

RESOLUTION NO. 151, SERIES 2016

A RESOLUTION OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE MAYOR TO NEGOTIATE A SECOND AMENDED AND RESTATED MEMORANDUM OF AGREEMENT FOR THE LOUISVILLE ARENA PROJECT AND TO PRESENT SUCH NEGOTIATED SECOND AMENDED AND RESTATED MEMORANDUM OF AGREEMENT TO THE COUNCIL FOR APPROVAL

Sponsored by: Council Members Butler, Leet, Downard, Yates, Hamilton, Blackwell, Welch, Parker, Kramer and Shanklin

WHEREAS, pursuant to actions taken by the Commonwealth of Kentucky (the "Commonwealth"), the Louisville/Jefferson County Metro Government ("Louisville Metro"), the University of Louisville, University of Louisville Athletic Association, Inc. and certain non-governmental entities, the Louisville Arena Project, a public project intended for multi-uses as a public, recreational and sports facility (the "Arena Project"), was undertaken, and the Arena Project has significantly benefited Louisville Metro and the Commonwealth by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in and around the Louisville Metro area;

WHEREAS, the Louisville Arena Authority, Inc., a Kentucky non-stock, nonprofit corporation (the "Arena Authority") was created as an independent entity to oversee the acquisition, development, construction, and financing of the Arena Project;

WHEREAS, the Legislative Council of Louisville/Jefferson County Metro Government (the "Council") enacted Resolution No. 81, Series 2006, ratifying, approving and adopting a Memorandum of Agreement, dated July 21, 2006, by and between Louisville Metro and the Arena Authority (the "Guarantee Agreement") pursuant to which Louisville Metro guaranteed to the Arena Authority, to the fullest extent permitted by law, the payment of funds to pay a portion of the debt costs for the Arena Project during a period commencing on November 1, 2010, to and including November 1, 2039, in an aggregate principal amount not to exceed \$309,000,000 (the "Guaranteed Payments");

WHEREAS, Resolution No. 81, Series 2006, and the Guarantee Agreement were adopted by Louisville Metro with the intent that the Guaranteed Payments would fund a portion of the costs of the Arena Project by paying a portion of the debt arising from bonds issued by the Kentucky Economic Development Finance Authority (“KEDFA”). These debt payments would constitute a long-term monetary obligation of Louisville Metro payable from (i) legally available Louisville Metro revenues, moneys and funds and (ii) moneys derived from the imposition of existing general taxes in the same manner as for payment of other outstanding monetary obligations of Louisville Metro, including ad valorem property taxes, as permitted by law, occupational license fees, insurance premium taxes, excises, permits, licenses, fines, available moneys from tax increment districts, or other sources of revenues of, or distributions to, Louisville Metro (collectively, the “Pledged Receipts”) as selected by Louisville Metro, provided that such long-term monetary obligation shall not constitute a general obligation indebtedness of Louisville Metro within the meaning of the Constitution or Statutes;

WHEREAS, to effectuate the intent of Louisville Metro to make the Guaranteed Payments, the Council enacted Ordinance No. 143, Series 2007, to legally comply with the requirements and utilize the authority of KRS Chapters 58 and 67C, KRS Sections 83.420 and Sections 91.200 – 91.280, inclusive;

WHEREAS, Ordinance No. 143, Series 2007, amended, readopted, and restated Resolution No. 81, Series 2006 and the Guarantee Agreement to conform Louisville Metro’s final terms of the Guarantee Agreement as those identified in the Amended and Restated Memorandum of Agreement, including the “Modified Exhibit B,” dated July 30, 2007, (the “Amended Guarantee Agreement”) attached hereto and incorporated herein as “Exhibit A”;

WHEREAS, in addition to the Guaranteed Payments, other security--as such is identified in the Loan Agreement dated August 1, 2008, by and between KEDFA and the Arena Authority and the Bond Trust Indenture dated August 1, 2008, by and between KEDFA and U.S. Bank

