

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: September 26, 2012

CF 11-0023

TO: Honorable Members of the Ad Hoc Committee on
Downtown Stadium and Convention Center RenovationFROM: Gerry F. Miller
Chief Legislative AnalystMiguel A. Santana
City Administrative OfficerSUBJECT: **SECOND SUPPLEMENTAL REPORT – LOS ANGELES CONVENTION
CENTER AND EVENT CENTER TRANSACTION DOCUMENTS AND NEW
HALL DESIGN**

On September 24, 2012, the Ad Hoc Committee on Downtown Stadium and Convention Center Renovation considered and approved various Transaction Documents related to implementation of the New Hall and Event Center project. That action also included approval of recommended revisions to the Transaction Documents proposed by the City Administrative Officer (CAO) and Chief Legislative Analyst (CLA) that clarify terms related to assignment of the Project rights and responsibilities in the event of the sale of Anschutz Entertainment Group (AEG or Developer). Additionally, the Ad Hoc Committee directed the CAO and CLA to provide the Council with a final set of revisions prior to consideration of this matter in Council.

Attachment A to this Second Supplemental Report provides the final set of revisions for your consideration. The revisions relate to assignment rights and ownership changes in the Implementation Agreement (IA) which control actions on this project leading to the close of escrow, as well as recommended changes to the Event Center Ground Lease and Other Documents. It refines the escrow closing conditions to recognize that Philip F. Anschutz may not be the owner at that time; that the City shall review and approve a new Party based on their character, financial capacity, and experience; that AEG will retain its current management team through construction of the Event Center; and that the City will receive notice of any changes that occur.

In addition, revisions to the Event Center Ground Lease regarding limitations to the termination provision have been proposed. These revisions are necessary to support the Mello-Roos component of the Finance Plan.

RECOMMENDATION

That the City Council approves revisions to the Implementation Agreement and other Transaction Documents included in the staff report of September 11, 2012, as provided in Attachment A to this second supplemental report, and to make similar revisions to the other relevant Transaction Documents.

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ATTACHMENT A

Glossary to the Implementation Agreement:

“Affiliate” of any Person means, when used with reference to a specified person or entity, any person or entity who directly or indirectly controls, is controlled by or is under common control with the specified person or entity. In the case of each one of those entities included in the defined term “Developer”, Affiliate of such Developer entity includes any person or entity who directly or indirectly controls, is controlled by, or is under common control with such Developer entity, the controlling owner of the NFL Team, or the National Football League, acting in such league’s capacity as an entity separate and apart from the constituent owners of the league. A person or entity shall be regarded as in control of another entity if it owns or is under common ownership or directly or indirectly controls at least fifty (51%) of the voting stock or other equity interests of the other entity, or in the absence of ownership of at least fifty percent (51%) of the voting securities of an entity, if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such entity.

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Implementation Agreement: Section 14.1

14.1 Representations and Warranties for the City’s Benefit. Each Party to this IA other than the City represents and warrants to the City, as of the Effective Date, as follows:

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..... (e) Ownership of Non-City Parties. Such Party is a wholly-owned entity in a chain of entities, each entity in which is owned or controlled by Philip F. Anschutz.

Implementation Agreement: Section 3.3

3.3 Conditions for the Benefit of the City. The conditions set forth in this Section 3.3 are in addition to the representations or certifications provided pursuant to Article II and are for the benefit of the City and may be waived only by consent of the City in its sole discretion.

3.3.1 Representations and Warranties. All of the representations and warranties of the Parties to this IA other than the City as set forth in Section 14.1 of this IA remain true and correct in all material respects, including without limitation the representations and warranties set forth in Section 14.1(e) of this IA regarding ownership of Non-City Parties. Notwithstanding anything herein to the contrary, in the event that prior to Closing, there is any transfer of interest in or change in the ownership of: (i) any Party to this IA who is not the City (i.e. ArenaLandCo, HallCo, EventCo, and ParkingCo; each a “Non-City Party”, and collectively, the “Non-City Parties”) or (ii) any entity that directly or indirectly controls any Non-City Party, then this condition 3.3.1 shall be

