

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: September 21, 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 Officer Subject: **SUPPLEMENTAL REPORT – LOS ANGELES CONVENTION CENTER
AND EVENT CENTER TRANSACTION DOCUMENTS AND NEW HALL
DESIGN**

On September 10, 2012, our offices transmitted for your consideration (CF 11-0023) the Transaction Documents necessary to finalize the agreement between the City of Los Angeles (City) and the Anschutz Entertainment Group (AEG or Developer), for the upgrade and expansion of the Los Angeles Convention Center (LACC) and the construction of the Event Center on the current LACC West Hall site to house a National Football League (NFL) franchise.

These documents were negotiated over the course of a year, following Council approval of a Memorandum of Understanding (MOU) outlining the business terms for this project. Those negotiations were conducted without knowledge of the Developer's internal discussions concerning the sale of AEG and its assets, which were made public on September 18, 2012.

It is important to note that all such City contracts, for this project and for other economic development projects, personal services contracts, and other types contractual arrangements, contain provisions related to assignment rights. It is standard practice to provide for contingencies such as a developer transferring its rights and obligations to an affiliate or new owner, including City approval of such a transfer.

In light of information related to the possible sale of AEG, the City negotiating team reviewed the Implementation Agreement (IA) and other Transaction Documents submitted for Council review to determine whether there could be any unforeseen effects on the proposed New Hall and Event Center project. Three issue areas were identified for additional, detailed review:

- Adequacy of the Event Center finance requirements;
- Adequacy of the cross-default provisions; and
- Adequacy of the transfer and assignment provisions.

Event Center Finance Requirements

As noted previously, there is no City funding provided to the Event Center. A change in the Developer's status does not impact this condition.

It should be noted that this project does not move forward unless the Developer has a complete finance plan for the Event Center in place, including a loan from a senior lender and adequate Developer equity (IA, Section 3.3.3). The Event Center Ground Lease, Section 20.3, places a limit on the amount of the cumulative loan to value in the initial construction financing. The Developer may not borrow more than 60% of the cost to complete the Event Center, requiring that 40% of the cost be covered by an equity contribution of the Developer. This ensures that the Developer will have a significant personal interest in the success of the facility. The agreements also require that the Developer obtain completion guarantees on both the New Hall and Event Center, to ensure that the projects are built once construction begins. Finally, a Security Agreement requires letters of credit to ensure that there are sufficient funds to guarantee any short-fall in the identified funding sources, as well as a Gap Funding Agreement with the NFL Team as a Co-Obligor that requires the same.

All of these finance requirements must be in place before the close of escrow, before the City sells any bonds, and before construction commences on the project. A change in the Developer's status does not impact these requirements.

Cross-Default Provisions

The various leases and agreements that comprise the full set of Transaction Documents include provisions related to a default by the Developer. They also include cross-default provisions, which means that if a default occurs in one agreement, it may trigger default in others. Staff have reviewed these provisions to ensure that a change in ownership or management does not affect these provisions, and have determined that there is no effect.

Assignment Provisions

The assignment provisions in the IA and other transaction documents describe the terms for any transfer of the rights in these documents to another entity, whether that is an affiliate of the Developer or a new Party. All of these documents currently contain provisions that require City approval of assignments to entities other than affiliates of AEG, Phillip F. Anschutz, the NFL (including team owner), or financing lenders. The City may consider the character and financial capacity of the entity that would receive the assignment.

On review, staff have determined that revisions to the assignment language should be added to the IA and other Transaction Documents. The proposed language revisions are provided in Attachment A to this supplemental report and focuses on changes within the IA. Subsequent revisions to the other Transaction Documents will need to be made to ensure consistency with the changes to the IA attached herein.

First, the City should be able to consider the new Party's experience when conducting its review and granting approval, in addition to character and financial capacity. This allows the City to ensure that the new Party, including the full management team, would be capable of completing and operating the Event Center.