National Association, as Bond Trustee--was pledged to the payment of bonds issued by KEDFA;

WHEREAS, pursuant to KRS Chapter 154, KEDFA issued its bonds (the "Arena Bonds") to loan to the Arena Authority to provide financing for the Arena Project;

WHEREAS, as contemplated by the "Modified Exhibit B" in the Amended Guarantee Agreement, Louisville Metro agreed to annually pay an amount, not below the Minimum Annual Guaranteed Payment and not above the Maximum Annual Guaranteed Payment;

WHEREAS, Louisville Metro's Guaranteed Payment has been the maximum for fiscal year 2013 through 2017 (5 years);

WHEREAS, the debt service for the Arena Bonds will increase in the coming years and, in order to refinance the debt, Louisville Metro desires to amend the Amended Guarantee, specifically the "Modified Exhibit B," but only if certain conditions are met;

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

Section 1. Incorporation of Preamble. The facts and recitations set out in the preamble of this Resolution are adopted and incorporated as a part hereof, and the terms defined in the preamble shall have the same meanings when used herein.

Section 2. Mayor Authorized to Negotiate a Second Amended and Restated Memorandum of Agreement. The Council authorizes the Mayor to negotiate a Second Amended and Restated Memorandum of Agreement between Louisville Metro and the Arena Authority. In negotiating the Second Amended and Restated Memorandum of Agreement, the Mayor is authorized to obligate Louisville Metro to a new minimum annual payment, provided such amount does not exceed the Maximum Annual Guaranteed Payment, as that term is defined in "Modified Exhibit B" of the Amended Guarantee Agreement. Upon agreement and execution of a Second Amended and Restated Memorandum of Agreement between Louisville

Metro and the Arena Authority, the Second Amended and Restated Memorandum of Agreement shall be presented to the Council for review and approval.

Section 3. Conditions Precedent to Negotiating a Second Amended and Restated Guarantee Agreement. The Mayor of Louisville Metro may negotiate a Second Amended and Restated Guarantee Agreement provided the following conditions are met:

- (a) The Arena Authority and the University of Louisville or the University of Louisville Athletic Association, Inc. negotiate a new lease agreement with terms and conditions that require the University of Louisville or University of Louisville Athletic Association, Inc. to contribute more money, funds, or receipts toward the retirement of debt; and
- (b) The Commonwealth agrees to amend the termination date of the Arena Zone TIF and correspondingly increase the released amount and cap of the TIF.

Section 4. Current Arena Bonds not to be Affected. Nothing in this Resolution shall be read to affect the rights of the current Arena bondholders. Louisville Metro will continue to abide by the covenants and conditions agreed upon in the Amended Guarantee Agreement until such contractual duties and obligations shall cease to exist.

Section 5. Headings. The headings of the sections in this Resolution are incorporated only for reference and are not to be made a part of this Resolution.

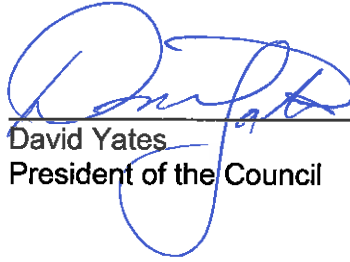
Section 6. Severability. The provisions of this Resolution are severable and, if any section, phrase, or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this Resolution.

Section 7. Supplements. The provisions of this Resolution may be supplemented from time to time by ordinance or resolution of the Council.

Section 8. Effective Date. This Resolution shall take effect upon passage and approval.



