

ARENA MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT dated this ____ day of _____, 2011, is entered into by between the **Evansville Redevelopment Commission** ("City") and the **Evansville-Vanderburgh County Building Authority** ("Building Authority"),

WITNESSETH:

WHEREAS, the Building Authority is a municipal corporation organized and existing pursuant to IC §36-9-13 for the purpose of financing, acquiring, improving, constructing, reconstructing, renovating, equipping, operating, maintaining and managing governmental buildings for eligible governmental entities; and

WHEREAS, pursuant to section 3.30.128 of the City of Evansville, Indiana Municipal Code the Director of the Department of Metropolitan Development, and DMD, have provided, and will continue to provide, staff assistance to the Redevelopment Commission in connection with the construction of the multi-purpose arena ("Arena") in downtown Evansville, Indiana ; and

WHEREAS, the City of Evansville and the Evansville Redevelopment Commission is involved in the construction and financing of the Arena through the issuance of bonds in the name of the City of Evansville and the pledge of TIF funds, food and beverage tax and funds from Casino Aztar requiring City Council approval, and

WHEREAS, the City, as an eligible governmental entity pursuant to IC § 36-9-13-2, has requested that the Building Authority undertake the maintenance and cleaning responsibilities relating to the new downtown arena currently under construction in Evansville, Indiana (the "Arena"); and

WHEREAS, the Evansville Redevelopment Authority is the owner of the Arena; and

WHEREAS, the City entered into a written lease with the Evansville Redevelopment Authority dated March 9, 2010 ("Lease") in which the operation, maintenance and repair of the Arena was assumed by the Evansville Redevelopment Commission; and

WHEREAS, the City desires that the Building Authority undertake the responsibility of maintaining and repairing the Arena after the same is constructed;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

Term

The term of this Maintenance Agreement shall be for a period of 15 months (unless earlier terminated as herein provided) commencing on October 1, 2011 and ending on December 31, 2012, and shall continue thereafter for successive annual renewal periods, unless on or before ninety (90) days before the expiration of the initial term or any renewal period, either party notifies the other party, in writing, that it elects to terminate this Maintenance Agreement at the end of such term or renewal period.

ARTICLE II

Early Termination

The Building Authority may terminate this Maintenance Agreement, notwithstanding anything herein to the contrary, by providing sixty (60) days prior written notice to the City in the event the Building Authority shall not have been paid sufficient funds by the City to pay the maintenance and operational expenses billed to the City for providing the services to be performed by the Building Authority hereunder. However, the City shall have the right to cure such default within the sixty (60) day period by paying the outstanding sum of money owed by

the City to the Building Authority. The City may terminate this Maintenance Agreement, notwithstanding anything herein to the contrary, by providing sixty (60) days prior written notice to the Building Authority in the event the Building Authority shall not perform its duties under this Management Agreement. However, the Building Authority shall have the right to cure such default within the sixty (60) day period . This Maintenance Agreement is subject to annual appropriation by the Evansville Common Council. In the event the Evansville Common Council fails to appropriate sufficient sums to cover the cost of the maintenance and operational services provided by the Building Authority and billed to the City pursuant to this Maintenance Agreement, the parties may renegotiate the terms of this Maintenance Agreement or either party may terminate the same. If this Maintenance Agreement is terminated, and the City shall pay the Building Authority for any unpaid maintenance services or operational expenses and such sums shall be paid by the City to the Building Authority within thirty (30) days of the final billing.

ARTICLE III

Building Authority's Responsibilities

The Building Authority agrees to maintain the interior and exterior of the Arena facility, excluding, however, the bowl area of the Arena, all as more particularly set forth in the Lease as though the Building Authority was the lessee thereunder. The maintenance of the Arena shall include, but shall not be limited to, the furnishing of heat, air conditioning, water, gas, plumbing, electricity, lighting, and other utility services. It shall also include the responsibility of the maintenance and repair of all HVAC and refrigeration systems, ice plant, lighting, elevators, escalators, scoreboards, security controls, fire and sprinkler systems, doors, windows, and docks regarding the Arena. In addition, the Building Authority shall be responsible for the cleaning of all of the private suites, offices, restrooms, other non-bowl Arena areas, and the outside Arena

