

**SECOND AMENDED AND RESTATED  
MEMORANDUM OF AGREEMENT**

This **SECOND AMENDED AND RESTATED MEMORANDUM OF AGREEMENT** (“Second Amended Memorandum”) is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a consolidated local government of the Commonwealth of Kentucky, with an address of Metro Hall, 4<sup>th</sup> Floor, 527 West Jefferson Street, Louisville, KY 40202, (“Louisville Metro”) and the **LOUISVILLE ARENA AUTHORITY, INC.**, a Kentucky non-stock, non-profit corporation, with an address of 3500 National City Tower, 101 South Fifth Street, Louisville, KY 40202, (the “Arena Authority”).

**WITNESSETH:**

**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; and

**WHEREAS**, to address the debt service concerns, the Council has adopted and passed a resolution authorizing the Mayor to enter into an agreement if certain conditions are met;

**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 here, Louisville Metro and the Arena Authority agree as follows:

The above recitals are true and accurate and incorporated herein and made apart hereof for purposes of this agreement.

## **SECTION 1. DEFINITIONS**

Terms defined in the recitals above are incorporated herein and shall have the meaning given to them.

“Authorizing Resolution” means Resolution No. \_\_\_\_, Series 2016, of Louisville Metro, adopted and resolved by the Council on \_\_\_\_\_, 20\_\_\_\_, and in full force and effect.

“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;

“KEDFA” shall mean the Kentucky Economic Development Finance Authority or such other successor entity;

“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, to the extent permitted by law, directly or through appropriate debt instruments of its own or one or more of its agencies, to support a portion of the financing of the Louisville Arena paid by Louisville Metro to the Arena Authority each November 1, commencing on November 1, 2017 and concluding on November 1, 2039, or such other date if mutually agreed upon, pursuant to Section 2 of this Second 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

“Second Amended Memorandum” shall mean this Second Amended and Restated Memorandum of Agreement, by and between Louisville Metro and the Arena Authority.

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

Louisville Metro covenants and agrees to undertake the following obligations:

- A. Pursuant to the Authorizing Resolution, Louisville Metro agrees to disburse to the Arena Authority the Guaranteed Payments as described in Modified Exhibit B hereto conditioned upon the following:
  1. The Mayor of Louisville Metro receives an opinion from Bond Counsel that entering into this Second Amended Memorandum is permitted under the Arena Bond Trust Indenture and will not adversely affect the current Arena Bonds, including their tax exempt status;
  2. The Bond Insurer consents in writing to the amendments;

3. A new lease by and between the Arena Authority and the University of Louisville or the University of Louisville Association, Inc. in entered with terms and conditions that require the University of Louisville or the University of Louisville Association, Inc. to contribute more money, funds, or receipts sufficient to assist in the retirement of debt; and
  4. It appears imminent that KEDFA will issue bonds to refinance the current outstanding Arena debt, to the extent permitted by the Trust Indenture.
- B. Louisville Metro, by entering into this Second Amended Memorandum, confirms that, to extent permitted by law, it has a continuing annual obligation to make the Guaranteed Payment, subject to the requirements and conditions specifically provided and detailed in Modified Exhibit B, attached hereto and incorporated herein.
- C. Louisville Metro shall cooperate fully with the Arena Authority in order to facilitate the obligations set out in this Second Amended Memorandum.

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

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

- A. The Arena Authority shall enter into a new lease agreement with the University of Louisville or University of Louisville Athletic Association with terms and conditions that require the University of Louisville or University of Louisville Athletic Association to contribute more money, funds, or receipts toward the retirement of debt;
- B. The Arena Authority will comply with all terms and conditions set forth in the agreement between the Commonwealth and the Arena Authority;
- C. The Arena Authority hereby acknowledges that any debt issued by the Arena Authority or any other entity other than Louisville Metro, including any industrial revenue bonds that may be issued on a conduit basis by Louisville Metro, shall not constitute a debt, pledge of the full faith and credit, or a moral obligation of Louisville Metro beyond those amounts identified as Guaranteed Payments in the Authorizing Resolution and this Second Amended Memorandum;
- D. A copy of the Arena Authority resolution or a copy of the minutes as certified by the authorized Board officer, authorizing the execution of this Second Amended Memorandum;
- E. The Arena Authority acknowledges that the signature of its counsel upon this Second Amended Memorandum evidences that this Second 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;
- F. The Arena Authority shall comply with all applicable laws;