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satisfied with respect to the Non-City Parties' representation and warranty set forth in Section 14.1(e) below if all of the following are true: (a) the City shall have had no less than 30 calendar days to review and approve, and shall have approved in writing, any such transfer of interest or change in ownership; provided, however, that the City's approval of such transfer or change may be withheld only on the basis of the transferee's/new owner's character, financial capability, and experience, all as reasonably determined by the City in accordance with the criteria set forth in Section 12.13 of this IA), and (b) the transferee/new owner shall have delivered to the City a written confirmation and agreement stating that such transferee/new owner: (x) has received copies of this IA and all Other Agreements, acknowledges the obligations of the Non-City Parties under this IA and all Other Agreements, and agrees to cause the Non-City Parties to comply with all such obligations; (y) agrees to maintain a management team through the completion of construction of the Project which is sufficiently qualified in the transferee/new owner's reasonable discretion to complete construction of the Project in accordance with this IA and the Other Agreements, and (z) agrees that if the existing CEO of Anschutz Entertainment Group, Inc. as of the Approval Date of this IA is removed from his position prior to the completion of construction of the Project, the City shall receive written notification of such removal as soon as reasonably practicable, and shall have an opportunity to comment on the qualifications of a replacement.

Implementation Agreement: Article XII

12.1 General. The qualifications and identity of each of the Non-City Parties and its principals are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this IA with the Non-City Parties. Therefore, no voluntary or involuntary successor in interest of the Non-City Parties shall acquire any rights or powers under this IA, except as expressly set forth herein.

12.2 Purpose of Restrictions on Transfer with Respect to the Project. This IA is entered into for, among other things, the purpose of development of the New Hall and development and operation of the Event Center and the New Parking Structures and the Project's subsequent use in accordance with the terms of this IA and the Other Agreements. The Developer recognizes that the qualifications and identity of the Developer are of particular concern to the City in view of:

(a) The importance of the redevelopment of the Site to the general welfare of the community and the promotion of entertainment, sporting, and recreational opportunities for the public;

(b) The reliance by the City upon the unique qualifications and ability of the Developer to serve as a catalyst for development of the Site and upon the continuing interest which the Developer will have in the Arena Site and the L.A. Live

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Site to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Site and surrounding areas;

(c) The fact that a change in ownership or control of the owner of the leasehold estates in the Site, or a substantial part of the Site, or any other transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof, other than as specified in Section 12.3, below, is for practical purposes a transfer or disposition of the Property; and

(d) The importance to the City and the community of the standards of use, operation and maintenance of the site.

12.3 Change in Control. During the term of the IA, a transfer of interest in or change in the ownership of: (i) any one of those entities included in the defined term "Non-City Parties" (as defined in Section 3.3.1 of this IA) or (ii) any entity that directly or indirectly controls any of the Non-City Parties shall be deemed an assignment of such Non-City Party's interests in this IA for purposes of this Article XII (with the understanding that the transferee/new owner shall be deemed the assignee of such assignment for purposes of determining the character, financial capability, and experience of the assignee pursuant to Section 12.13 below) if such transfer of interest or change in ownership would cause control (as the word "control" is defined in the definition of "Affiliate") of any of the Non-City Parties to be held by an individual or entity other than an Affiliate of such Non-City Party (with the understanding that the status of "Affiliate" shall be determined as of prior to the proposed transfer of interest or change in ownership; for illustrative purposes only, a proposed transfer of interest or change in ownership shall be deemed an assignment, and shall comply with the assignment provisions relating to non-Affiliate assignments, if ownership of AEG is to be sold to a buyer who is not an Affiliate); provided, that notwithstanding anything to the contrary in this IA or any of the Other Agreements, in all cases of a change in control other than a direct assignment by any of the Non-City Parties of its interests in this IA not as a result of a change in control, regardless of whether occurring before or after Completion of the Event Center or New Parking Structures, the City shall not unreasonably withhold its consent to such assignment. Notwithstanding the foregoing, any transfer of an ownership interest in any one entity which comprises the Developer resulting in Philip F. Anschutz and the other owners of the NFL Team, together with their respective Affiliates, collectively or individually, owning greater than a 50% ownership interest in such entity, shall not be deemed an assignment for purposes of this Article XII; provided, however, that Developer shall in each case remain bound by the terms of this IA and the Other Agreements. In addition, notwithstanding anything to the contrary in this IA or any of the Other Agreements, the Event Center Operator which is the party to the Primary Venue Contract (as defined in the Event Center Ground Lease) and the Developer entity which is the tenant under the Event Center Ground Lease shall be under the common control of the same entity or person during the term of this IA.

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12.4 Subleases. Notwithstanding anything to the contrary in this IA, the Non-City Parties may enter into subleases under the Event Center Ground Lease, the New Parking Structures Ground Leases, or Arena Ground Lease in accordance with the provisions of the respective ground leases.