Second, staff have determined that the definition of "Affiliate" should be revised to refine the context for an automatic assignment to an affiliate. The originally proposed language recognized

that certain automatic assignment rights were available to affiliates of Philip F. Anschutz. Since it is likely that Anschutz will no longer be associated with this project, this language should be removed and replaced with requirements that limit automatic assignment to affiliates of L.A. Event Center LLC, L.A. Arena Land Company LLC, L.A. Convention Hall LLC, L.A. Parking Structures LLC or the NFL team and league. This results in a much more restrictive set of affiliates to whom an assignment can be made automatically.

Finally, it should be noted that the IA already provides the City with an opportunity to review and approve the status of the ownership of the Developer. Section 3.3 sets out conditions that benefit the City that must be met before escrow can close. One of the conditions is that the Developer must meet a set of "Representations and Warranties," as described in Section 14.1 of the IA. One of those Representations and Warranties is that Philip F. Anschutz is owner of the chain of entities known as the Developer. If the sale of AEG results in a change in ownership, then the City must approve of any such change in order to meet the requirements of this section.

RECOMMENDATION

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

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 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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Philip F. Anschutz,

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Implementation Agreement: Article XII

12.1 General. The qualifications and identity of the Developer 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 Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this IA, except as expressly set forth herein.

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12.2 Purpose of Restrictions on Transfer. This IA is entered into solely for 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 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 "Developer" (as defined in Section 1.4(b) of this IA) or (ii) any entity that directly or indirectly controls any of the Developer entities shall be deemed an assignment for purposes of this Article XII 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 Developer entities to be held by an individual or entity other than an Affiliate of such Developer entity (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). 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, all of the Developer entities shall be under the common control of the same entity or person during the term of this IA.

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

12.5 General Restrictions on Assignment. Except as otherwise expressly provided in this Article XII or the Event Center Ground Lease or the New Parking Structures Ground Leases, the Developer 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 or the New parking Structures Ground Leases, 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 Developer, which consent may be withheld in the sole but good faith discretion of the Developer.

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12.6 Assignment to Affiliates. Subject to the provisions of Section 12.3 above, any 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 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 Party, and (c) a copy of the assignment document, in which the assignee shall have assumed the obligations of such assignor Party applicable to the interest assigned. Such an assignment shall not relieve such assignor Party of liability for the performance of its obligations under this IA.

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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), 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 under the Event Center Ground Lease, it being understood that the assignee receiving interests under this IA shall be the same entity as the assignee receiving interest under the Event Center Ground Lease.

12.9 Assignment before Completion of New Parking Structures. Except as otherwise set forth in Section 12.6 (Affiliates), 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 interests under this IA shall be the same entity as the assignee receiving interest under the New Parking Structures Ground Leases.

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, as reasonably determined by the City.

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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, as reasonably determined by the City.

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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.

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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 the Developer, the City may withhold such consent on the basis of the following 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 assignee must be a person or entity of good character and reputation, and no director, officer or executive of such assignee 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, such entity or person shall be held to 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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(b) Financial Capability. The assignee 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 Developer shall have the right to address and rebut. If the assignee (together with its Affiliates) has a verifiable net worth of One Billion Dollars or more, it shall be deemed to have met this test; and

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(c) Experience. The assignee must have a minimum of five years experience in: (i) operating a public assembly facility that has served as the primary home venue for a National Football League franchise, (ii) operating a parking garage servicing a major sports and entertainment facility, or (iii) constructing and managing construction of a major public facility similar to a convention center, as applicable to the obligations which the assignee is assuming, 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 Developer, 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.

Event Center Ground Lease (and similar changes will be made to the parking ground leases):

19.1.8 Assignment before Completion of Event Center.

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19.1.8.1 Except as set forth in Section 19.1.6 (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.

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 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 as determined by Landlord in its reasonable discretion.

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 as reasonably determined by Landlord.

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19.1.11 Factors Affecting Assignment. Where 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 on the basis of the following 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 assignee must be a person or entity of good character and reputation, and no director, officer or executive of such assignee shall

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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, such entity or person shall be held to 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.

19.1.11.2 Financial Capability. The assignee 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 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. The assignee must have a minimum of five years experience in operating a public assembly facility that has served as the primary home venue for a National Football League franchise, and such experience must have occurred fully within the ten years preceding the proposed date of the assignment.