

## **OAK VIEW GROUP**

### **Responses to City of Seattle's April 25, 2017 Request for Clarification**

#### **Legal Team Questions/Requests**

1. Your proposal indicates Oak View Group, LLC ("Oak View") will be the lead party; however, the Goldman Sachs letter (proposal page 20) indicates that the project will be developed by a newly created ArenaCo. Please describe ArenaCo, including ownership. Also, assuming the City will require guaranties of ArenaCo's obligations under the Development Agreement and Lease Agreement, describe guarantors for those obligations, with the understanding that City will need further assurances of the credit worthiness of any entity(ies) providing the guaranties.

#### ***OVG Response:***

*OVG intends to form a new special purpose entity ("ArenaCo") for this transaction, which entity would be a counterparty to both the Lease Agreement and Development Agreement. ArenaCo would also be the borrower under the contemplated debt financing for the project. The membership interests in ArenaCo would be held by OVG and its investors in proportion to their respective equity investments in the project. ArenaCo's obligations will be guaranteed by an affiliate of the Madison Square Garden Company (NYSE: MSG). OVG is prepared to cause any guarantor to provide to the City satisfactory evidence of such entity's credit worthiness, with the understanding that OVG and City might need to agree upon reasonable measures to protect the confidentiality of any non-public financial information.*

2. The allocation to the City of cost overrun risk in your proposal is unlikely to be acceptable to the City. We invite you to offer more competitive terms relating to costs arising from force majeure or other events beyond the reasonable control of Oak View.

#### ***OVG Response:***

*OVG is willing to share in these categories of cost overruns with the City. The mechanism by which such costs would be allocated will be worked out in the negotiation of the definitive Lease Agreement.*

3. The scope of requested environmental indemnity in your proposal is unlikely to be acceptable to the City. We invite you to offer a more realistic scope of environmental indemnity or terms to address the risk, which could include but not be limited to investigations during the diligence phase or environmental insurance.

#### ***OVG Response:***

*OVG looks forward to working with the City on this issue as the parties further discuss the terms and conditions of the development agreement and the lease. It is common in negotiating an agreement involving property that is, or may be impacted by past releases of hazardous substances, to include risk management terms, such as indemnity language, to allocate that risk between the parties. It is also common for these environmental indemnities to provide that the current owner indemnifies the prospective buyer or lessor for the costs of addressing existing environmental issues because the prospective buyer or lessor is not*

*responsible for the releases that led to any existing contamination (or possibility of contamination) at the property. And, it is common for the indemnity to flow the other way post-purchase or lease—the new owner or lessor indemnifies the previous owner or in the case of a lease, continuing owner, for any releases or environmental issues that occur post-purchase or lease. OVG’s environmental indemnity language is consistent with this common practice. OVG appreciates the City’s suggestion of environmental insurance as a possible risk management tool. Unfortunately, the current environmental insurance products available on the market are expensive, full of caveats, carve-outs, disclaimers, and deductibles. Unless the City has an existing policy that can extend to protect OVG, OVG does not view such products as helpful risk management tools for it or the City. OVG’s goal is to work with the City to ensure that existing and future environmental risk is allocated fairly between the parties based on common terms. OVG stands ready to review and consider any specific changes, edits, or suggestions to the environmental indemnity language proposed at page 31 of OVG’s proposal.*

4. Will the long-term debt be secured by Oak View’s leasehold only, or are you requesting a mortgage on the City’s fee title?

***OVG Response:***

*OVG’s mortgage will only encumber OVG’s leasehold interest in the property, and will not encumber the fee interest owned by the City.*

5. Please describe the legal structure by which Oak View will convert historic tax credits into \$50M of capital funds, the anticipated timing of the funds, and alternative funding plan if less than \$50M are obtained.

***OVG Response:***

*OVG is still evaluating the mechanics and timing of different transaction structures that would allow OVG to realize the net present value of the historic tax credits, including bringing in a tax credit investor into the ownership structure or obtaining bridge financing secured by the tax credit benefits. OVG is committed to fund this component of the project budget from equity if the tax credit benefits are not obtained.*

6. Please describe the specific sources of the “City Tax Reinvestment of NASC Revenues” in addition to the legal structure by which the revenues will be converted into \$40M of capital funds.