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12.5 General Restrictions on Assignment. Except as otherwise expressly provided in this Article XII (including without limitation the provisions of Section 12.3 above) or the Event Center Ground Lease, the New Parking Structures Ground Leases, or the Arena Ground Lease, a Non-City Party may not transfer, sell, convey or assign (in each case referred to herein as "assign" or as "assignment") all or any portion of its interests in this IA, in any of the Other Agreements, in the Project or the Site or in any portion thereof, without the prior written consent of the City, which consent may be withheld in the sole but good faith discretion of the City. Except as otherwise contemplated by this IA or the Event Center Ground Lease, the New parking Structures Ground Leases, or the Arena Ground Lease, the City may not assign all or any portion of its interest in this IA, in any of the Other Agreements, in the Project or the Site or in any portion thereof, without the prior written consent of the pertinent Non-City Party, which consent may be withheld in the sole but good faith discretion of such Non-City Party.

12.6 Assignment to Affiliates. Subject to the provisions of Section 12.3 above, any Non-City Party to this Agreement may assign all or any portion of its interests in this IA to one or more Affiliates (as owners of separate portions, as tenants-in-common, or in any other legally permitted way), without obtaining the prior consent of the City. At least 30 days prior to such an assignment, such Non-City Party shall provide to the City (a) written notice of the assignment, (b) evidence reasonably satisfactory to the City that each assignee is an Affiliate of such Non-City Party, and (c) a copy of the assignment document, in which the assignee shall have assumed the obligations of such assignor Non-City Party applicable to the interest assigned. Such an assignment shall not relieve such assignor Non-City Party of liability for the performance of its obligations under this IA.

12.7 Collateral Assignment to Event Center and New Parking Structures Lender(s). Subject to the provisions of this Section 12.7, any entity which comprises Developer may collaterally assign its interest in this IA, to any Institutional Lender as security for such entity's obligations in connection with the financing of the Project or any part thereof; subject to and in accordance with the terms and conditions set forth in the Event Center Ground Lease or in the New Parking Structures Ground Leases, as applicable. Nothing in this Section 12.7 shall permit the Developer to encumber the City's fee interest in the Event Center Site or the New Parking Structures Site.

12.8 Assignment before Completion of Event Center. Except as otherwise set forth in Section 12.6 (Affiliates), and subject to the provisions of Section 12.3 (Change in Control), before Completion of the Event Center, EventCo may only assign all or any portion of its interest in this IA in connection with an assignment of EventCo's interest

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under the Event Center Ground Lease, it being understood that the assignee receiving an interest under this IA shall be the same entity as (or an Affiliate of) the assignee receiving an interest under the Event Center Ground Lease.

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12.9 Assignment before Completion of New Parking Structures. Except as otherwise set forth in Section 12.6 (Affiliates), and subject to the provisions of Section 12.3 (Change in Control), before Completion of the New Parking Structures, ParkingCo may only assign all or any portion of its interests in this IA in connection with an assignment of ParkingCo's interest under the New Parking Structures Ground Leases, it being understood that the assignee receiving an interest under this IA shall be the same entity as (or an Affiliate of) the assignee receiving an interest under the New Parking Structures Ground Leases.

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12.10 Assignment after Completion of Event Center. Subject to the provisions of Section 12.12, after Completion of the Event Center, EventCo may sell or assign all or any portion of its interests in the IA to a non-Affiliate, provided that EventCo obtains the prior written approval of the City, which approval may be withheld only on the basis of the assignee's character, financial capability, and experience, all as reasonably determined by the City in confirming that such proposed assignee satisfies the three (3) criteria set forth in Section 12.13 below.

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12.11 Assignment after Completion of New Parking Structures. Subject to the provisions of Section 12.12, after Completion of the New Parking Structures, ParkingCo may sell or assign all or any portion of its interests in the IA to a non-Affiliate, provided that ParkingCo obtains the prior written approval of the City, which approval may be withheld only on the basis of the assignee's character, financial capability, and experience, all as reasonably determined by the City in confirming that such proposed assignee satisfies the three (3) criteria set forth in Section 12.13 below.

12.12 Assignment Documents. At least 30 days prior to any assignment pursuant to Sections 12.8 through 12.11, inclusive, the Developer shall provide to the City (i) written notice of the assignment, (ii) evidence reasonably satisfactory to the City that the assignee satisfies any criteria set forth in the provisions of this Article XII which are applicable to such assignment; and (iii) a copy of the assignment document pursuant to which the assignee shall assume the obligations of the Developer applicable to the interest assigned, including, without limitation, the obligations of the Developer under the IA. Such an assignment shall not relieve the Developer of liability for the performance of its obligations hereunder.

