

RESOLUTION NO. 81 SERIES 2006

A RESOLUTION RATIFYING AND APPROVING A MEMORANDUM OF AGREEMENT RELATING TO FINANCING A PORTION OF THE LOUISVILLE ARENA PROJECT BY AND BETWEEN LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AND THE LOUISVILLE ARENA AUTHORITY, INC.

**SPONSORED BY: Councilman Kevin Kramer
Councilwoman Julie Raque Adams
Councilman Robin Engel
Councilman George Unseld
Councilwoman Tina Ward-Pugh
Councilman Leonard Watkins
Councilman David Tandy**

WHEREAS, the Louisville Arena project, under the auspices of the Louisville Arena Authority, Inc. ("Arena Authority"), a public project intended for multiple uses as a public, recreational, cultural, and sports facility ("Project"), will significantly benefit 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 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; 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 after 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 Louisville/Jefferson County Metro Government ("Metro Louisville") and the Arena Authority setting forth the amount of financial support for the Project to be provided by Metro Louisville either through guarantees and/or tax-increment financing revenues; and

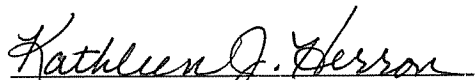
WHEREAS, the Commonwealth of Kentucky intends to invest in the Project, thereby serving as a catalyst for downtown Louisville, more particularly, the neighboring six square mile (2.45 miles by 2.45 miles) area that is calculated by going 1.225 miles from the Arena to the East and West and 2.45 miles from the Arena to the South (the "Development Area");

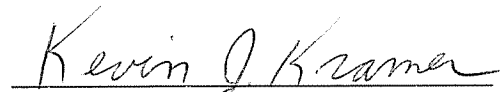
WHEREAS, the attached Memorandum of Agreement between Metro Louisville and the Arena Authority, in a form and substance satisfactory to the Commonwealth of Kentucky, has been executed by the Mayor and can therefore be submitted to the Metro Council for ratification and approval;

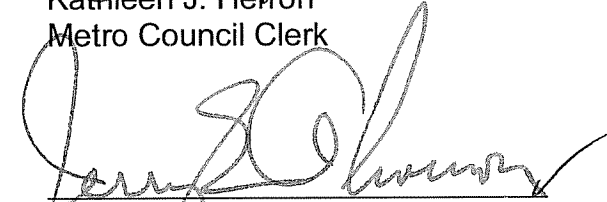
NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section 1. That the Memorandum of Agreement between Metro Louisville and the Arena Authority, which guarantees, to the fullest extent permitted by law, that as of November 2010 and for thirty years ending November 1, 2039, Metro Louisville shall provide certain payments to the Arena Authority, directly or through appropriate debt instruments of its own or one or more of its agencies, supported by incremental property and occupational tax revenues and/or other non-tax income, to support a portion of the development, financing and construction of the Project, be and the same is hereby ratified and approved. The Memorandum of Agreement is attached hereto and made a part hereof as if fully copied herein.

Section 2. That this Resolution shall become effective upon its passage and approval.

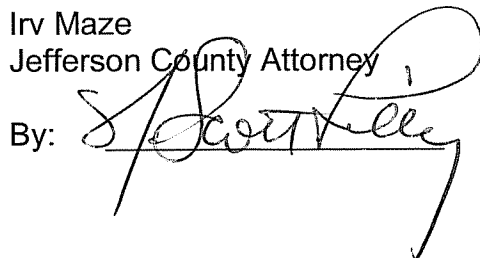

Kathleen J. Herron
Metro Council Clerk


Kevin J. Kramer
President of the Council


Jerry Abramson
Mayor

Approved: 7-28-06
Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney
By: 

LOUISVILLE METRO COUNCIL
ADOPTED
July 25, 2006

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (hereinafter the "Memorandum") is made and entered into this 21st day of July, 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, 4th 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").

