

CITY CLERK ORIGINAL

C-10267
09/08/2015

GLENDALE REPRESENTATION AGREEMENT

This Glendale Representation Agreement ("Agreement") is made and entered into as of the 8th day of September, 2015 by and between Beacon Sports Capital Partners, LLC ("Beacon Sports"), 1233 Highland Avenue, Suite B, Needham, MA 02492 and the City of Glendale, AZ ("Glendale") 5850 W. Glendale, 4th Floor, Suite 431, Glendale, AZ 85301, jointly, the "Parties".

WITNESSETH:

This Agreement is made with reference to the following facts:

A. Beacon Sports is engaged in the business of providing investment banking and financial advisory services to professional sports franchises and companies in the United States;

B. Glendale currently owns the Gila River Arena ("Arena") located in Glendale, AZ and has an existing management and lease agreement with Ice Arizona, LLC dba the Phoenix Coyotes hockey club ("IceArizona") of the National Hockey League ("NHL"). Glendale is seeking to develop a Request for Proposal ("RFP") process for the future lease and management of the Arena to prospective Venue Managers ("Venue Managers") in order to improve the economic and business outcome of Glendale's ownership of the Arena;

C. Glendale desires to retain Beacon Sports as its financial advisor to perform advisory services as are mutually agreed upon between the two parties.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

1. **ENGAGEMENT.** Glendale hereby retains Beacon Sports as its Financial Advisor.
2. **DUTIES OF BEACON SPORTS.** Beacon Sports shall act as a liaison and intermediary for Glendale. Beacon Sports will perform the following:
 - i. Review all existing business contracts related to the operations and the management of the Gila River Arena ("Arena") including but not limited to the current arena management agreement with IceArizona, the concessionaire agreement, event booking agreement, and any others agreements and reports deemed significant to the RFP process;
 - ii. Assist the City in the preparation of an RFP for the management of the Arena. The RFP would include objectives outlined by the City of Glendale regarding its vision and objectives with respect to the future utilization and operations of the Arena;
 - iii. Solicit inquires of interest and formal responses to the RFP. Beacon Sports will assist all interested and responsive parties in their due diligence and review process;
 - iv. Arrange and attend meetings with responsive bidders, including tours of the Arena. ;
 - v. Review and analyze all responsive bids and inquiries and make recommendations to the City with regard to the benefits of each bid. Meet with Glendale to discuss the RFP process including comparing and contrasting the most advantageous offers submitted in terms of projected arena usage and financial/economic benefits to the City;
 - vi. Assist Glendale in the review and decision making process including providing a recommendation in terms of selecting a venue manager to negotiate on an exclusive basis;
 - vii. Assist in the negotiation of a new arena management agreement;
 - viii. Assist in the closing and execution of an Arena Management Agreement between the City of Glendale and the venue manager selected by Glendale;

- ix. Assist, where appropriate, in the transition of the Arena's operations to the selected venue manager; and,
- x. Any other services mutually agreed upon.

2.1 NO AGENCY. Beacon Sports acknowledges and agrees that it is not an agent of Glendale and may not bind or obligate Glendale in any way.

2.2 PROGRESS. Close cooperation and frequent communication improve the ability to assist and complete the work of the Parties. The Parties agree to keep each other informed as to the status of all contacts, discussions, and negotiations with any prospective Venue Managers. Beacon Sports will use its best efforts and endeavor to assist Glendale in obtaining and presenting to Glendale qualified offers on terms that are acceptable to Glendale. However, Beacon Sports, makes no representation regarding the successful outcome of the RFP. Furthermore, Glendale, in its sole and absolute discretion may, at any time and for any reason, including no reason, terminate or cancel any RFP at any time and for any reason

- 3. **TERM.** The initial term of this Agreement ("Initial Term") shall commence on the date set forth above and terminate ten (10) months thereafter. The entire time period that this Agreement is in effect, and any portion thereof, shall be referred to herein as the "Term".
- 4. **TERMINATION.** Glendale may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.
- 5. **COMPENSATION.** The following sets forth the Parties agreement with respect to fees and expenses, the payment of costs, and the timing and content of billing statements

5.1 FEE BASIS. The rate for this matter shall be \$400 per hour each for the services of Richard W. Billings, Jr., Gerald G. Sheehan, and Christopher C. Billings.

