

ORDINANCE NO. 160555

Authorizing the Director of Convention and Entertainment Facilities to execute a Fourth 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 were made by the DOR in the amount of \$3,049,356.00 and the Manager has 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 no decision has been rendered by the Administrative Hearing Commission in the Case; and

WHEREAS, Manager contends the \$3,049,356.00 additional assessment by the DOR is not proper; and

WHEREAS, Manager and City agree and acknowledge that if Manager had remitted the Additional Sales Tax at the times during the Assessment Period that DOR alleges that the Additional Sales Tax was due, the Net Cash Flow available for allocation pursuant to Section 5.5 hereof for the Fiscal Years ending in 2008, 2009, 2010, 2011, 2012, 2013 and 2014 would have been reduced under Section 5.5(a)(v) of the Agreement by an aggregate amount equal to the Assessment Amount; and

WHEREAS, in order to avoid the need to seek refunds from the City if an unfavorable resolution of the sales tax assessments occurs, and to place the parties in the appropriate relative position that they would have been in if all or some portion of the sales taxes covered by the State assessments are found to be owing, Manager is going to reserve the amounts that would be payable to the City under Section 5.5(a)(v) against its potential liability under the sales tax assessments until those sales tax assessments are resolved; and

WHEREAS, City and Manager desire to execute a Fourth Amendment to the Agreement to make necessary changes of the distribution of amounts allocable to the City under Section 5.5(a)(v) of this agreement pending the disposition of a case with the Missouri Department of Revenue in which Manager may have to pay additional sales tax assessments; NOW, THEREFORE,

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BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

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

Section 2. That the Manager and the City agree that for each subsequent Fiscal Year following the Fiscal Year ending July 31, 2016 until conclusion of the Fiscal Year in which the Final Disposition of the DOR case occurs, any amounts allocable to City under Section 5.5(a)(v) of this Agreement shall be retained by Manager pending the Final Disposition of the Sales Tax Case with the Department of Revenue and the retained amounts will be a cash reserve to potentially pay the disputed amount to the DOR.

Section 3. That a Fourth 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.

Approved as to form and legality:

Lana K. Torczon
Assistant City Attorney