WITNESSETH:

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 that authorizes and guarantees the payment of funds from Metro Louisville to the Arena Authority for the purpose of financing a portion of the Project, attached hereto as Exhibit A;

“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;

(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;

(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;

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

B. The Parking Authority of River City ("PARC") shall bond and construct the Louisville Arena parking garage and revenues derived therefrom shall remain with PARC.

C. Metro Louisville by entering into this Memorandum confirms that it has a continuing annual obligation to make a "Possible Additional Payment Due" to the extent the Authority's revenue from all sources, including Metro Louisville's "Minimum Payment" and without deduction of the Authority's operating expenses, is not adequate to meet the Authority's debt service obligations.

D. 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.

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.

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 C.

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 may include in its agreements with all contractors and subcontractors terms consistent with the applicable provisions of Louisville/Jefferson County Metro Code of Ordinance § 37.90 (D), with the exception of subparagraph (D) (3) thereof, after meeting with and seeking counsel from unions and the minority contractor committee described herein.

M. The Arena Authority will contract with an organization or organizations recommended by a committee of at least five (5) members convened by the Louisville Urban League/Justice Resource Center, including at least one union representative, to represent minority and union contractors; to assist with recruitment of Project minorities and women; to assist in training those individuals thereby recruited; to provide verification and concurrent monitoring of the level of participation of minorities and women in the Project; and to monitor the payment of prevailing wages.

N. The Arena Authority by entering into this Memorandum confirms that it will incorporate, where appropriate, the following terms and conditions:

- a. The payment of the prevailing wage for each trade on the project.
- b. A goal of at least 20% minority participation for employees and contractors, respectively, on the Project.
- c. A goal of at least 5% women participation for employees and contractors, respectively, on the Project.
- d. Opportunities for both union and non-union employees and contractors.
- e. A goal that 75% of Project jobs be reserved for Kentucky and Indiana residents and a goal that at least 60% of Project jobs be reserved for residents of the Metro Louisville Standard Metropolitan Statistical Area.

P. The Arena Authority shall amend its bylaws to add the President of the Metro Council or designee as a non-voting ex-officio member of the Board of Directors of the Arena Authority.

Q. The Arena Authority by entering into this Memorandum confirms that Metro Louisville shall have no additional payment obligations beyond its annual "Minimum Payment Due" to the extent the Authority's revenue from all

sources, including Metro Louisville's "Minimum Payment" and without deduction of the Authority's operating expenses, is adequate to meet the Authority's debt service obligations.

R. 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:

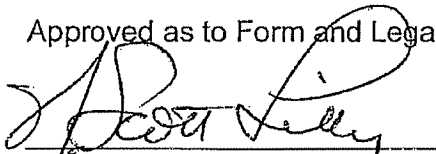
If to Metro Louisville: Mayor
Metro Hall, 4th Floor
527 West Jefferson Street
Louisville, Kentucky 40202

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

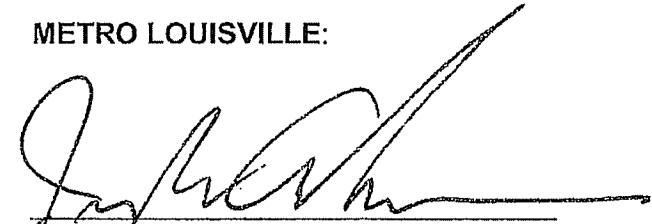
In WITNESS WHEREOF, Metro Louisville and the Arena Authority have executed this Memorandum effective as of the date first above written.

METRO LOUISVILLE:

Approved as to Form and Legality:



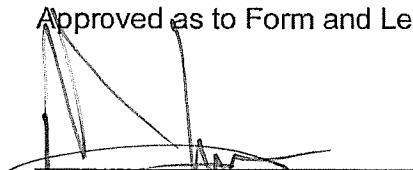
Honorable Irv Maze
Jefferson County Attorney



Jerry E. Abramson, Mayor

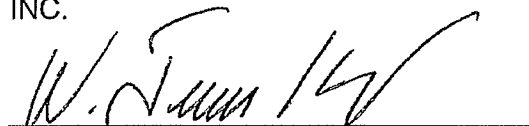
ARENA AUTHORITY:

Approved as to Form and Legality:



Counsel for Arena Authority

LOUISVILLE ARENA AUTHORITY,
INC.



