

## MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (hereinafter the "Memorandum") is made and entered into this \_\_\_ day of June, 2006, by and between LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a municipal governmental body within the Commonwealth of Kentucky, with the address at the Metro Hall, 4<sup>th</sup> Floor, 527 West Jefferson Street, Louisville, KY 40202, (hereinafter "Metro Louisville") and the LOUISVILLE ARENA AUTHORITY, INC., a Kentucky non-stock, non-profit corporation, with an address of 3500 National City Tower, 101 S. Fifth Street, Louisville, KY 40202, (hereinafter the "Arena Authority").

### W I T N E S S E T H:

WHEREAS, the Louisville Arena project, under the auspices of the Arena Authority, a public project intended for multiple uses as a public, recreational, cultural, and sports facility ("Project"), will significantly benefit Metro Louisville and the Commonwealth of Kentucky by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in the area where the Project will be located; and

WHEREAS, the Arena Authority was created in order to facilitate public improvements and publicly promoted private area improvements and complimentary amenities, to serve as an economic development stimulus in Metro Louisville and the Commonwealth as a whole and for the purpose of creating, financing, developing and overseeing the construction, management and operation of a multi-use arena to be constructed in Louisville, Jefferson County, Kentucky; and

WHEREAS, the 2006 General Assembly enacted House Bill 380 authorizing the expenditure of up to seventy-five million dollars (\$75,000,000) in state-supported bonds to pay a portion of the cost of constructing the Project and designated the Finance and Administration Cabinet of the Commonwealth as the budget unit responsible for the administration of the state funds for the Project, funds which will be obtained through the issuance of bonds and/or notes supported by state appropriations; and

WHEREAS, the release of the state-supported bond funds to the Arena Authority on or near July 1, 2006, is contingent upon the execution of various agreements, in form and substance satisfactory to the Commonwealth of Kentucky, acting by and through its Finance and Administration Cabinet, including an agreement between the Arena Authority and Metro Louisville setting forth the amount of financial support for the Project to be provided by Metro Louisville; and

WHEREAS, Metro Louisville has adopted a resolution authorizing and guaranteeing payments to the Arena Authority which will be used for the purpose of financing a portion of the Project by authorizing the Mayor to enter into this Memorandum;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of which is hereby acknowledged by the parties hereto, Metro Louisville and the Arena Authority agree as follows:

**SECTION 1.        DEFINITIONS**

Definitions. For the purposes hereof, the following words and phrases shall have the meanings ascribed thereto:

“Authorizing Resolution” means that Resolution adopted by Louisville Metro Council on June \_\_\_\_, 2006 that authorizes and guarantees the payment of funds, as described in Exhibit A attached hereto, from Metro Louisville to the Arena Authority for the purpose of financing a portion of the Project;

“Budget Act” shall mean House Bill 380 of the General Assembly of the Commonwealth of Kentucky, 2006 Regular Session, as enacted and vetoed in part;

“Code” shall mean the Internal Revenue Code of 1986, as amended, or as hereafter amended, including valid Regulations of the Department of the Treasury thereunder and Rulings of the Commissioner of the Internal Revenue Service thereunder; reference to a provision of the Code by number or letter includes reference to any law hereafter enacted as an amendment to or substitution for such provision; words which are used herein and in the Code shall have the meaning given to such words in or pursuant to the Code;

“Commonwealth” shall mean the Commonwealth of Kentucky and all governmental agencies, authorities and political subdivisions thereof, including without limitation the Finance and Administration Cabinet, a governmental agency of the Commonwealth of Kentucky;

“Laws” shall include all laws, statutes, court decisions, rules, orders and regulations of the United States of America, the States thereof and of their respective counties, municipalities and other subdivisions, and shall include without limitation the laws, statutes, court decisions, rules, orders and regulations of any other applicable jurisdiction;

“Memorandum” shall mean this Memorandum of Agreement, by and between Metro Louisville and the Arena Authority;

“Payments” shall mean the guaranteed distribution of funds, directly or through appropriate debt instruments of its own or one or more of its agencies, to support a portion of the development, financing and construction of the Louisville Arena Project paid by Metro Louisville to the Arena Authority each November 1, commencing November 1, 2010 and concluding November 1, 2039, pursuant to Section 2 of this Memorandum and reflected in the schedule attached hereto as Exhibit B;

“Person” shall include an individual, firm, trust, estate, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof; and

“Project” shall refer to the development, construction and financing, including but not limited to all reasonable and/or necessary costs incurred or estimated to be incurred in connection with and any such costs incidental to the development, construction and financing, of the downtown Louisville Arena, a public project intended for multiple uses as a public, recreational, cultural, and sports facility.