***OVG Response:***

*This will be addressed in our response to questions 16 and 17 in the “Finance” section to be provided.*

7. Please describe the legal mechanism by which City tax revenue streams will be captured and then applied against Base Rent and funded into a City Arena Fund.

**OVG Response:**

*The processes for identifying the applicable revenue streams, the baseline revenue threshold (i.e., existing parking taxes), the rent credit approach, and the separation of revenues received for use in the maintenance and/or operation of the Property are better determined in a conversation about existing City structures, policies, practices and protocols. For example, some revenue streams are easily determined by the City upon the City's collection of the remitted taxes (e.g., the admissions tax or parking tax). Other revenue streams, e.g., sales tax or leasehold excise tax, may require a different approach given the way those funds are collected, distributed to various agencies, and remitted to the City. Timing of disbursements should also be structured in a manner that is most consistent with other City budgeting, appropriations, and reporting schedules.*

8. The financial terms of lease renewals in your proposal are unlikely to be acceptable to the City. We invite you to offer more competitive terms relating to base rent, incentive rent, reserve fund deposits and Development Financing Incentives applicable during renewal terms.

**OVG Response:**

*We believe that OVG has presented a highly-competitive economic package, based on realistic modeling assumptions and with low risk to the City. OVG does recognize that base rent payments should be adjusted on a regular basis by an escalator such as CPI, and we are willing to build that into our proposal. With respect to the reserve fund deposits, we note that OVG is taking all risk with respect to ongoing capital improvements, whether or not funded from reserve fund deposits. We look are prepared to work with the City on base and incentive rent terms in the context of our proposal as a whole, to negotiate an overall package of financial and non-financial obligations that provide a substantial net benefit and limited risk to the City.*

9. Taking into consideration the discussion of the Memorandum of Understanding Seattle Sports and Entertainment Facility on page 1 of the Request for Proposals, describe your anticipated plan and timing for seeking professional sports franchises as arena tenants. Describe how securing professional sports franchises as arena tenants, and the timing of the securing of such tenants, affects your proposal. In particular, describe any proposed incentives and/or consequences of obtaining or not obtaining a franchise or franchisees.

**OVG Response:**

*As OVG stated at its in-person meetings with City staff, we prefer to have any discussions about NBA and NHL team issues at the appropriate time directly with City staff.*

10. What is the anticipated public agency funding source and funding mechanism for the new South Parking Garage and Seattle Center Parking ?

**OVG Response:**

*Please see response to question 13 under “Design and Constructability Team Questions/Requests,” above.*

11. How is the parking garage a “separate structure apart from the Arena,” when it appears integrated into the design?

**OVG Response:**

*If the parking garage were not to be constructed, the proposed design of the arena (including the proposed atrium) would not require any material redesign above grade other than to remove any pedestrian sky bridge connections to such parking garage.*

12. Is obtaining that funding a contingency to your proposal?

**OVG Response:**

*No. Please see response to question 13 under “Design and Constructability Team Questions/Requests,” above.*

13. Is the cost of this garage included in your project costs?

**OVG Response:**

*Yes. The cost of the garage is included in our project costs.*

14. Describe your operational and financial expectations and plans for operation of the garage.

**OVG Response:**

*OVG plans to operate and maintain the garage, possibly through a contract with a third-party parking operator. Depending on the funding source(s) and the amount contributed, we will be open to sharing in those revenues at a to be determined rate. Although this is part of the arena project costs, we believe that the parking garage is an independent business unit. If a financial partner were to contribute to the parking garage, we would expect to have a revenue-sharing arrangement with such partner. If no financial partner comes forward, we remain prepared to construct and operate the garage independently. OVG will ensure that the garage is available for other resident organizations and festival and events at Seattle Center.*

15. Describe your expectations and plan regarding the three existing Seattle Center parking garages.

**OVG Response:**

*OVG proposes to take over operation of the three existing garages, including the staffing, cleaning and non-capital upkeep and maintenance. OVG will guarantee the City its current parking revenue streams from those garages and retain any excess revenues it generates from*

*the garages. We will operate the garages taking into consideration the existing resident organizations' needs and we hope to gain a further understanding of those relationships, but our goal is to provide as good, if not better access, pricing and service as is currently being offered.*

16. Provide more detail regarding a potential new development on the South Site (Thomas St/First Ave.), including interim use, timing, incentives/consequences of development/failure to develop, thoughts on public/private activation, and specifically whether you seek any public funding, tax increment or other public assistance.