12.13 Factors Affecting Assignment. Where the City is required by this Article XII to be reasonable in determining whether to consent to a proposed assignment by a Non-City Party (including without limitation as set forth in Section 12.3 above), the City may withhold such consent solely upon the basis of the following three (3) factors

(provided, that, where the factors to be considered in any such approval are expressly limited elsewhere in this Article XII, this Section 12.13 shall not be deemed to modify such limitation):

(a) Character. The “Individual Owners” (as defined herein) of the assignee must be a person or persons of good character and reputation; provided, however, that this test shall be deemed to have been met as long as none of the Individual Owners shall have been convicted in a federal or state felony criminal proceeding (including a conviction entered on a plea of nolo contendere) of a crime of moral turpitude, unless the same shall have been subsequently reversed, suspended, vacated, annulled, or otherwise rendered of no effect under applicable law. In determining the character of a foreign entity or person, any criminal conduct of such foreign entity or person shall be evaluated based upon the standards of the laws and regulations of the United States, the State of California, and the City of Los Angeles, regardless of whether or not such entity or person is actually subject to the jurisdiction of such laws and regulations. For the purposes of this IA and the Other Documents, the term “Individual Owner” shall mean (i) if the new owner or owners is or are an individual or individuals, then those of such individual or individuals owning the controlling ownership interest in the assignee, and (ii) if the new owner or owners is or are an entity or entities, then those of such individual or individuals owning the controlling ownership interest in such controlling entity or entities, and (iii) in the case of either (i) or (ii) above, the senior-most executive of such new owner having significant involvement in the management and supervision of the construction and operation of the Project;

(b) Financial Capability. The assignee (together with its post-assignment Affiliates) must have sufficient verifiable financial resources or commitments to carry out the development and operation of the Project in accordance with the terms of this IA and the Other Agreements. The determination as to financial capability must be based upon facts which the Non-City Party shall have the right to address and rebut. If the assignee (together with its post-assignment Affiliates) has a verifiable net worth of One Billion Dollars or more, it shall be deemed to have met this test; and

(c) Experience. Following the proposed consummation of such assignment (including the proposed consummation of a “change in control” transaction as defined in Section 12.3 above), the assignee (together with its post-assignment Affiliates) must have a minimum of three (3) years experience in: (i) constructing and operating major sports and entertainment venues, (ii) constructing and operating a parking garage servicing a major sports and entertainment facility, (iii) constructing or managing the construction of a major public facility, such as a convention center or a convention center hotel, or (iv) operating major sports and entertainment venues, as applicable to the obligations which the assignee is assuming (by way of example, an assignee of EventCo’s interest shall satisfy the criteria set forth in (i) above, an assignee of ParkingCo’s interest shall satisfy the criteria set forth in (ii) above, an assignee of HallCo’s interest shall satisfy the criteria in (iii) above, and an assignee of

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Arenal and Co's interest shall satisfy the criteria in (iv) above), and such experience must have occurred fully within the ten years preceding the proposed date of the assignment,

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12.14 Assignment by City. The City may assign all or any portion of its interests in this IA without obtaining the prior consent of the Non-City Parties, to a governmental unit or units (including, without limitation, a joint powers authority or other multi-governmental organization), or to one of the Government Entities. At the election of a Government Entity in any such assignment, it may delegate its proprietary rights and responsibilities to a private party while retaining its governmental rights under this IA or Other Agreements or under law. Any assignee shall expressly assume the rights and responsibilities so assigned.

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Event Center Ground Lease (and applicable conforming changes will be made to other provisions of the Event Center ground lease and the parking ground leases):

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19.1.8 Assignment before Completion of Event Center.

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19.1.8.1 Except as set forth in Section 19.1.2 of this Lease (Change in Control), Section 19.1.6 (Affiliates), and Section 19.1.8.2 (major entertainment or media company), before Completion of the Event Center, Tenant may not assign all or any portion of its interest in this Lease or the Premises without obtaining the prior written consent of Landlord, which consent may be withheld on the basis of the assignee's character, experience or financial capability, as determined in the sole but good faith discretion of Landlord.

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19.1.8.2 Subject to the provisions of Section 19.1.10, prior to the Completion of the Event Center, Tenant may assign all or any portion of its interest in this Lease or the Premises to a major media or entertainment company which (together with its post-assignment Affiliates) has a net worth of at least One Billion Dollars (\$1,000,000,000) provided that Tenant obtains the prior written consent of Landlord, which consent may be withheld only on the basis of the assignee's character and experience, both as determined by Landlord in its reasonable discretion in confirming that such proposed assignee satisfies the two (2) applicable criteria set forth in Section 19.1.11 below.