## **SECTION 2. OBLIGATIONS OF METRO LOUISVILLE**

Metro Louisville covenants and agrees to undertake the following obligations:

A. Pursuant to the Authorizing Resolution, Metro Louisville agrees to disburse to the Arena Authority the Payments conditioned upon the following:

(i) the execution of this Memorandum, in form and substance satisfactory to the Commonwealth, by the parties hereto;

(ii) the execution of an agreement between the Commonwealth and the Arena Authority governing the distribution of up to seventy-five million dollars (\$75,000,000) of bond funds that will support a portion of the Project as authorized in the Budget Act and attached hereto as Exhibit \_\_\_\_;

(iii) the execution of an agreement between the Commonwealth and the Arena Authority governing the application of state tax-increment financing or other non-tax income revenues that will support a portion of the Project, a copy of which will be incorporated and attached hereto as Exhibit \_\_\_\_;

(iv) the execution of an agreement, in form and substance satisfactory to the Commonwealth, between the University of Louisville and the Arena Authority regarding scheduling priorities for men's and women's basketball games and practices, sharing of catering and concession revenue, allocation and pricing of parking spaces, marketing

and allocation of revenues from suites and premium seats, arena advertising, signage, banners and branding, ticket prices and surcharges, arena development team membership, other events and uses of the arena, rental rates, merchandise revenue sharing and such other matters as the Arena Authority and the University of Louisville deem appropriate, as required by the Budget Act, a copy of which will be incorporated and attached hereto as Exhibit \_\_\_\_;

(v) the receipt of the items required to be submitted by the Arena Authority as set forth in Section 3 below;

B. Metro Louisville shall cooperate fully with the Arena Authority in order to facilitate the obligations set out in this Memorandum.

### **SECTION 3. OBLIGATIONS OF THE ARENA AUTHORITY.**

The Arena Authority covenants and agrees to undertake the following obligations:

A. The Arena Authority hereby acknowledges that the Budget Act authorizes the expenditure of state-supported bond funds for this Project and that the Arena Authority will comply with all terms and conditions set forth in the agreement between the Commonwealth and the Arena Authority attached hereto as Exhibit \_\_\_\_.

B. The Arena Authority hereby acknowledges that any debt issued by the Arena Authority or any other entity other than Metro Louisville, including any industrial revenue bonds that may be issued on a conduit basis by Metro Louisville, shall not constitute a debt, pledge of the full faith and credit, or a moral obligation of Metro Louisville beyond those amounts identified as Payments in the Authorizing Resolution and this Memorandum.

C. The Arena Authority shall provide to Metro Louisville:

(i) a summary overview of the Project, including estimated budget and timetable for completion, which can include documents previously prepared and submitted to the Commonwealth and Metro Louisville;

(ii) the projected and/or contemplated source and disposition of other funds to be used to complete the Project, including identification of any other funding sources, including but not limited to the agreements referenced in Section 2 above;

(iii) a copy of the articles, resolution, ordinance or other appropriate document(s) pursuant to which the Arena Authority was formed;

(iv) any and all other documents, instruments, or assurances relating to the Project or the parties as may be reasonably requested by Metro Louisville.

D. The Arena Authority shall provide to Metro Louisville in a timely manner copies of any semi-annual progress reports submitted to the Commonwealth, pursuant to the terms and conditions of the agreement between the Commonwealth and the Arena Authority attached hereto as Exhibit \_\_\_\_.

E. The Arena Authority shall retain all records relating to the Project for five (5) years following the completion of the Project.

F. A copy of the Arena Authority resolution or copy of the minutes as certified by the authorized Board officer, authorizing the execution of this Memorandum will be attached hereto as Exhibit \_\_\_\_.

G. The Arena Authority acknowledges that the signature of its counsel upon this Memorandum evidences that this Memorandum has been duly authorized, executed and delivered by the Arena Authority and is enforceable against the Arena Authority in accordance with its terms.

H. The Arena Authority shall comply with all applicable federal and state statutes, local laws and ordinances, executive orders, regulatory requirements and policies.

I. The Arena Authority shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that, for the purposes of federal income taxation, interest paid on all tax-exempt bonds issued in support of the Project shall be excludable from gross income under any valid provision of law.

J. The Arena Authority shall not permit at any time or times any of the proceeds of any tax-exempt obligations issued to fund the Project to be used to acquire or to replace funds which were used directly or indirectly to acquire any securities or obligations which are "higher yielding investments" (as defined in the Code), the acquisition of which would cause a debt obligation to be an "arbitrage bond" as defined in Sections 103(b)(2) and 148 of the Code as then in effect, unless, under any valid provision of law hereafter enacted (i) such action would not cause arbitrage bond status to occur, or (ii) the interest paid by the Arena Authority on the debt obligation will be excludable from the gross income of a recipient thereof for federal income tax purposes without regard to compliance with the provisions of Section 103(a) of the Code.

