

ORDINANCE NO. 171027

Authorizing the Director of Convention and Entertainment Facilities to execute a Fifth Amendment to the Arena Management Agreement with AEG Kansas City Arena, LLC, to modify the net cash flow distribution in the Agreement.

WHEREAS, the City and AEG Kansas City Arena, LLC (f/k/a Anschutz Kansas City, LLC) ("Manager") are parties to an Arena Management Agreement ("Agreement") for the Sprint Arena dated as of March 24, 2006; and

WHEREAS, during 2012 and 2014, the Missouri Department of Revenue ("DOR") completed sales and use tax audits of the Sprint Arena, and the DOR issued final decisions regarding sales tax in connection with leases of suites and the fees relating to rights to purchase tickets at the Arena which assessment of additional sales tax for the periods October 1, 2007 to June 30, 2010 and September 1, 2010 to August 31, 2013, the period from October 1, 2007 through August 31, 2013 ("the Assessment Period") were made by the DOR in the amount of \$3,049,356.00 and the Manager contested the DOR's determinations by instituting proceedings in the State of Missouri's Administrative Hearing Commission; and

WHEREAS, the hearing on the Case occurred on April 27, 2015, and on December 19, 2016, the Missouri Administrative Hearing Commission issued its ruling in the Case, upholding the assessments by DOR of the Additional Sales Tax for the Assessment Period and this now constitutes the Final Disposition of the Case for the Assessment Period; and

WHEREAS, AEG has taken steps to pay and satisfy the outstanding assessments for the Assessment Period, together with interest thereon, and AEG has proceeded to modify its sales tax collection practices to conform with the Ruling; and

WHEREAS, at this time, City and Manager agree to modify the Net Flow available for allocation to the City pursuant to Sections 5.5 and 5.8 of this fifth amendment because of possible Future Sales taxes claims for the periods following August 28, 2013, that may be asserted by the DOR as a result of the ambiguity relating to the amendment of §144.030.2, RSMo, until it is determined (whether by final nonappealable judgment, settlement or otherwise) that Manager is responsible to remit Future Sales Taxes (the "Future Sales Tax Disposition"); and

WHEREAS, City and Manager desire to execute a Fifth Amendment to the Agreement to make necessary changes of the distribution of amounts allocable to the City under Sections 5.5 and 5.8 of this Fifth Amendment in case of Future Sales Tax Assessments by the DOR; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Convention and Entertainment Facilities is authorized to execute a Fifth Amendment to the Agreement.

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Section 2. That the Manager and the City agree that for each subsequent Fiscal Year ending after August 31, 2013, as to any Future Sales Tax claims by the DOR, that any amounts allocable to the City under Sections 5.5 and 5.8 of this Fifth Amendment shall be retained by Manager pending any Final Disposition of the Future Sales Taxes Assessment and the retained amounts will be a cash reserve to potentially pay the disputed amount of the to the DOR.

Section 3. That a Fifth Amendment to the Agreement between the City and Manager is hereby accepted and approved. A copy of the amendment is on file with the Director of Convention and Entertainment Facilities.

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Approved as to form and legality:

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Lana K. Torczon  
Assistant City Attorney