

## ARENA - REVENUE FUND AGREEMENT SUMMARY

This document controls the flow of tax monies from the City and State to USM over the term of the agreement. Essentially, the City will collect tax monies and place them in an account specifically created to hold those funds (the Arena Fund). The agreement then sets forth under what circumstances USM is entitled to draw on the monies in the Arena Fund.

As with the other agreements, this is intended as a summary and guide only. Please refer to the text of the agreement for the complete terms and context.

### Recitals:

A-G. States the background leading up to the execution of this Agreement. Importantly, the recitals track the two statutorily required reviews (one by the General Assembly and one by the State Treasurer) that will have to be completed before this document can be executed. We anticipate sending this Agreement, along with the other Transaction Documents to the General Assembly and State Treasurer within days of execution of the Development Agreement.

### Agreement:

1. Definitions. Any term not specifically defined in the Agreement is defined in the Appendix.
2. Identification of Receipts for Arena Funds. Identifies which tax funds will be included in the Arena Fund.
  - a. (i) Real Estate Taxes paid at the Arena Land (5.8 acres), (ii) personal property taxes at the Arena Land, (iii) business license taxes with respect to Arena Operations, (iv) admissions taxes for Arena Operations, (v) meals taxes for Arena Operations. All such taxes assessed after the date of this Agreement (signed at Construction Loan Closing) will be included in the Arena Fund.
  - b. 1% of the amount subject to the City-wide transient occupancy tax (hotel tax), exclusive of any flat fee (i.e., 1 cent of the 8 cent hotel tax). By way of example, if a room charge was \$200 the total Transient Occupancy tax would be \$17 (\$16 due to the 8% hotel tax plus \$1 assessed as a flat fee) \$2 would be credited to the Arena Fund (or 1% of the room charge).
  - c. An amount equal to the sums received by the City from the Commonwealth for sales and use tax for construction materials, FF&E or other items purchased by USM during construction of the Arena.
  - d. An amount equal to sums received by the City from the Commonwealth for sales and use tax payable in connection with Arena Operations. For (c) and (d), the Commonwealth will identify those taxes paid and remit a portion back to the City for inclusion in the Arena Fund.
  - e. An amount contributed by the City from the local sales and use taxes it receives for sales and use taxes related to Arena Events. The City will contribute the City's 1 cent portion of the sales tax for all sales at the Arena to the Arena Revenue Fund.

3. Establishment of Arena Fund. Requires the City to establish the Arena Fund when monies will first be credited (after Construction Loan Closing but before actual start of construction). The Arena Fund will remain in place until the earlier of (i) July 1, 2043 (current statutory limit) or such later date as extended by the General Assembly or (ii) the expiration of the amortization period of the original developer financing (expected to be 30 years).

4. Non-Appropriation. All obligations of the City in this Agreement are subject to annual appropriation by City Council of those funds for such purpose. City Manager will include sufficient funds to meet City's annual obligation in his or her budget, but the ultimate decision is made by City Council. City is not responsible for damages if it does not fulfill its obligations under this Agreement due to non-appropriation; however, were City to not appropriate sufficient monies, the City's credit rating would be negatively impacted.

5. No General Obligation Pledge. Makes clear that this Agreement does not pledge the full faith and credit or the taxing power of the City or Commonwealth. This clause is read with the non-appropriation clause to make clear this is not Constitutional debt of City or Commonwealth.

6. City Credits to Arena Fund. States when the taxes received by the City will be credited to the Arena Fund.

a. Hotel Tax Revenues. Credited monthly beginning the July 1 in the year the Arena opens. If Arena opens October 1, 2019, credits to be made retroactive to July 1, 2019. If the Arena opens January 15, 2020, credits to begin July 1, 2020.

b. Construction, State and Local Sales Tax Revenues. City to credit fund 30 days after receipt of funds from Commonwealth (sales taxes all paid to Commonwealth with local portion remitted to localities). Taxes for construction materials and related items to be credited when received (after Construction Loan Closing) and taxes for sales at Arena to be credited after Arena opening.

c. Direct Arena Tax Revenues (items in 2(a), above) to be credited quarterly. USM required to provide City a summary of taxes paid in previous quarter to City (in form attached as Schedule 1) along with supporting documentation of the taxes paid. City to credit Arena Fund promptly after confirmation of taxes paid.

d. The total amount of credits to the Arena Fund in a City Fiscal Year will not exceed the Payment Cap, defined in Section 9, below.

e. Requires USM to provide City access to USM's books and records relating to taxes paid and also to any third party taxpayer for whom USM is seeking credit into the Arena Fund. USM and third party must certify the accuracy of the information provided to the City.