K. The Arena Authority will not make any additional pledge or assignment of or create or suffer any lien or encumbrance upon the Payments, except as provided in the Authorizing Resolution and in this Memorandum.

L. The Arena Authority shall fully cooperate with Metro Louisville and any and all other parties necessary to facilitate the obligations set out in this Memorandum.

#### **SECTION 4. MUTUALITY OF OBLIGATIONS**

A. The parties agree that the obligations imposed upon the parties are for the benefit of the parties and that the timely fulfillment of each and every obligation in accordance with this Memorandum is necessary. The failure of a party to fulfill its obligations under this Memorandum or the failure of any event to occur by the date established by this Memorandum shall constitute a breach of this Memorandum unless the fulfillment of such obligation is waived or modified by written agreement of the parties.

B. In the event of default by the Arena Authority, including the failure to meet any material time deadlines set out in documents later incorporated into this Memorandum, Metro Louisville may declare this Memorandum void *ab initio* without further obligation to the other parties to this Memorandum and may commence appropriate legal or equitable action to enforce its rights under this Memorandum, including action for recovery of funds expended hereunder.

C. Except as may otherwise be provided herein, each party to this Memorandum shall be solely responsible for any costs incurred in fulfilling its obligations under this Memorandum, and no party shall have any claim against any other party for reimbursement of such costs, whether or not any party is in default.

D. Waiver by either party of performance by the other party of any of the provisions of this Memorandum shall not be construed as a waiver of any further right to insist upon full performance of the terms of this Memorandum.

E. Once this Memorandum is executed, the parties may terminate the agreement only for just cause.

#### **SECTION 5. TERM OF MEMORANDUM**

This Memorandum shall be effective as of the date first written above and shall terminate upon completion of the schedule of Payments attached hereto and identified in Exhibit B, unless otherwise extended by the parties.

#### **SECTION 6. MISCELLANEOUS PROVISIONS**

A. This Memorandum may be signed by each party upon a separate copy, and in such case one counterpart of this Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this

Memorandum or the terms and conditions hereof to produce or account for more than one of such counterparts.

B. The headings set forth in this Memorandum are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Memorandum.

C. The terms and conditions of this Memorandum shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Memorandum, which assignment shall be prohibited except with the prior written consent of the parties hereto.

D. This Memorandum shall not be amended, modified, or supplemented except by a written agreement duly executed by both parties.

E. This Memorandum sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof.

F. Time is of the essence in the performance of each of the terms and conditions of this Memorandum.

G. The parties agree that before filing any suit, action or proceeding with respect to a dispute arising out of or related to the terms and conditions of this Memorandum, or any other agreement subsequently executed which arises or derives herefrom, they will attempt to resolve said dispute by participating in good faith in non-binding mediation.

H. The parties agree that any suit, action or proceeding with respect to this Memorandum may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Louisville, Jefferson County, Kentucky; or the United States District Court for the Western District of Kentucky, Louisville Division.

I. All notices, requests, demands, waivers, and other communications given as provided in this Memorandum shall be in writing, and shall be addressed as follows:

If to Metro Louisville: Mayor  
Metro Hall, 4<sup>th</sup> Floor  
527 West Jefferson Street  
Louisville, Kentucky 40202

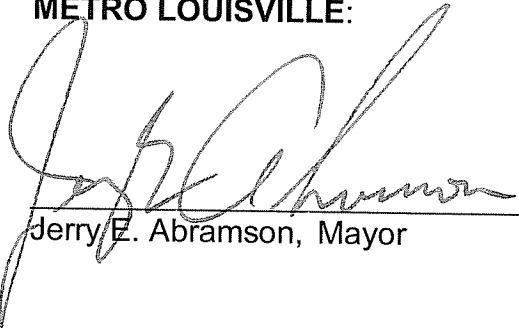
If to the Arena Authority: Louisville Arena Authority, Inc.  
3500 National City Tower  
101 S. Fifth Street  
Louisville, Kentucky 40202  
Attn: Chairman

In WITNESS WHEREOF, Metro Louisville and the Arena Authority have executed this Memorandum effective as of the date first above written.

**METRO LOUISVILLE:**

Approved as to Form and Legality:

\_\_\_\_\_  
Honorable Irv Maze  
Jefferson County Attorney

  
\_\_\_\_\_  
Jerry E. Abramson, Mayor

**ARENA AUTHORITY:**

Approved as to Form and Legality:

LOUISVILLE ARENA AUTHORITY,  
INC.

\_\_\_\_\_  
Counsel for Arena Authority

\_\_\_\_\_  
Chair



**Exhibit B**

**Metro Louisville Schedule of  
Annual Guaranteed Payments**

**2010-2019    \$9,800,000**

**2020-2029    \$10,800,000**

**2030-2039    \$10,300,000**