5.2 RETAINER.. Upon execution of this Agreement, Glendale shall pay Beacon Sports a\$25,000 retainer to be applied towards its services to be performed under the Agreement at the hourly rate detailed above.

5.3 COSTS AND EXPENSES. Glendale will reimburse Beacon Sports for out-of-pocket expenses relating to its services hereunder, including travel, living, lodging, etc. within thirty (30) days after receipt by Glendale of appropriate documentation supporting the expenses. Beacon Sports will provide reasonable notice to Glendale in advance of any cost or expense greater than \$500.

5.4 BILLING. Beacon Sports will submit detailed invoices including its services performed to Glendale on a monthly basis. Glendale will remit payment to Beacon Sports within thirty days (30) after receipt of such invoices.

6. **CONFIDENTIALITY.** Beacon Sports acknowledges that all documents provided to Glendale may be subject to disclosure by laws related to open public records. Consequently, Beacon Sports understands that disclosure of some or all of the items subject to this Agreement may be required by law. In the event Glendale receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Beacon Sports, Glendale agrees to provide Beacon Sports with notice of that request, which shall be deemed given when deposited by Glendale with the USPS for regular delivery to the address of Beacon Sports specified below for notices. Within ten (10) days of notice by Glendale, Beacon Sports will inform Glendale in writing of any objection by Beacon Sports to the disclosure of the requested information. Failure by Beacon Sports

to object timely shall be deemed to waive any objection and any remedy against Glendale for disclosure. In the event Beacon Sports objects to disclosure within the time specified, Beacon Sports agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which Beacon Sports does not object thereto. Furthermore, Beacon Sports agrees to indemnify and hold harmless Glendale from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending Glendale in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Agreement.

Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, in the event necessary and/or requested by Beacon Sports, Glendale may enter into a separate agreement setting forth the rights and obligations of Glendale, Beacon Sports and the third-party regarding the confidentiality of information.

7. MUTUAL REPRESENTATIONS AND WARRANTIES.

(i) Beacon Sports warrants and represents that (a) it has full authority to make and perform this Agreement in accordance with its terms; (b) the making or performance of this Agreement by Beacon Sports will not violate any rights of, agreements with, or obligations to any third parties; (c) Beacon Sports will comply with all applicable laws, rules and regulations relating to the Agreement; and (d) Beacon Sports will not circumvent or otherwise frustrate the intent of this Agreement.

(ii) Glendale warrants and represents that (a) it has full authority to make and perform this Agreement in accordance with its terms; (b) the making or performance of this Agreement by Glendale will not violate any rights of, agreements with or obligations to any third parties; (c) Glendale will comply with all applicable laws, rules and regulations relating to the Agreement; and (d) Glendale will not circumvent or otherwise frustrate the intent of this Agreement.

8. MUTUAL INDEMNIFICATION. Beacon Sports and Glendale each agree the party at fault shall hold the other party harmless from and against and shall indemnify fully, if applicable, from any and all losses, claims, damages, liabilities, costs, expenses and fees, including, without limitation, reasonable attorneys' and paralegals' fees incurred in the context of any court, arbitration, administrative or other proceeding, together with the costs incurred in such proceeding (individually and collectively, "Costs") arising from or relating to breach of this Agreement by such indemnifying party.

9. PUBLIC ANNOUNCEMENTS. Notwithstanding anything contained in this Agreement to the contrary, subject to regulatory restrictions, Beacon Sports shall have the right to publicly announce and/or advertise any agreement hereunder for which a closing has occurred. Notwithstanding the foregoing, Beacon Sports shall provide Glendale the opportunity to review and comment on any announcement prior to announcement. Glendale shall identify Beacon Sports as its consult in any key public announcements it may make regarding any completed assignment hereunder.

