

Meeting Date: 8/13/2013

Report Type: Staff/Discussion

Report ID: 2013-00641

Title: Agreement: Property Acquisition Cost, Defense and Indemnity Agreement for Entertainment and Sports Center (ESC) Site Acquisition Assistance

Location: Downtown Plaza, District 4

Issue: Despite its efforts, the Sacramento Kings ownership group, Sacramento Basketball Holdings, LLC (SBH), has been unable to acquire certain parcels needed for the arena project. SBH is responsible for all ESC property acquisition; however, it has asked for the City's assistance in acquiring the remaining property. In order to provide assistance, the City requires a Property Acquisition Cost, Defense and Indemnity Agreement to cover the expenses of the acquisition.

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute a Property Acquisition Cost, Defense, and Indemnity 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: John F. Shirey, City Manager and John Dangberg, Assistant City Manager, (916) 808-5704, Office of the City Manager

Department: City Manager

Division: Executive Office

Dept ID: 02001011

Attachments:

1-Description/Analysis

2-Property Cost Agreement

City Attorney Review

Approved as to Form

Matthew Ruyak

8/7/2013 5:43:27 PM

Approvals/Acknowledgements

Department Director or Designee: John Dangberg - 8/7/2013 4:24:50 PM

Description/Analysis

Issue Detail: As set forth in the term sheet approved by the City Council on March 26, 2013, SBH is responsible for all property acquisition necessary for the development of the ESC. Currently, the Macy's East store located near 7th and K Streets is the only property not owned by Sacramento Basketball Holdings, JMA Ventures or the public. SBH attempted to purchase the property but was ultimately unsuccessful despite a generous offer and reasonable terms. SBH has asked for the City's assistance in acquiring this site for the ESC. In order to provide property acquisition assistance, Council approval of an agreement between the City and Sacramento Basketball Holdings, LLC that provides reimbursement and protection for the City is needed.

Policy Considerations: The development of the ESC will transform Downtown Plaza into a center of entertainment and activity. Completion of the ESC will fulfill several critical policy objectives. Specifically, the ESC will serve as a catalyst for economic development in downtown and throughout our region.

Economic Impact: None at this time.

Environmental Considerations: This report involves a reimbursement agreement for City expenses associated with property acquisition. 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 actual development and financing of the ESC is subject to review pursuant to the California Environmental Quality Act (CEQA). Any property acquisition will be done in compliance with CEQA.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Site acquisition is the responsibility of the ownership group as set forth in the term sheet. Therefore, costs and any risk associated with property acquisition should be borne by the ownership group. This agreement provides for payment by SBH of certain costs, reimbursement for City expenses and mitigates risks associated with City actions to acquire property in support of the ESC project.

Financial Considerations: None. The agreement between the City and SBH requires that SBH reimburse the City for all expenses associated with its efforts to acquire the Macy's East property for the ESC project.

Emerging Small Business Development (ESBD): Not applicable.

PROPERTY ACQUISITION COST, DEFENSE, AND INDEMNITY AGREEMENT

This agreement, dated August 13, 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**”) on certain real property located in the City of Sacramento, California. The property (“**Property**”) is shown in Exhibit “A,” which is a part of this agreement.

The Term Sheet provides that SBH is responsible for all land acquisitions from third parties necessary to develop the ESC, and the SBH has since affirmed this responsibility. SBH needs to acquire interests in the Property sufficient for planned public and private financing, development, ownership, and operation of the ESC, which interests may include fee, leasehold, ground lease, sublease, improvements, and any other interests in the Property. SBH has made reasonable and good faith efforts to negotiate a purchase of the current ground lease on the Property but has been unable to do so. SBH now seeks the City’s assistance in acquiring any and all property interests in and to the Property.

The Parties intend by this agreement to set forth SBH’s obligations to pay for, and to indemnify, defend, and hold harmless the City for any and all actions taken by the City to acquire – or assist SBH in acquiring – any and all interests in the Property.

SBH acknowledges and agrees that any potential decision to acquire the Property, or any interests in the Property, by eminent domain 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 the California Eminent Domain Law. By entering into this agreement, the City does not in any way delegate or assign any of its discretion to proceed with, or not proceed with, eminent domain to SBH. Further, by entering into this agreement, the City in no way is committing, promising, or agreeing to exercise its eminent domain authority.

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

1. Acquisition Costs Reimbursement

1.1 Acquisition Costs. Except for costs described in section 1.2(E), SBH shall be responsible for all costs reasonably incurred by the City to acquire all or any interest in the

Property required for the development described in the Term Sheet, whether by voluntary negotiation or potential eminent domain. These “**Acquisition Costs**” include, but are not limited to, the following:

- (A) Appraisal fees and costs associated with appraisal of the Property;
- (B) Environmental consultants’ fees and costs relating to any potential hazardous substances on the Property, including but not limited to soil or groundwater contamination;
- (C) Relocation consultants’ fees and costs relating to any applicable relocation obligations of the City for potential legal occupants of the Property;
- (D) Attorneys’ fees and costs relating to a voluntary purchase of the Property or a potential acquisition of the Property by eminent domain;
- (E) The purchase price of the Property, whether such purchase price be determined by voluntary negotiation or by a settlement of a potential eminent domain action in court, or by a jury verdict in an eminent domain trial; and
- (F) All litigation expenses, attorneys’ fees, and court costs reasonably necessary to prosecute an eminent domain action, should the City exercise its sole discretion to prosecute an action.