H. Stephen Ott
Metro Council Clerk



David Yates
President of the Council



Greg Fischer
Mayor

12/19/2016

Approval Date

APPROVED AS TO FORM AND LEGALITY:
Michael O'Connell
Jefferson County Attorney

BY: 
Assistant Jefferson County Attorney

**LOUISVILLE METRO COUNCIL
ADOPTED**
December 15, 2016

EXHIBIT A

Amended and Restated Memorandum of Agreement

(See attachment)

**AMENDED AND RESTATED
MEMORANDUM OF AGREEMENT**

This AMENDED AND RESTATED MEMORANDUM OF AGREEMENT (hereinafter the "Amended Memorandum") is made and entered into this 30th day of July, 2007, 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 complementary 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 Amended 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:

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

"Authorizing Ordinance" means Ordinance No. 143, Series 2007, of Metro Louisville, adopted and ordained by the Legislative Council of Metro Louisville on July 30, 2007, and in full force and effect.

"Authorizing Resolution" means Resolution No. 81, Series 2006, of Metro Louisville, adopted by the Legislative Council of Metro Louisville on July 25, 2006, that authorized and guaranteed the payment of funds 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 mean and 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;

"Payments" or "Guaranteed 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 Amended Memorandum and reflected in the schedule attached hereto as Modified 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" or "Arena 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 Ordinance and the Authorizing Resolution, Metro Louisville agrees to disburse to the Arena Authority the Guaranteed Payments as described in Modified Exhibit B hereto conditioned upon the following:

(i) the execution and delivery of this Amended 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 Amended Memorandum confirms that it has a continuing annual obligation to possibly make an additional Annual Guaranteed Payment in excess of the Minimum Annual Guaranteed Payment, subject to the requirements and conditions specifically provided and detailed in Modified Exhibit B, attached hereto and incorporated herein, but never in excess of the Maximum Annual Guaranteed Payment for such year.

D. Metro Louisville shall cooperate fully with the Arena Authority in order to facilitate the obligations set out in this Amended 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 Guaranteed Payments in the Authorizing Resolution and this Amended 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 this Section 2;

(iii) a copy of the laws, articles, resolutions, ordinances or other appropriate documents 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 Amended Memorandum.

G. The Arena Authority acknowledges that the signature of its counsel upon this Amended Memorandum evidences that this Amended 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 Guaranteed Payments, except as provided in the Authorizing Resolution and in this Amended 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 Amended 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 shall fully cooperate with Metro Louisville and any and all other parties necessary to facilitate the agreements and obligations set out in this Amended Memorandum.

SECTION 4. CONFORMITY WITH AUTHORIZING ORDINANCE; AUTHORIZING ORDINANCE PREVAILS; GUARANTEED PAYMENTS ARE IRREVOCABLE

A. In amending and readopting this Amended Memorandum, it is the intent of the Legislative Council of Metro Louisville that the Authorizing Ordinance and this Amended Memorandum shall be consistent with one another, to the end that third parties involved in the Arena Project, including, but not limited to, the Commonwealth, which has made a direct grant of \$75,000,000 to the Arena Project and created a state tax increment district in support thereof and the purchasers of Arena Bonds may rely upon the covenants of Metro Louisville in the Authorizing Ordinance to make the Guaranteed Payments without interruption and that the Authorizing Ordinance creates an enforceable long term debt instrument of Metro Louisville in accordance with its terms, and that the payments of the Guaranteed Payments in future years from Pledged Receipts, as defined in the Authorizing Ordinance, shall constitute contractual duties and obligations of Metro Louisville. Accordingly, Metro Louisville covenants and agrees that its covenants and agreements to make the Guaranteed Payments and the payments thereof are and shall be irrevocable. In the event of any conflict or inconsistency between the provisions of this Amended Memorandum and the Authorizing Ordinance, the provision of the Authorizing Ordinance shall prevail.

B. Except as may otherwise be provided herein, each party to this Amended Memorandum shall be solely responsible for any costs incurred in fulfilling its obligations under this Amended Memorandum, and no party shall have any claim against any other party for reimbursement of such costs.

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

SECTION 5. TERM OF AMENDED MEMORANDUM

This Amended 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 Modified Exhibit B, unless otherwise extended by the parties.