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19.1.9 Assignment after Completion of Event Center. Subject to the provisions of Section 19.1.10, after Completion of the Event Center, Tenant may assign all or any portion of its interest in this Lease or the Premises, provided that Tenant obtains the prior written consent of Landlord, which consent may be withheld only on the basis of the assignee's character, experience or financial capability, all as reasonably determined by Landlord in confirming that such proposed assignee satisfies the three (3) criteria set forth in Section 19.1.11 below.

19.1.11 Factors Affecting Assignment. Where either Section 19.1.2 of this Lease (Changes in Control) or any other provision in this Section 19.1 requires Landlord to be reasonable in determining whether to consent to a proposed assignment by Tenant, Landlord may withhold such consent solely upon the basis of the following three (3) factors (provided, that, where the factors to be considered in any such consent are expressly limited elsewhere in this Section 19, this Section 19.1.11 shall not be deemed to modify such limitation):

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19.1.11.1 Character. The "Individual Owners" (as defined in Section 12.13(a) of the IA) of the assignee must be a person or persons of good character and reputation; provided, however, that this test shall be deemed to have been met as long as none of the Individual Owners shall have been convicted in a federal or state felony criminal proceeding (including a conviction entered on a plea of nolo contendere) of a crime of moral turpitude, unless the same shall have been subsequently reversed, suspended, vacated, annulled, or otherwise rendered of no effect under applicable law. In determining the character of a foreign entity or person, any criminal conduct of such foreign entity or person shall be evaluated based upon the standards of the laws and regulations of the United States, the State of California, and the City of Los Angeles, regardless of whether or not such entity or person is actually subject to the jurisdiction of such laws and regulations.

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19.1.11.2 Financial Capability. The assignee (together with its post-assignment Affiliates) must have sufficient verifiable financial resources or commitments to carry out the development and operation of the Event Center in accordance with the terms of this Lease. The determination as to financial capability must be based upon facts which Tenant shall have the right to address and rebut. If the assignee (together with its post-assignment Affiliates) has a verifiable net worth of One Billion Dollars (\$1,000,000,000) or more, it shall be deemed to have met this test.

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19.1.11.3 Experience. Following the proposed consummation of such assignment (including the proposed consummation of a "change in control" transaction), the assignee (together with its post-assignment Affiliates) must have a minimum of three (3) years experience in constructing and operating major sports and entertainment venues, and such experience must have occurred fully within the ten years preceding the proposed date of the assignment.

The following provisions will be added to the Event Center Ground Lease:

- The Premises that is the subject of this Lease is within the City of Los Angeles Community Facilities District No. 10 (Convention Center) (the "District") within which a special tax has been levied on all privately owned real property, including privately held leasehold interests in government property. Upon entry into this Lease, you will be subject to the special tax pursuant to Government Code Section

53340.1. The maximum special tax that may be levied annually on your leasehold interest consistent with the formation of the District is [\$2,000,000], subject to an annual increase of [3.0%] beginning in Fiscal Year 2016-17. Failure to timely pay the special tax can lead to fines, penalties, interest charges and forfeiture of the leasehold interest.

- Limitations on Termination. Notwithstanding anything to the contrary herein or in any related agreement, so long as the Landlord has outstanding its City of Los Angeles Community Facilities District No. 10 (Convention Center) Bonds payable from special taxes levied on the Premises (the "District Bonds"), the Tenant shall not terminate this Lease; provided, however, that if Tenant would have otherwise had the right to terminate this Lease but for the provisions of this Section 34.12, then in such event, the parties shall mutually negotiate in good faith an amendment to this Lease allowing for the expansion of Tenant's permitted use of the Premises during the remainder of the Term of this Lease in order to allow Tenant to realize some continued economic benefit from its leasehold interest throughout the remainder of the Term. Notwithstanding anything to the contrary herein or in any related agreement, so long as the District Bonds are outstanding, the Landlord shall not terminate this Lease unless simultaneously with the termination of this Lease Landlord enters into a new lease of the Premises with a non-governmental entity capable of paying the special taxes. Nothing in this Section 34.12 shall otherwise limit Landlord's right of re-entry or Landlord's right to otherwise dispossess Tenant pursuant to the terms hereof without termination of this Lease.

The following provision shall be added to each of the parking ground leases:

- Tenant shall comply with ParkingCo's obligations under the Implementation Agreement, including without limitation Article IX (Campus Operation and Cooperation Policy) of the Implementation Agreement.

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