Chair

Exhibit B

Section 1. Metro Louisville annual Guaranteed Payments to or for the benefit of Arena Authority:

<u>Year(s)</u>	<u>Amount(s)</u>
2010 – 2019	\$9,800,000
2020 – 2029	\$10,800,000
2030 – 2039	\$10,300,000

Section 2. Metro Louisville's annual Guaranteed Payment for any year shall be reduced by the Excess Net Cash Flow, if any, generated by the Arena Authority. Excess Net Cash Flow represents the remaining balance after the accrual and/or payment of all operating costs and debt service obligations for the Arena Authority's fiscal year (net of any cumulative loss carry forward). Excess Net Cash Flow shall be determined annually and not earlier than March 31 of each year commencing in 2011 and allocated as follows:

- (a) Excess Net Cash Flow up to \$3 million shall be placed in a Renovation Fund to be maintained by the Arena Authority;
- (b) Additional Excess Net Cash Flow beyond that referred to in paragraph (a) above shall be credited against Metro Louisville's annual Guaranteed Payment until said annual Guaranteed Payment is equal to one-third (1/3) of the annual Bond Principal and Interest Payment; and
- (c) Forty-five percent (45%) of any additional Excess Net Cash Flow beyond that referred in paragraphs (a) and (b) above shall be remitted to Metro Louisville within sixty (60) days of the date of determination, with the remaining fifty-five percent (55%) being retained by the Arena Authority.

Section 3. Notwithstanding Section 1, the Metro Louisville minimum payment shall be \$6,533,333 per year for 2010-2019, \$7,200,000 for 2020-2029, and \$6,866,667 for 2030-2039, adjusted annually in accordance with Section 1 and Section 2.

Section 4. In the event that the Excess Net Cash Flow in any year shall not be sufficient to fund both the credit to Metro Louisville (e.g., the difference between the Section 1 amount and the Section 3 amount) and the \$3 million contribution to the Renovation Fund, any resulting deficiency shall be made up in the year(s) following before additional credits/contributions are made or allotted.

Section 5. If Metro Louisville's payments in Section 3 are insufficient to maintain debt service payments, then Metro Louisville will guarantee the difference between Section 3 and up to the amount(s) shown in Section 1 for that year.

Section 6. In no event shall the credits and remittances to Metro Louisville provided for herein exceed the amount of Metro Louisville's Guaranteed Payment for that calendar year.

REQUIRED DEBT PAYMENTS
METRO LOUISVILLE

	(A)	(B)	(C)
	<u>Minimum Payment Due</u>	<u>Possible Additional Payment Due</u>	<u>Maximum Payment Due</u>
2010-2019	\$ 6,533,333	\$ 3,288,667	\$ 9,800,000
2020-2029	7,200,000	3,600,000	10,800,000
2030-2039	6,866,667	3,433,333	10,300,000
Average Years	\$ 6,866,667 x 30 <u>\$206,000,000</u>	3,433,333 x 30 <u>\$103,000,000</u>	10,300,000 x 30 <u>\$309,000,000</u>

1. Metro Louisville is required to make the payments each year as shown in column (A) (MINIMUM PAYMENT DUE).
2. If all sources, including the Metro payment in (1) above, are insufficient to pay the total debt service in any year, Metro Louisville guarantees to pay the shortfall up to the amount in column (B) (POSSIBLE ADDITIONAL PAYMENT DUE).
3. In any year when revenue from all sources, including the Metro payment in (1) above, exceeds the required debt service, Excess Net Cash Flow will be disbursed as follows:
 - a. Up to \$3,000,000 to a Renovation Fund to be maintained by the Louisville Arena Authority, Inc.
 - b. Additional Excess Net Cash Flow beyond that referred to in (a) shall be split (45%) to Metro Louisville with the remaining (55%) being retained by the Louisville Metro Authority, Inc.