SECTION 6. MISCELLANEOUS PROVISIONS

A. This Amended Memorandum may be signed by each party upon a separate copy, and in such case one counterpart of this Amended Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Amended 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 Amended 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 Amended 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 Amended Memorandum.

C. The terms and conditions of this Amended 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 Amended Memorandum, which assignment shall be prohibited.

D. This Amended Memorandum shall not be amended, modified, or supplemented except by a written agreement duly executed by both parties; provided, however, that any such amendment, modification or supplement shall be insubstantial in nature and that the irrevocable nature of the Guaranteed Payments may not be amended or modified whatsoever.

E. This Amended Memorandum sets forth the entire understanding of the parties with respect to the subject matter hereof and 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 Amended Memorandum.

G. All notices, requests, demands, waivers, and other communications given as provided in this Amended 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

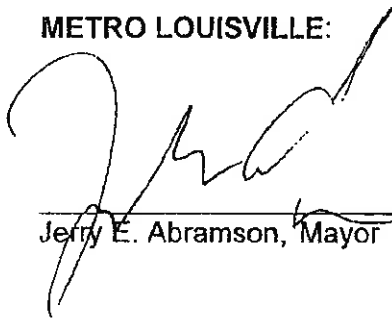
If to the Arena Authority: Louisville Arena Authority, Inc.
3500 National City Tower
101 S. Fifth Street
Louisville, Kentucky 40202
Attn: Chairman

In WITNESS WHEREOF, Metro Louisville and the Arena Authority have executed this Amended 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.



Chairman

Exhibit B

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

Year(s)	Amount(s)
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</u> <u>Payment Due</u>	<u>Possible Additional</u> <u>Payment Due</u>	<u>Maximum</u> <u>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	\$ 6,866,667	3,433,333	10,300,000
Years	x 30	x 30	x 30
	<u>\$206,000,000</u>	<u>\$103,000,000</u>	<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.

MODIFIED EXHIBIT B

Section 1. Guaranteed Payments. Metro Louisville minimum and maximum annual Guaranteed Payments to or for the benefit of the Arena Authority are as follows:

<u>Year(s)</u>	<u>Minimum Annual Guaranteed Payments</u>	<u>Maximum Annual Guaranteed Payments</u>
2010-2019	\$6,533,333	\$9,800,000
2020-2029	\$7,200,000	\$10,800,000
2030-2039	\$6,866,667	\$10,300,000

Section 2. Payment of Minimum Annual Guaranteed Payment. Metro Louisville shall annually appropriate and pay to the Trustee under the Indenture the full amount of the initial Minimum Annual Guaranteed Payment on November 1, 2010, plus any additional amount, as provided in Section 5 hereof, and thereafter on each November 1 to and including November 1, 2039, will appropriate and pay the Minimum Annual Guaranteed Payment plus any additional amount, as provided in Section 5 hereof, due in such year.

Section 3. Gross Pledged Arena Revenues. Each year, beginning November 1, 2010, all Arena Authority revenues consisting of Gross Pledged Arena Revenues will be directly transferred, as received, to the Arena Bond Trustee to be used for the purpose of paying debt service on the Arena Bonds to the extent required, and will be available after annual debt service is fully funded, to defer Arena operating and maintenance costs. "Gross Pledged Arena Revenues" are defined as certain Arena Revenues that are generally received on an annual basis from contractually obligated third parties for such services as Arena naming rights (external and internal), annual advertising revenues, revenues received from corporate and other sponsorship rights, such as exclusive use of suites, including lounges, preferential seating, mezzanine and terrace preferential seating, annual sponsorship rights and other similar revenue streams.

