seattle for its Master Use Permit and, in May 2015, the City Department of Planning and Development issued the Final Environmental Impact Statement.<sup>1</sup> The ArenaCo proposal also involves the closure of a street segment (Occidental Avenue S). Street vacations are reviewed by the Seattle Design Commission to assess impacts to the remaining streets in the area and to evaluate public benefits in exchange for the street closure.<sup>2</sup> After completing its review, the Design Commission provided feedback to the Seattle Department of Transportation, which then formally recommended the street vacation to the City Council on November 30, 2015.<sup>3</sup>

The petition to vacate a portion of Occidental Avenue S is currently being considered by the Seattle City Council, with committee discussions scheduled for April 5 and April 19. The King County Council does not have a role in approving the street vacation. However, the final legislative action required by both councils would be action to approve Transaction Documents.

### **SUMMARY OF THE PROPOSAL:**

Under the MOU, the **“First Installment”** of public funds to the project would occur when the City acquires the site from ArenaCo prior to any construction. This would also represent the point at which the land would enter public ownership. *The County would not be party to this transaction.*

The City would acquire the site only after:

- The permitting and SEPA review of the project is complete;
- A call for bids, consistent with the Municipal Leasing Act, is made and if ArenaCo is the winning bidder;
- **“Transaction Documents,”** including an Umbrella Agreement, are approved by the City and County;
- The NBA team is acquired with a non-relocation agreement in place;
- The City and County have been satisfied regarding the financial ability of ArenaCo and its investors to meet obligations specified in the MOU; and
- ArenaCo has funded a required reserve account with money or securities in an amount equal to the first year's debt service on the City's bonds.

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<sup>1</sup>Alternative locations considered were the Key Arena site, Memorial Stadium site (adjacent to Seattle Center), and two alternatives on the SODO project site (1700 – 1<sup>st</sup> Avenue S). The FEIS can be viewed at: <http://www.seattle.gov/dpd/BuildingConnections/SeattleArenaFEIS.pdf>

<sup>2</sup>The City of Seattle street vacation process is described at: <http://www.seattle.gov/transportation/streetvacations.htm>

<sup>3</sup>Seattle City Council Clerk File Number 312905

After the NBA team is acquired with a non-relocation agreement in place, the team would potentially play at Key Arena for an interim period while the SODO arena is constructed. During this time, \$7 million in taxes generated at Key Arena by the NBA team would go into a Key Arena Fund; any taxes generated thereafter at Key Arena (and at the SODO arena prior to the date it transfers into public ownership) would be deposited into a “SODO Transportation Infrastructure Fund” that would help fund transportation improvements.<sup>4</sup>

ArenaCo, the City and the County would use a Lease-Purchase method to construct the facility. The City would ground lease the site to ArenaCo for \$1 million annually during construction of the arena. ArenaCo would be responsible for all construction costs, including cost overruns.<sup>5</sup>

Following completion of construction, the City and County would then lease the arena from ArenaCo with the option to purchase the arena on the day after the arena is added to the property tax rolls or at a later date within six months (at ArenaCo’s request). This date is the “**Transfer Date.**” If the City and County exercise the option to purchase the arena, they would then lease it back to ArenaCo.<sup>6, 7</sup>

Note that the Transfer Date would be the point at which the “**Second Installment**” of public financing occurs. *This would involve both the City and the County.* The amount of this Second Installment is contingent on whether an NHL team has been secured and whether the SODO Transportation Infrastructure Fund has reached \$40 million.

**If the NHL team HAS been secured...**

- **... and the SODO Transportation Infrastructure Fund has reached \$40 million:** The Second Installment would be an amount that together with the First Installment totals \$200 million, with the City contributing a maximum of \$120 million and the County contributing a maximum of \$80 million.
- **... but the SODO Transportation Infrastructure Fund has not reached \$40 million:** The Second Installment would be the same as above, i.e. with the City contributing an amount when added to the First Installment equals \$120 million and the County contributing \$80 million, but if the SODO Transportation Infrastructure Fund does not contain at least \$40 million, a portion of the Second Installment would go to that fund to bring it to \$40 million.

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<sup>4</sup>The purpose of the fund is to help fund transportation improvements with first priority given to projects that protect Port of Seattle operations and freight mobility, including projects that improve pedestrian safety, transit service, and overall traffic management.

<sup>5</sup>The arena would be required to meet any NBA and NHL requirements for arenas, and be substantially similar in quality to three mutually agreed-upon arenas. The arena would also be required to comply with City requirements for sustainable construction and ArenaCo would commit to using the City of Seattle’s Inclusion Plan.