1.2 *Expansive Scope of Reimbursement Obligation.*

- (A) *Generally.* SBH agrees that its obligations are to be interpreted in a manner that ensures the City is fully reimbursed for its efforts.
- (B) *Time of City’s Efforts.* Acquisition Costs include those incurred by the City before and after the date of this agreement.
- (C) *Success not Required.* SBH shall pay all Acquisition Costs regardless of the outcome of Property acquisition efforts.
- (D) *SBH’s Acquisition of Interests.* SBH shall pay all Acquisition Costs regardless of which Party (or any other entity) obtains interests in the Property.
- (E) *Excluded Costs.* Acquisition costs do not include salaries, benefits, or other costs for City employees, including without limitation City Attorney’s Office employees.

2. Payment of Acquisition Costs

2.1 *Initial Payment.* SBH shall pay the City \$15,000 within seven days of the date of this agreement.

2.2 *Additional Payments.* SBH shall pay the City within 30 days of receipt of

each invoice from the City. Each invoice shall contain an itemization of the services or costs, including the total number of hours of work performed by appraisers, consultants, or attorneys in connection with the work and a description of the work performed, as well as copies of all invoices submitted by third parties to the City relating to Acquisition Costs.

2.3 Purchase Price Payment. Notwithstanding section 2.2, upon demand from the City after consultation pursuant to section 3 of this agreement, SBH shall timely deliver to City the proposed purchase price of the Property. Unless otherwise required by law, City's demand shall provide at least five business days for SBH to deliver such funds, and in no event shall SBH be obligated to deliver such funds more than three days before City is legally or contractually bound to do so. The City shall return the full price to SBH if the City does not acquire the Property.

2.4 Effect of Failure to Pay Timely. If SBH fails to make timely payments, City may refuse to assist SBH in the development of the ESC, to the extent legally permissible. City may also terminate Property acquisition assistance. City's refusal to assist in further development or termination of Property acquisition assistance does not relieve SBH of its obligations under this agreement, and the City retains all contractual and other remedies.

3. SBH Consultation and Review

3.1 Consultation with SBH. While any potential decision to exercise its eminent domain authority lies solely and exclusively with the City, the City agrees to consult with SBH on significant issues relating to the acquisition of the Property. For example, the City shall consult with SBH before making any offer for the Property that exceeds 125% of the City's most recent appraisal, and the City shall not approve or finalize any purchase price or settlement of the Property without first consulting with SBH. However, if SBH does not agree to the purchase price reasonably agreed by the City, settlement, or jury verdict, the City shall have the right to abandon its acquisition efforts. If the City abandons its acquisition efforts, SBH is obligated to pay all legal and other costs associated with the abandonment, and SBH shall indemnify, defend, and hold the City harmless from any and all legal claims arising out of the abandonment.

3.2 Review of Documents. SBH is entitled to review relevant reports, appraisals, invoices, correspondence, and similar documentation prepared or received by the City relating to the subject of this agreement and the acquisition of the Property, except as otherwise protected or prohibited by law.

4. Ownership of Property upon City's Potential Acquisition. Title to the Property shall ultimately be vested in an entity or entities consistent with the terms of the Term Sheet and its implementing agreements, and (if the City exercises its eminent domain authority) in a manner

that is consistent with all applicable provisions of the California Eminent Domain Law.

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, the City's efforts to acquire the Property, except for the City's willful misconduct or criminal acts.

6. Waiver of Claims Against City

6.1 Waiver of Claims. SBH acknowledges that it has requested the City's assistance in the acquisition of the Property. SBH expressly waives any and all claims of any nature and any kind it may have related to or arising out of the City's potential acquisition of the Property, including but not limited to any and all claims SBH may have related to the City and its counsel's analysis, investigation, research, document preparation, and decisions with respect to the potential filing of an eminent domain proceeding and the outcome of any eminent domain proceeding.

6.2 Exception. Notwithstanding sections 5 and 6.1, SBH does not waive claims for the breach of an obligation expressly stated in this agreement (or indemnify City for claims arising therefrom). The City's liability to SBH for such claims shall not exceed \$100,000.

7. Miscellaneous Provisions

7.1 Certain Terms. The term "City" includes its agents, officers, consultants, contractors, and employees. The term "Property" includes any and all interests therein, including but not limited to fee, leaseholds, ground leases, subleases, improvements, and any other interests in the Property.

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.

<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>David Skinner, Esq. Meyers Nave 555 12th Street, Suite 1500 Oakland, California 94607</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 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. Exhibit A is a part of this agreement.

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. 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.