***OVG Response:***

*As stated in the response to question 7 in "Design/Constructability Questions/Requests," above, OVG does not yet have a pre-determined plan for this location.*

17. At the time of selection of a single proposer the City will require a substantial deposit that is refundable only due to City default. We invite you to offer a modified deposit and contingencies proposal that meets this requirement.

***OVG Response:***

*OVG is unclear what "City default" means in this context, if the parties have not yet entered into signed documents. If the City is proposing that the parties enter into an exclusive negotiating agreement or similar instrument, OVG is open to discussion with the City as to an appropriate deposit and conditions for refundability in such context.*

18. (Vested Rights) The City seeks clarification on the difference between laws in effect on the date of the development agreement and entitlements in effect on the "Adoption Date."

***OVG Response:***

*This is a scrivener's error in the response text. OVG's goal is to vest its rights under the laws and other project approvals in effect as of the date of the Development Agreement and shield against adverse changes in law, including building moratoria.*

19. Describe the extent and scope of proposed signage plan and requirements, including any proposed extension to Seattle Center campus.

***OVG Response:***

*OVG recognizes the need for project signage to be architecturally and thematically compatible with the historic arena building and the Seattle Center campus as a whole, and to be appropriately scaled and lit as to integrate into the surrounding neighborhood. Accordingly, OVG would like to work with the City to develop an optimal signage program (primary project identification, monument signs, wayfinding signs, and signage for the parking structures) that*

*meets these objectives. To the extent that any variances from current code standards are necessary or desirable, OVG would like to approach such sign program in a holistic fashion as to provide a consistent visual identity for Seattle Center.*

20. Further describe the limitation on your transportation and access obligations being “commercially reasonable and feasible for a project of this size and type both from a cost and scheduling perspective.”

**OVG Response:**

*The intent of this limitation is that OVG’s mitigation obligations will be within the confines of applicable state law governing the City’s exercise of substantive mitigation authority under the State Environmental Policy Act (e.g., WAC 197-11-660(1)) and the nexus and proportionality provisions of other authorities governing exercise of municipal mitigation powers (e.g., Benchmark Land Co. v. City of Battle Ground, 146 Wn.2d 685, 49 P.3d 860 (2002)). Mitigation may be imposed only (a) if such mitigation is reasonable and capable of being accomplished, (b) to the extent attributable to identified adverse impacts of the project (i.e., not existing or baseline system deficiencies), and (c) after considering whether local, state, or federal requirements and enforcement otherwise mitigate impacts of the project.*

## **Transportation Team Questions/Requests**

1. Seattle Police intersection control is currently in use for KeyArena events at high traffic locations. This mitigation tool is not mentioned in proposal. Will this tool be part of the transportation plan?

***OVG Response:***

*Yes, as we develop our Transportation Management Plan we will provide full detail of the number of officers, location and hours to manage and expedite the flow of traffic around NASC at OVG's expense.*

2. Event genre information is not available in the proposal. This information is critical in planning for transportation. Vehicle occupancy rates, timing and travel routes vary dramatically per event. How will information be gathered and used in planning?

***OVG Response:***

*OVG is committed to provide information on parking, access routes, transit options, and bicycling and walking options to the NASC for all events. OVG did not have adequate time to prepare a detailed Transportation Management Plan (TMP) for submittal with the RFP, but we plan to hire a transportation consultant to assist us in the next phase of this process. The TMP will include regular surveys of event attendees to determine their mode of access and other information on traveling to and from the NASC.*

3. Daytime corporate arena events do not fall within the evening timeframe analysis in the proposal. How will these events and their unique impacts be mitigated?

***OVG Response:***

*OVG will prepare a mitigation plan to address impacts for all of its events during the entitlements phase of the process.*

4. The Seattle Center campus hosts several large summer festival events. How will Arena events be managed when scheduled in the same timeframe to minimize the impacts?

***OVG Response:***

*OVG will communicate with the resident organizations to understand the large summer festivals calendars, and in many cases, we anticipate the NASC will be a part of those programming plans. We will take every precaution to honor the existing festival schedules so as not to interfere or negatively impact their events.*

5. Summer festivals use Thomas Street, 2nd Ave, Republican and Warren adjacent to the Seattle Center campus for vender, artist, food and beverage, band gear, ice and other trucks and vehicles.