- G. 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 Arena shall be excludable from gross income under any valid provision of law;
- H. The Arena Authority shall not permit at any time or times any of the proceeds of any tax-exempt obligations issued to fund the Arena 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;
- I. 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;
- J. The Arena Authority shall, if necessary, cooperate with the Commonwealth in addressing the necessary changes to the Arena Zone TIF; and
- K. The Arena Authority shall fully cooperate with Louisville Metro and any and all other parties necessary to facilitate the agreements and obligations set out in this Second Amended Memorandum.

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

- A. In amending and readopting this Second Amended Memorandum, it is the intent of the Council that the Authorizing Resolution and this Second Amended Memorandum shall be consistent with one another, to the end that third parties involved in the Arena, including, but not limited to, the Commonwealth, the purchasers of Arena Bonds may rely upon the covenants of Louisville Metro in the Authorizing Resolution to make the Guaranteed Payments without interruption and that, to the extent permitted by law, the Authorizing Resolution creates an enforceable long term debt instrument of Louisville Metro in accordance with its terms, and that the payments of the Guaranteed Payments in future years from Pledged Receipts, as defined in the Authorizing Resolution, shall constitute contractual duties and obligations of Louisville Metro. Accordingly, Louisville Metro covenants and agrees that its covenants and agreements to make the Guaranteed Payments and the payments thereof are and shall, to the extent permitted by law, be irrevocable. In the event of any conflict or inconsistency between the provisions of this Second Amended Memorandum and the Authorizing Resolution, the provision of the Authorizing Resolution shall control.

- B. Except as may otherwise be provided herein, each party to this Second Amended Memorandum shall be solely responsible for any costs incurred in fulfilling its obligations under this Second 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 Second Amended Memorandum shall not be construed as a waiver of any further right to insist upon full performance of the terms of this Second Amended Memorandum.

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

This Second 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 Second Amended Memorandum may be signed by each party upon a separate copy, and in such case one counterpart of this Second Amended Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Second 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 Second 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 Second 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 Second Amended Memorandum.
- C. The terms and conditions of this Second 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 Second Amended Memorandum, which assignment shall be prohibited.
- D. This Second 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 Second 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 to the extent permitted by law or any agreement executed in connection with the issuance of the Arena Bonds.
- F. 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 Louisville Metro: Mayor  
Metro Hall, 4<sup>th</sup> Floor  
527 West Jefferson Street  
Louisville, KY 40202

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

*Signature Page to Follow.*

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

**Louisville Metro:**

Approved as to Form and Legality:

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Honorable Mike O'Connell  
Jefferson County Attorney

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Greg Fischer  
Mayor

**The Arena Authority:**

LOUISVILLE ARENA AUTHORITY, INC.

Approved as to Form and Legality:

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Counsel for the Arena Authority

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Chairman



## MODIFIED EXHIBIT B

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

Year(s)	Minimum Annual Guaranteed Payments	Maximum Annual Guaranteed Payments
	-	
2010-2019	<del>\$6,533,333</del>	\$9,800,000
2020-2029	<del>\$7,200,000</del>	\$10,800,000
2030-2039	<del>\$6,866,667</del>	\$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 (less contractual revenue sharing, if any) 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. "Net Pledged Arena Revenues" are defined as all Arena Authority Revenues (less contractual revenue sharing, if any) not constituting Gross Pledged Arena Revenues such as revenues from non-University events, concessions, catering, restaurant, parking and other similar 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 (less contractual revenue sharing, if any) 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 Metro 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 Metro provided for herein exceed the amount of ~~Metro~~ Louisville Metro's Guaranteed Payment for that fiscal year.