7. Disbursements from Arena Fund. Disbursements to USM from the Arena Fund to begin after the Arena receives a certificate of occupancy (or would have received but for City Delay) and will continue monthly for the first year (with no more than 2 draws allowed prior to grand opening of the Arena unless delay between CO and grand opening caused by City Delay or Force Majeure) and quarterly thereafter.

Payments to continue until the expiration of the term of this Agreement (see Paragraph 3 above) or unless there is an Adjudicated Default under one of the Transaction Documents which is continuing.

Draw Schedule for Each City Fiscal Year- sets forth the dates by which monies credited each quarter will be dispersed. Failure of the City to timely make a payment will result in past due amounts (after notice from USM) accruing interest at the statutory rate.

8. Obligation to Demonstrate Amounts Paid to City. Virginia law prevents the taxing authorities from reporting how much a taxpayer has paid in taxes. Therefore, the Direct Tax Summary will also contain such information and reports as are needed by City or Commonwealth to confirm the amount of taxes properly credited to the Arena Fund.

9. Payment Cap. The annual cap of payments to USM from the Arena Fund. Exact amount to be determined prior to Construction Loan Closing with amortization schedule attached as Schedule 2. Cap to be the sum of USM's debt service (principal and interest) to primary lender plus an amount equal to a 6% return to the equity investors. If USM invests more than \$40MM in equity, the return on the equity over \$40MM will be the lesser of 6% or the interest rate paid on the primary loan. The cap is estimated to start at \$12.6MM and rise to \$14.6MM over the term of this Agreement.

10. Miscellaneous Provisions.

10.1 Notices. Addresses and method for notices.

10.2 Default. If either party defaults, the other may seek relief in court. Remedies cumulative; exercising one remedy does not waive or preclude another.

10.3 Assignment. City cannot assign its rights or obligations under this Agreement. USM can only assign as set forth in the Lease (City to approve new tenant) but USM allowed to grant a security interest in this Agreement to its lender.

10.4 Consents and Approvals. Consents required in this Agreement to be in writing, failure to grant consent not deemed a waiver.

10.5 Entire Agreement; Amendments. This and the Transaction Documents represent the entire agreement between the parties. Any amendments, waivers or modifications have to be duly authorized and executed in writing.

10.6 Relevant Law; Venue; Mediation. Transaction Documents governed by Virginia Law; disputes heard in Virginia Beach Circuit Court; if requested, parties to mediate prior to litigation.

10.7. Waiver of Jury Trial. No jury trials for disputes.

10.8 Partial Invalidity. If one term of a Transaction Agreements is deemed to be invalid or unenforceable, that shall not make any other provision of the Transaction Agreements invalid or unenforceable.

10.9. Counterparts. This Agreement may be executed with counterpart signature pages.

10.10 Transaction Agreements. Identifies the other Transaction Agreements. Specifies that prior to the Draw Commencement Date, a default by either party under any other Transaction Document is a default under this Agreement. Thereafter, only an Adjudicated Default under another Transaction Documents (remaining uncured) will by either party will be deemed a default under this Agreement.

10.11 New Arena-Specific Taxes. States that it is not the intent of the City Council who votes to approve the Transaction Documents (estimated December 2015) to impose any Arena-Specific Taxes (such as a public safety fee imposed on tickets sold at indoor venues with more than 10,000 seats) and if such tax were to be imposed, that proceeds from the tax would be included in the Arena Fund. However, under Virginia law, City Council cannot abdicate its taxing authority and cannot bind a future City Council in making taxing decisions.