Several of these locations would not be available under the proposed plan. How will this be mitigated?

***OVG Response:***

*OVG does not understand this question, as to why these streets would not be available under our proposed plan.*

6. We currently encourage traffic egress headed South via 2nd Ave North towards downtown where additional points of freeway access do not impact the Mercer and Denny corridors. Will this route be added to the route mix?

***OVG Response:***

*Yes, 2nd Avenue will be an important post-event egress route emphasized in the TMP. 2nd Avenue was not included in the auto access section of the proposal because the focus of the analysis was on the pre-event ingress routes to parking facilities.*

7. The Proposal includes curbside changes which take away bus parking that is currently in heavy use in support of school children's programming at several resident organization venues. How will the project replace this asset?

***OVG Response:***

*OVG's proposal seeks to increase bus lanes and loading exchanges on 1st Avenue. OVG will work with the City to ensure that it is maximizing the bus and transit loading areas near the arena.*

8. Seattle Center's 5th Ave N. Garage is underutilized by KeyArena patrons but offers the quickest access to SR 99. How will the project improve use of this garage?

***OVG Response:***

*There are multiple ways to improve utilization, including using incentive pricing, engaging in more robust marketing and communications, and offering reserved parking. OVG will build a plan to increase utilization and continually refine its approach based on what works best in the marketplace.*

9. The Proposal highlights partnerships and investments to improve multi-modal access to the new Arena that depend on significant improvements to pedestrian, cycling and transit infrastructure. How do you plan to leverage other funding sources to make sure these projects are fully realized?

***OVG Response:***



*OVG seeks clarification as to the reference made to our proposal above. OVG will fund all multi-modal access solutions on the arena site, as discussed elsewhere in OVG's proposal. See OVG's response to question 6 in "Design/Constructability Questions/Requests," above.*

10. Seattle Center's Master Plan and the Uptown UDF encourage redevelopment of the 1300-stall Mercer St. parking garage. How does your proposal take this into account?

**OVG Response:**

*OVG believes its proposal has the clearest and quickest path to getting built. We also believe the NASC will be a catalyst to the next stages of the Master Plan for Seattle Center. OVG believes its 850 parking stalls will give the City greater flexibility to redevelop the Mercer Garage, because there will be alternative parking for the arts organizations on Mercer that heavily rely on that garage. If that parking garage is removed from the parking inventory, OVG would be seeking an adjustment in the payments we make to the City for the revenue derived from that garage.*

11. Use of the Monorail features prominently in your proposal. Can you describe in more detail how you plan to increase the service and capacity of the Monorail, and whether you have allowed budget for this?

**OVG Response:**

*OVG will have a robust communication plan with its customers about public transit (including the Monorail) and its convenience and benefits. We will financially incentivize public transit ridership to and from our events, which might take the form of ticket bundling. We will work with the Monorail to integrate its ticketing into OVG's system for a seamless buying process. OVG will also investigate the potential of adding covered walkways along the south side of Fisher Pavilion to offer additional rain protection for riders to the arena.*

12. For Figure 3 (Estimated Travel Mod to New Arena) on page 92, does that represent a forecast, or a target (meaning the desirable mode share)?

**OVG Response:**

*Yes, this represents a forecast.*

13. How was the "excess capacity" data on Figure 4 (also on page 92) calculated for parking, and more specifically, transit?

**OVG Response:**

*Excess capacity for parking and transit was determined from available information on parking utilization and transit ridership on routes in the Seattle Center vicinity.*

14. If you're showing a surplus of parking within a 15-minute walkshed of the arena site, why are you proposing an additional 850 space parking garage?

***OVG Response:***

*A world class arena requires a parking garage that is convenient, safe and easy to access. While OVG will encourage transit, bicycling, and walking to and from events, a segment of event attendees will drive to the NASC. Moreover, to best position the arena to attract an NBA or NHL franchise as an anchor tenant, adjacent parking as a component of an overall transportation plan is a key consideration for the leagues' assessment of customer and player experience. It is also a way for us to have additional comfort that we will have adequate parking if the Mercer Garage is removed.*

15. The analysis summary on page 105 of your proposal lists several actions, but it's unclear which actions OVG would play a proactive role in, or provide financial support for. Can you be more specific about this?

***OVG Response:***

*See OVG's response to question 6 in "Design/Constructability Questions/Requests," above.*