grounds including snow removal. In addition, the Building Authority shall provide lawn care and painting services for the Arena and shall be responsible for the replacement of the equipment and fixtures paid by the City and located within the Arena. The Building Authority's failure to furnish any of the foregoing utilities, services or repairs shall not, in any way, render the Building Authority liable for injuries or damages to any person or property suffered by the City, their agents, employees, licensees and invitees. The Building Authority may enter into any and all service contracts it deems necessary or appropriate in order to perform its maintenance and operational responsibilities hereunder.

ARTICLE IV

City Fees Payable to the Building Authority

The City shall pay to the Building Authority a maintenance fee sufficient to cover the reasonable costs associated with the Building Authority's maintenance and cleaning responsibilities relating to the Arena. The amount of such fee shall be calculated by the Building Authority and approved in advance by the City before each fiscal year before being submitted to the City for payment. The first maintenance fee to be paid by the City to the Building Authority shall be due on or before October 1, 2011. Thereafter, the maintenance fee shall be payable in advance by the City in equal semi-annual installments on the 1st day of January and 1st day of July of each year during the term of this Maintenance Agreement pursuant to the terms and provisions set forth in Article V hereunder.

In addition, pursuant to Article VI, the City may fund reasonable reserves for the non-recurring general maintenance, improvement and replacement of equipment and fixtures located within the Arena in accordance with generally accepted accounting principles.

ARTICLE V

Annual Arena Budget

For the purpose of determining the cost of maintaining the Arena, the Building Authority shall, on or before June 15 of each year, prepare and adopt a budget setting forth in reasonable detail its estimated maintenance expenses for the fiscal year commencing on January 1 of the next ensuing calendar year, and shall promptly transmit a copy of such budget to the City. In preparing such budget, the Building Authority shall take into account any amounts on hand which will be available for application to such maintenance costs, and shall also take into account any deficiency in funds arising through maintenance expense exceeding the amount budgeted in any prior year. In addition, the Building Authority shall take into account the costs of maintaining structures of comparable character and use, and shall provide for reasonable salaries and wages and efficient management with a view to maintaining the Arena in a first-class condition at the lowest feasible cost. Any such budget shall also make provision for a reasonable working balance and for reasonable reserves for non-recurring general maintenance, improvement or replacement of the Arena building and related fixtures and equipment. The City shall annually budget such sufficient funds necessary to pay the maintenance fee required by the budget submitted by the Building Authority and approved in advance by the City, or make such other arrangements to pay the maintenance fee .

ARTICLE VI

Expense Records

The Building Authority shall keep and maintain a record of all expenses incurred in operating, maintaining, and managing the Arena. Such financial records shall be available for inspection by City at all reasonable times.

ARTICLE VII

Insurance

SECTION 7.01. Insurance Coverage. The Building Authority, out of the maintenance fees, shall, during the term of this Management Agreement, maintain the following insurance:

(a) Comprehensive general liability insurance for bodily injury and property damage and general automobile liability insurance covering vehicles owned or leased by the Building Authority, against claims for damages for bodily injury, including accidental death, as well as claims for property damages as more particularly set forth in paragraph six (6) of the Lease as though the Building Authority was the lessee thereunder. Such insurance shall be carried for not less than the following limits of liability:

Combined bodily injury insurance, including accidental death, and property damage insurance in an amount not less than \$1,000,000 on account of one occurrence and in the amount of not less than \$5,000,000 umbrella excess or equivalent combination. The Building Authority shall not be responsible for insuring any liability arising out of any of the operations performed by employees and agents of the City.

(b) Workmen's Compensation insurance insuring liabilities and obligations under Indiana Workers Compensation and the Workers Occupational Diseases Act with respect to employees of the Building Authority who work within the Arena and the related outside Arena grounds.

