

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this "Agreement") is effective as of March 22, 2017, and is entered by and between Phoenix Arena Development Limited Partnership ("Company") and City of Phoenix, a municipal corporation ("Recipient").

The parties to this Non-Disclosure Agreement have agreed to the following terms governing the confidentiality of certain information Company may disclose to Recipient.

1. For their mutual benefit, the parties intend to discuss and disclose certain information of Company for the purpose of evaluating the current and future status of the downtown arena. Both parties acknowledge that certain information disclosed by Company may be confidential and, if so, must be protected by Recipient to the extent allowed by applicable law.

2. "Confidential Information," as used herein, means including, without limitation, any business plans, business opportunities, marketing plans, corporate information, lists of names or classes of customers or employees, financial data, strategic planning, lists of suppliers, any inventions, disclosures, processes, systems, methods, formulae, devices, patents, patent applications, trademarks, intellectual properties, instruments, materials, products, patterns, compilations, programs, techniques, source codes, mask works, costs of production, prices or financial statements that: (a) derives independent economic value, actual or potential, for not being generally known to the public or to other persons including employees of Company or (b) is the subject of efforts to maintain its secrecy. However, Confidential Information will not include information that: (i) is now or subsequently becomes generally available to the public through no wrongful act or omission of the Recipient or anyone to whom the Recipient disclosed such information in accordance with Section 3 and Section 4 of this Agreement; (ii) the Recipient can demonstrate by its written records to have had rightfully in its possession prior to disclosure to the Recipient by Company; (iii) can be demonstrated by the Recipient's written records to have been independently developed by the Recipient without use, directly or indirectly, of any Confidential Information; (iv) the Recipient rightfully obtains from a third party who has the right to transfer or disclose it; or (v) information disclosed pursuant to Section 5 of this Agreement. For information to be considered Confidential Information, Company must designate the information as such prior to, during or immediately after disclosure. Company must mark the material manifestations of its Confidential Information as being confidential and proprietary so that Recipient is aware that its receipt is governed by the terms of this Agreement. The foregoing notwithstanding, the terms of this Agreement also pertain to information not so marked if the Disclosure informs the Recipient of their confidential nature or if the Recipient otherwise knows or should reasonably be expected to know of their confidential nature.

3. Recipient will not disclose any Confidential Information it receives from Company to any person or entity except with the written consent of Company or as otherwise provided herein or required by law.

4. Recipient may disclose Confidential Information to its employees and consultants if any, who have a need to know and who have been informed of, and agree to abide by, Recipient's obligations under this Agreement.

5. Company acknowledges, accepts and agrees that Recipient is subject to the Arizona Open Meeting Law, Arizona Revised Statutes (A.R.S.) §§ 38-431 through 38-431.09, as amended from time to time (the "Open Meeting Law") and the Arizona Public Records Act, A.R.S. §§ 39-121 through 39-161, as amended from time to time (the "Public Records Law"). Pursuant to the Open Meeting Law the Phoenix City Council may only take action in a duly noticed public meeting, and must conduct its discussion of such action in the public meeting. Pursuant to the Public Records Law, public disclosure applies under the facts and circumstances. Notwithstanding anything in this agreement to the contrary, Recipient is authorized to disclose information and documents as may be required by applicable law. Recipient will not disclose information or documents identified by Company as confidential without the consent of the Company unless Recipient determines that such disclosure is required by law or necessary for the Phoenix City Council to take legal action. Before making any such disclosure, Recipient will promptly notify Company of any request for disclosure so that Company may have the opportunity to obtain a court order to protect such information at the Company's sole cost and expense. If Company fails to obtain and deliver to the Recipient a court order to protect against disclosure of the Confidential Information within fourteen (14) calendar days from the date of recipient's notice to Company, the Company will be deemed to have consented to release the information and Recipient will be authorized to release the requested information.

6. All Confidential Information disclosed by Company to Recipient in tangible form (including, without limitation, information incorporated in computer software or held in electronic storage media) is and will remain property of Company. All such Confidential Information must be returned to Company promptly upon the written request of Company and may not thereafter be retained in any form by Recipient. The rights and obligations of the parties under this Agreement will survive any such return of Confidential Information.

7. Either party may terminate this Agreement by written notice to the other party. Notwithstanding any such termination, all rights and obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination.

8. Neither party hereto shall in any way, or in any form disclose, publicize or advertise in any manner the discussions that gave rise to this Agreement or the discussions or negotiations covered by this Agreement without the prior written consent of the other party or as otherwise required by law.

9. This Non-Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to its choice of law provisions. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed herein.

IN WITNESS WHEREOF, the parties have executed this Non-Disclosure Agreement as of the date first above written.

COMPANY:

By: [Signature]
Name: Jason Paulg
Title: President

CITY OF PHOENIX, a municipal corporation
Ed Zuercher, City Manager

By: [Signature]
Name: JOHN M. CHAN
Title: PHOENIX CONVENTION
CENTER DIRECTOR

ATTEST:

[Signature]
City Clerk



APPROVED AS TO FORM:

[Signature]
Acting City Attorney TGS

2017 MAR 30 PM 3:33

CITY CLERK DEPT.