

**REQUEST FOR PROPOSAL**

**FOR THE**

**MANAGEMENT & OPERATION**

**OF A**

**SPORTS AND ENTERTAINMENT ARENA**

**OPERATIONS AND MANAGEMENT SERVICES**

**LOCATED IN MIDDLETOWN, OHIO**

**ISSUED BY:**



**THE WARREN COUNTY PORT AUTHORITY,**

**THE OWNER OF THE SPORTS AND ENTERTAINMENT ARENA**

**DATE OF ISSUANCE: SEPTEMBER 28, 2023**

**PROPOSAL SUBMISSION DEADLINE: OCTOBER 13, 2023**

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## REQUEST FOR PROPOSALS

The Warren County Port Authority (“WCPA”) is soliciting proposals from qualified firms for the operation and management of a Sports and Entertainment Arena (“Arena”) to be located in the City of Middletown, Warren County, Ohio. This Request for Proposals (“RFP”) is intended to outline the basis for submission of Proposals to provide management and operation of the Arena. This RFP contains general conditions for the procurement process, the scope of services requested, contract requirements, instructions for submission of a Proposal (“Proposal”), and submission forms that must be included in the Proposal. This RFP includes matters of qualification and should be read in its entirety before preparing the Proposal. All materials submitted pursuant to this RFP shall become the property of the WCPA.

### 1. OVERVIEW

#### 1.1 GENERAL CONDITIONS

To the extent permitted by law, all Proposals submitted by any responder (each an “Proposer”) in response to this RFP shall be kept confidential until the Proposal evaluation process is complete and the intent to award is announced. Submitted Proposals shall be released during the evaluation process to the members of the Evaluation Committee established by the WCPA, WCPA’s Developer, CCP of Ohio, LLC and other appropriate designated WCPA staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into the final QMA (defined below) with the selected Proposer.

Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP by the Proposer shall be made in accordance with the requirements listed in Section 4.5 - Initial Questions Submission, Final Questions Submission. The WCPA is not responsible for oral interpretations given by any WCPA employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. Any questions or concerns not submitted by the stated time and date set forth in Section 4.3 herein will be deemed waived and may be disregarded.

If any addenda are issued to this RFP, the WCPA will deliver such addenda by electronic mail to the address provided by each potential Proposer. Failure of any potential Proposer to provide WCPA with a valid email address and to receive such addendum or interpretation shall not relieve such Proposer from any obligation under its Proposal as submitted. All addenda so issued shall become part of the Contract Documents.

The WCPA reserves the right to: (a) accept or reject any and/or all submissions of Proposals; (b) to waive irregularities, informalities, and technicalities in any submitted Proposal; and (c) to accept any alternative submission of Proposals presented which, in its opinion, would best serve the interests of the WCPA. The WCPA shall be the sole judge of the Proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The WCPA also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the WCPA deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

## **1.2 OBJECTIVE**

The WCPA desires to enter into an operations and management agreement constituting a qualified management agreement under Rev. Proc. 2017-13 and related federal laws, rules and regulations (“QMA”) with a qualified and experienced sports and entertainment management company to oversee the daily operations and programming of the Arena.

## **2. SCOPE OF SERVICES**

### **2.1 STATEMENT OF WORK AND SCOPE**

The WCPA owns or will own a Sports and Entertainment Arena, consisting of multiple ice surfaces in Middletown, Ohio to be constructed at the south east corner of Union Road and SR-122 in Middletown, Ohio.

The QMA will encompass daily operations, event sales, programming, scheduling, maintenance and related activities for the use of the Complex for recreational use, Ice Sports, Hockey League and other community event and entertainment activities, and supervise through professional contracted entities the successful execution of the services of those entities, and shall be subject to all IRS guidelines applicable to QMAs. The WCPA seeks to grow citizen participation in enjoyment of ice sports, and community events and entertainment opportunities, for citizens of all ages, by providing services that include (but are not limited to):

- Three (3) Ice Arenas Space Utilization Monetization Plans
- Rink Rentals
- Tenant Lease Program
- Sponsorship procurement and fulfillment
- Jr. Hockey Franchise Team
- NAHL or USHL Franchise Team
- Sports Academy Program
- Equipment Sales and Services
- Adult and Youth Hockey Programming
- Outreach Programming
- Camps and Clinics
- Tournaments (local, regional and national)
- Lessons
- In-House and Contracted Events and Concerts,
- Food and Beverage Services
- Membership Plan
- Community Activities Program Model such as School Ceremonies, Trade Shows, and other Events of interest to the Community

The Proposer selected will be responsible for staffing and working with the appropriate parties within the WCPA to ensure maintenance issues at the facilities or on the grounds are resolved in an expedient and timely manner.

The Proposer selected shall ensure that the Proposer, the Arena, its operations and events are in full compliance with all applicable federal, state and local laws, regulations, rules, WCPA policies and directives, and the terms and conditions of the QMA.

**2.2 TRAINING AND IMPLEMENTATION**

The Proposer selected shall recruit, hire and train its staff members in applicable hockey and ice skating operations; hockey tournaments; local civic and touring entertainment programs; and food, beverage and customer service to ensure that all participants and visitors have a positive experience.

**2.3 INSURANCE REQUIREMENTS**

Insurance requirements for this project are listed at the end of the form of QMA, attached as Exhibit 5.

If the Proposer is unable to provide the required insurance referenced above, questions concerning a change to the requirements should be addressed during the question and answer phase and will not be considered after the deadline in Section 4.3.