10. GOVERNING LAW. This Agreement and all matters related hereto shall be governed by the laws of the State of Arizona without reference to conflicts of laws principles or principles of comity.

11. NOTICES. Any notice from one party to the other sent and received within the United States, shall be sent (a) via first class certified mail, return receipt requested or (b) via nationally-recognized overnight courier capable of verifying delivery, marked for next business day delivery and shall be deemed received upon the earlier of (i) the date of actual receipt, (ii) the date such mail is refused (iii) the date such mail is returned or (iv) three (3) days following deposit with the U.S. Postal Service. Notices sent or received outside the United States shall be sent via internationally-recognized overnight courier capable of verifying delivery, marked for second business day delivery and shall be deemed received upon the earlier of (i) the date of actual receipt or (ii) two (2) business days following deposit with such courier. Herein, "business day" means a day on

which such courier is open for business within the jurisdiction to which notice is delivered. Notices shall be in writing, addressed to the person to be noticed at the address below or to such other person and/or address as may be designated from time to time in writing by such party to be noticed, and all applicable courier or postage fees shall be prepaid by the noticing party.

If to Beacon Sports Capital Partners. LLC:

1233 Highland Avenue, Suite B
Needham, MA 02492
Attention: Gerald G. Sheehan.
Phone: (781) 449-4996

If to Client

5850 W. Glendale, 4th Floor
Glendale, AZ 85301
Attn: City Manager
Phone: (623) 764-4099

Copy to:

5850 W. Glendale, Ste. 450
Glendale, AZ 85301
Att. City Attorney
Phone: (623) 930-9530

12. **SEVERABILITY.** The invalidity or illegality of any provision or term contained in or made a part of this Agreement shall not affect the validity of the remainder of this Agreement.
13. **ENTIRE AGREEMENT/CONSTRUCTION.** This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter hereof, and there are no representations or understandings between the parties except as provided herein. This Agreement may not be amended or modified in any way except by writing duly executed by both parties. This Agreement may not be assigned by either party except upon prior written agreement by the other party. Furthermore, both parties have negotiated the terms of this Agreement and have had the opportunity to engage counsel to review the same. Accordingly, this Agreement shall not be construed more strongly in favor or against either party hereto. The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.
14. **WAIVER.** No waiver of a breach of or default under any provision of this Agreement shall be deemed a waiver of any other breach or default under the same or any other provision of this Agreement.
15. **FAX COUNTERPARTS.** The parties may enter this Agreement by signing any one or more counterparts, all of which shall constitute one and the same instrument. This Agreement shall become effective when one or more counterparts shall have been executed by each party and delivered to each other party. This Agreement may be delivered to such other parties via fax. Any party's faxed signature shall be deemed an original and binding signature as of the date set forth above.
16. **HEADINGS.** The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.
17. **AUTHORITY.** The signatories to this Agreement are the duly authorized agents of the parties hereto, and the transactions effected hereby have been duly authorized by all appropriate action of each party.
18. **FOREIGN PROHIBITIONS.** Beacon Sports certifies under A.R.S 35-391 et seq., and 35-393 et seq., that it does not have "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.
19. **IMMIGRATION LAW COMPLIANCE.** Beacon Sports warrants, to the extent applicable under A.R.S. 41-4401, compliance with all federal immigration laws and regulations that relate to their

employees as well as compliance with A.R.S. 23-241(A) which requires registration and participation with E-Verify Program.

20. **CONFLICT.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

THE PARTIES HERETO have caused this Agreement to be executed as of the date indicated above.

BEACON SPORTS CAPITAL PARTNERS, LLC

BY: _____
Richard W. Billings, Jr.
Founder and Managing Principal

CITY OF GLENDALE, AZ

BY: _____
Richard Bowers
Acting City Manager

ATTEST:

City Clerk

Approved as to form

City Attorney