Such policy or policies of insurance shall be for the benefit of the Building Authority and the City. The Building Authority shall be under no obligation to maintain such insurance if the City fails to pay the maintenance fee required hereunder. The City shall at all times have the right to inspect such insurance policies and may at any time request additional coverage or higher policy limits, provided the additional premiums be added to the maintenance fee paid by the City. The City shall be named as an additional named insured on the policy or policies of insurance maintained by the Building Authority in accordance with the provisions of this Article.

SECTION 7.02. Subrogation. Each party to this Maintenance Agreement releases the other from all liability for damage to the property of the other or loss of use thereof, and for all other losses insured, resulting from any peril or even normally covered by insurance or Workers Compensation coverage, regardless of whether such damage or loss is caused by the negligence of the other party, its invitees, its agents, employees, officers, directors, or board members.

ARTICLE VIII

Entry Upon Premises

The Building Authority, its agents and employees, shall have the right at all reasonable times and upon reasonable notice to enter the Arena property to examine and inspect the same, to perform the services described in Article III, and to make any repairs, alterations or additions which the Building Authority shall deem necessary for the safe, preservation, improvement or

repair of the Arena. The Building Authority shall be allowed to take all materials into and upon the Arena property that it may need to perform such services and to make such repairs, improvements, additions and alterations. Repairs, improvements, additions and alterations to the Arena shall primarily be done during ordinary business hours, barring an emergency, but if any such work shall be done at the request of the City during other hours, the City shall be responsible for any overtime costs incurred by the Building Authority in connection with such work.

ARTICLE IX

Indemnification

The City covenants and agrees to the extent permitted by law, to indemnify, defend and hold harmless at all times the Building Authority and its employees, invitees, agents, directors and trustees against any and all liability, loss, cost, damage, expense, penalties, causes of action, claims or judgments by reason of any accident, injury (including death), loss, casualty or damage resulting to any person or property through any use, misuse or non-use of the Arena or by reason of any act or thing done or not done on in or about the Arena property not due to the negligence of Building Authority or its subcontractors, employees, officials, agents or assigns. Such liability shall, however, be limited to the difference between any loss or damage amount in excess of any amount recovered by the Building Authority from any insurance carrier or other source by reason of such causes of action where the liability was incurred. The Building Authority covenants and agrees to the extent permitted by law, to indemnify, defend and hold harmless at all times the city of Evansville, the Evansville Redevelopment Authority and the Evansville Redevelopment Commission and their employees, invitees, agents, directors and trustees against any and all liability, loss, cost, damage, expense, penalties, causes of action,

claims or judgments by reason of any accident, injury (including death), loss, casualty or damage resulting to any person or property through any use, misuse or non-use of the Arena or by reason of any act or thing done or not done on in or about the Arena property due to the negligence of Building Authority or its subcontractors, employees, officials, agents or assigns. Such liability shall, however, be limited to the difference between any loss or damage amount in excess of any amount recovered by the City from any insurance carrier or other source by reason of such causes of action where the liability was incurred. This provision shall not be construed and is not meant to abrogate, diminish or limit any defenses, immunities, or limitations of liability (monetary or otherwise) available to the City under the laws of the State of Indiana.

ARTICLE X

Successors and Assignability

All of the terms and provisions of this Maintenance Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the successors and by the permitted

assigns of the parties hereto. This Maintenance Agreement shall not be assignable or transferable by any party without the written consent of the other party.

ARTICLE XI

Counterparts

This Maintenance Agreement may be executed in several counterparts, each of which will be deemed an original, and all such counterparts shall together constitute but one and the same instrument.

ARTICLE XII

Choice of Law and Venue

This Maintenance Agreement shall be construed and interpreted in accordance with the laws of the state of Indiana, and venue for any Court proceeding shall be maintained in the Vanderburgh Superior Court.

IN WITNESS WHEREOF, the parties have here to set their hands and seals on the day and year first written above.

EVANSVILLE-VANDERBURGH
COUNTY BUILDING AUTHORITY

By Joseph S. Shelby
President

ATTEST:

Stephen J. Fitz
Secretary

**CITY OF EVANSVILLE, BY AND
THROUGH ITS REDEVELOPMENT
COMMISSION**

President



ATTEST:

Secretary