Section 4. Net Pledged Arena Revenues. Each year, beginning November 1, 2010, all Arena Authority revenues consisting of Net Pledged Arena Revenues will be applied by the Arena Authority to operate and maintain the Arena by paying labor costs, salaries, costs of direct events, general and administrative expenses, communications, supplies, repairs and maintenance, marketing and similar costs of operating the Arena, but shall be available to pay debt service on the Arena Bonds on the demand of the Arena Bonds Trustee in the event of a shortfall in funds available for payment of annual debt service from Gross Pledged Arena Revenues, current year State Tax Increment revenues, uncommitted available State Tax Increment revenues from surplus State Tax Increment revenues (received in prior years and the current year) and the Metro Government Minimum Guaranteed Payments. The Trustee demand and consequent payment will be made prior to the making of any request to the Metro Government to make an additional payment of any Guaranteed Payment above the Minimum Guaranteed Payment for that year. "Net Pledged Arena Revenues" are defined as all Arena Authority Revenues not constituting Gross Pledged Arena

Revenues such as revenues from non-University events, concessions, catering, restaurant, parking and other similar revenues.

Section 5. Payment of Additional Amounts (Not to Exceed Maximum Annual Guaranteed Payment). The Arena Authority shall determine, on or prior to each October 1 in the years specified in Section 1, whether the Arena Authority's total gross revenues in each year from all sources (including (i) Gross Pledged Arena Revenues, (ii) the Metro Louisville Minimum Annual Guaranteed Payment, (iii) current year State Tax Increment revenues; (iv) uncommitted available State Tax Increment revenues from surplus State Tax Increment revenues received in prior years and the current year and (v) Net Pledged Arena Revenues, as provided in Sections 3 and 4) are sufficient to pay in full all debt service due on the Bonds on the next two scheduled semiannual payment dates. In the event of a shortfall in such amounts, then, at the request of the Arena Authority upon not less than 30 days' written notice, Metro Louisville shall appropriate and pay to the Trustee on each November 1 (or other date as required to prevent a debt service payment default) in such years the amount of any such shortfall, provided that the total amount paid by Metro Louisville in the calendar year shall not exceed in any such year the Maximum Annual Guaranteed Payment for such year specified in Section 1.

Section 6. Outside Consultant. In the event that for two consecutive years the Metro Government is required to fund any amount in excess of the Minimum Guaranteed Payment, upon request of the Metro Government, the Arena Authority must promptly retain an independent public accounting firm of national reputation in the field of arena operations (and such selection shall be reasonably satisfactory to the Metro Government) to examine the revenues and operating expenses of the Arena Authority and to file a report with recommendations as to actions which may be taken by the Arena Authority to increase net revenues available to pay debt service. The Arena Authority shall be obligated to file a report within 60 days of the delivery of such Consultant Report to the Metro Government and the Arena Authority as to actions the Arena Authority is taking or will take to implement the recommendations of the Consultant.

Section 7. Excess Net Cash Flow. "Excess Net Cash Flow" for any fiscal year of the Arena Authority represents the remaining balance of the Arena Authority's gross revenues from all sources (excluding amounts payable by the State as tax increment revenues) in such fiscal year after the accrual and/or payment of all operating and maintenance costs and debt service obligations for the Arena Authority in such fiscal year (net of any cumulative loss carryforward in such fiscal year). Excess Net Cash Flow shall be determined annually and not earlier than March 31 of each year commencing in 2011 and allocated in the following priorities:

(a) First, additional Excess Net Cash Flow shall be applied to make up any deficiency in the Debt Service Reserve Fund;

(b) Second, remaining Excess Net Cash Flow shall be deposited in a Renovation Fund to be maintained by the Arena Authority until the amount of deposits in

such Fund for such fiscal year equals \$3,000,000 plus, to the extent that there has been a deficiency in any prior fiscal year in the deposit of such annual \$3,000,000 requirement, the amount necessary to fully restore such deficiency; and

(c) Third, forty-five percent (45%) of any additional Excess Net Cash Flow beyond that referred to 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. In no event shall the remittances to Metro Louisville provided for herein exceed the amount of Metro Louisville's Guaranteed Payment for that fiscal year.