<sup>6</sup>Alternatively, the City and County could exercise an option to have a trustee prepay the facility lease – in this case, the City and County would lease the facility for 30 years and sub-lease the facility to ArenaCo. This is a less likely scenario.

<sup>7</sup>Note that, while the City and County would own the arena itself (and the land), ArenaCo would own all or a portion of the tenant improvements inside the arena (such as scoreboards, etc.) until the termination of the lease. The delineation of ownership of tenant improvements would be defined in the Transaction Documents.

### **If the NHL team HAS NOT been secured...**

- **...but the SODO Transportation Infrastructure Fund has reached \$40 million:** The Second Installment would be an amount that when combined with the First Installment is the lesser of the amount of debt that could be supported by the tax revenues and rent at the site or \$120 million. Of the \$120 million, the County's contribution would be capped at \$5 million and would be limited to an amount of debt that the County reasonably determines can be supported by its anticipated share of property taxes attributed to the arena.
- **... and the SODO Transportation Infrastructure Fund has not reached \$40 million:** If the SODO Transportation Infrastructure Fund does not contain at least \$40 million, the Second Installment would increase by a corresponding amount up to \$25 million, so the City and County contribution would total up to \$145 million. In this scenario, the County's potential contribution would increase from a maximum of \$5 million to a maximum of \$15 million.

In the NBA/NHL scenario, the public contribution for both the City and County would be capped at \$200 million. In the NBA-only scenario, the public contribution would be capped at \$120 million to \$145 million, depending on whether the SODO Transportation Infrastructure Fund has reached \$40 million. The County's participation in the NBA-only scenario would be limited to up to \$5 million or up to \$15 million.

The public financing would be issued in the form of limited tax general obligation bonds or certificates of participation, with a duration of approximately 30 years. Under the proposal, the debt service would increase at one percent annually for the first 10 years, then level off for the remainder of the term.

The term of the lease and the non-relocation agreement would be at least 30 years and no less than the term of any public financing. The total annual debt service would be paid by the following sources:

- **"Base Rent"**: paid by ArenaCo in the amount of \$1 million annually;
- **"Arena Tax Revenues"**: including property, sales, leasehold excise, admissions and business and occupation tax revenues attributable to the arena and arena tenant improvements; and
- **"Additional Rent"**: paid by ArenaCo if the combination of Base Rent and Arena Tax Revenues do not meet the City's and County's total debt service obligations.

### **REMAINING POTENTIAL LEGISLATIVE ACTIONS**

The Seattle City Council is currently reviewing the proposal to vacate a portion of Occidental Avenue S, which is a component of ArenaCo's permit application. The proposal includes a plaza at the corner of 1<sup>st</sup> Avenue S and S Massachusetts St; wider sidewalks along 1<sup>st</sup> Avenue S and S Holgate St; and ground-floor retail and restaurant spaces along 1<sup>st</sup> Avenue S.

The City Council's Sustainability and Transportation Committee discussed the street vacation proposal and held a public hearing on March 15. The committee is expected to discuss the street vacation on April 5 and April 19. If the City Council approves the street vacation, opponents could challenge that street vacation decision and the associated SEPA EIS adequacy to the Superior Court. An appeal of the street vacation would not prevent the City from processing the Master Use Permit (MUP) for the proposed arena pending judicial review of a street vacation, except in the rather unlikely event that the court were to issue an order staying such review.

The project's MUP will likely be a Type II permit decision, appealable to the City's Hearing Examiner. If the MUP is appealed to the Hearing Examiner, hearings typically occur 4 to 8 weeks after the filing of an appeal, and Examiner decisions generally issue within twenty days after the close of the hearing. The Examiner's decision is then reviewable in Superior Court under the Land Use Petition Act (LUPA). Such judicial review typically takes between four to eight months. The Superior Court's decision may be appealed to the Court of Appeals (an approximately six to nine month process), with opportunity to thereafter petition the Washington Supreme Court for further review. Note that unless the project opponents appealing the land use decisions can convince the court to enjoin construction, once permits issue, construction of the project can begin.

No action by the King County Council is needed related to the street vacation or issuance of the permit. Resolution of the Superior Court appeal would likely take several months. The Superior Court's decision would then be subject to further review in the Court of Appeals and Washington Supreme Court.

The final legislative action required by both councils would be action to approve Transaction Documents. Approval of Transaction Documents by both the City and County councils would need to occur before the City could acquire the SODO site.

## **ATTACHMENTS**

1. King County Council Ordinance 17433

## **INVITED**

1. Sung Yang, Chief of Staff, King County Executive's Office
2. Diane Carlson, Director of Regional Initiatives, King County Executive's Office
3. Michelle Allison, Director of Council Relations, King County Executive's Office