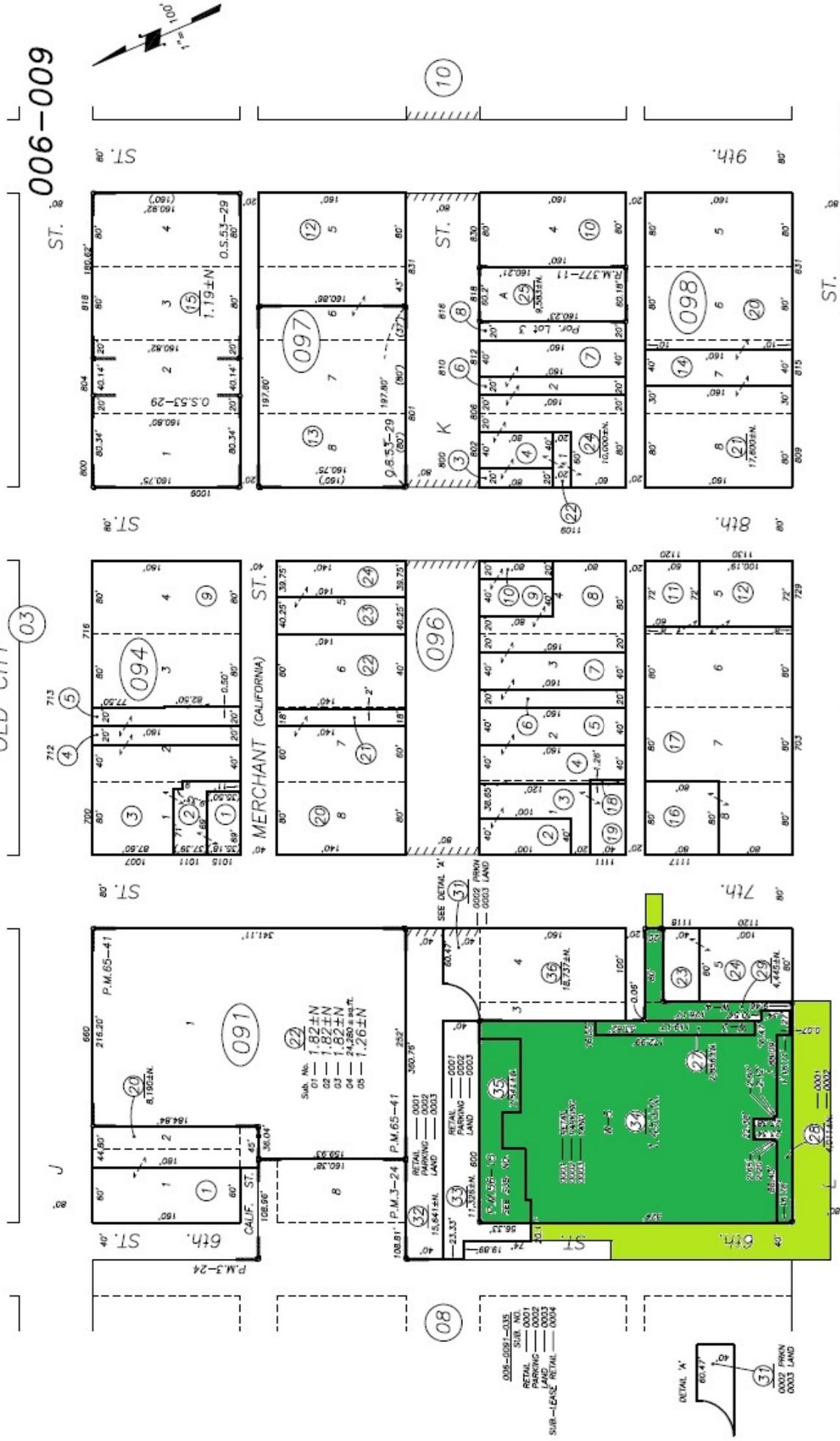
7.16 Survival of Indemnification, Defense, and Waiver. SBH's indemnification, defense, hold harmless, and waiver obligations survive any Property acquisition, completion of this agreement, and termination of this agreement.

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

(Signature Page Follows)

<p>City of Sacramento</p> <p>By: _____ John F. Shirey City Manager Date: _____, 2013</p>	<p>Sacramento Basketball Holdings, LLC</p> <p>By: _____ John Rinehart Chief Financial Officer 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 Name</p> <p>By: _____ Jeffrey K. Dorso Attorneys for SBH</p>

ASSESSORS PARCELS ARE FOR TAX ASSESSMENT PURPOSES ONLY AND DO NOT INDICATE EITHER PARCEL LEGALITY OR A VALID BUILDING SITE. THE COUNTY OF SACRAMENTO ASSUMES NO RESPONSIBILITY ARISING FROM USE OF THIS INFORMATION.



Property Acquisition Cost, Defense, and Indemnity Agreement
 EXHIBIT A, page 1
 Record of Survey O.S. Bk.53, Pg. 29 (12-6-94)
 818 K Street Office Condominiums, R.M. Bk. 377, Pg.1(08-30-2012)
 Assessor's Map Bk.006 Pg. 009
 County of Sacramento, Calif.