**2.4 DURATION**

The period of performance for the QMA is three (3) years from the date of execution with two (2) mutual one (1) year renewal options (subject to IRS guidelines for QMAs and annual appropriation by WCPA). The WCPA is in the process of consummating a transaction with the city of Middletown (“City”) and issuing tax-exempt special obligation revenue bonds in order to cause the construction of the Arena and related facilities and amenities (collectively, the “Transactions”). The award and execution of the QMA is contingent upon the consummation of the Transactions.

**2.5 REQUIREMENTS**

The Proposer shall explicitly state whether they can meet the requirements set forth in this RFP. If the Proposer does not meet a particular requirement, please state either the status of the requirement and/or future developments to meet the requirement.

**General Requirements:** The successful Proposer will demonstrate ability to perform all obligations set out in the form of QMA attached in order to provide the highest quality service. The successful Proposer will be expected to make every effort possible to maximize the Arena’s economic impact on the community while seeking to generate sufficient revenues and minimize expenses. The successful Proposer must be prepared to manage all aspects of the Arena operations in a professional manner and according to the standards of major U.S. arena and event centers. The WCPA, without limitation, expects such obligations to include the following:

**Business Operations**

- Properly established and registered to do business in the State of Ohio.
- Aggressively market and promote the Arena in a manner that will maximize the Arena’s economic impact to the community, use of the Arena, and use of area hotels.

- Develop annual budget for approval by WCPA.
- Develop and implement sales operations for event and sports sales to achieve revenue requirements for Arena.
- Recruit, perform background checks, hire, and train all labor for operation of the Arena and for all sports and event related activities.
- Ensure staff are certified with proper credentials to perform services when applicable.
- Ensure that all vendors and subcontractors have background checks and proper credentials to provide applicable services.
- Produce and abide by a Standard Operating Procedures Manual.
- Maintain online reservation and payment system, as well as over the phone or in-person reservation options. Ticketing system/box office should be included.
- Create and maintain professional website (or ability to establish) with relevant and up to date information.
- Maintain compliance with WCPA operating and marketing standards.
- Be responsible for all personnel matters including employment, training, and terminations.
- Produce monthly and annual fiscal operating statements.
- Provide standard uniforms for all personnel including any safety equipment (shoes, goggles, gloves etc.) that will be required.
- Ensure personnel maintain a professional appearance in their uniforms always as well as maintain professional attitudes and are polite and courteous to all customers whether internal and external.

## **Programming**

- Hosting of ice hockey and other ice activities with special interest groups, private groups, hockey clubs and/or school interests to assure the best overall, well-rounded hockey and skating programs for the community, while incorporating public play reservations and rentals, lessons, clinics, special events and camps in the overall sports program for the benefit of citizens of all ages and backgrounds
- Operation of recreational and competitive ice hockey programs such as but not limited to the following: senior and junior/youth-recreation and competitive league, age and/or gender-specific programs and activities, instructional clinics and academies, special events, etc.
- Provide private and/or group lessons and instruction by certified skating professionals
- Ability to provide supplies and equipment necessary for all hockey or skating related activities.
- Provide operating hours that meet WCPA minimum standards.
- Develop, publish and enforce rules and regulations.
- Regulation of play and participant conduct.
- Annual plan for outreach in conjunction with WCPA key performance goals.
- Maintaining and operating a business for the repair of ice hockey and or figure skates and other ice skating related equipment.
- Pro-shop operations, sales, and repairs.

## **Maintenance and Cleanliness**

- Keep all facilities (including bathrooms) clean and play areas clear of trash and debris.
- Routine inspection and maintenance of the ice rinks and Event areas, buildings, parking lot and grounds.
- Repair and replacement of hockey boards, court organizers, score boards, benches, seating areas, and locker rooms as approved.

- Grounds/building maintenance (see list below):
  - Maintenance of ice surfaces, goal nets and supporting equipment
  - Daily janitorial service
  - Daily ice rink clean-up and debris removal
  - Ice rink Zambonis, dasher boards and signage
  - Building light system

**Impact Reporting**

- Provide quarterly reporting of financial information and relevant key performance measures and goals.

**Minority Participation and Hiring**

The Proposer selected will use its best efforts to ensure that staffing and discretionary spending are reflective of WCPA population and demographics (See Exhibit 6).

**3. PROPOSAL REQUIREMENTS**

This Section describes the required contents of Proposer’s Proposal and provides an outline of how the Proposer should organize it.

The Proposer’s Proposal shall include each of the sections referenced in the table below. The requirements for each of these Proposal sections are described in more detail in this Section.

**ANY PROPOSAL MAY BE DISQUALIFIED FROM THIS RFP PROCESS IF THE PROPOSER FAILS TO CONFORM TO THE PROPOSAL INSTRUCTIONS IN THIS SECTION.**

Sections and Topics
Section 1 – Cover Letter
Section 2 – Non-Collusion Affidavit
Section 3 – Criminal and Civil Proceedings Disclosure
Section 4 – Pricing
Section 5 – Relevant Experience
Section 6 – Equal Business Opportunity (EBO) Program



### **3.1 COVER LETTER**

Proposer's Proposal shall contain a cover letter acknowledging Proposer's understanding of the RFP process and requirements set forth in this RFP, including its commitment to its Proposal. The cover letter shall be signed by an authorized representative of Proposer's company.

Provide Proposer's name, address, web address, telephone and e-mail address. Please include name, title and e-mail address of the individual who will serve as Proposer's primary contact.

Describe Proposer's ownership. Please include a statement confirming that the representative executing the Proposal is authorized to legally bind the Proposer.

### **3.2 NON-COLLUSION AFFIDAVIT**

Please use the form provided in Exhibit 1.

### **3.3 CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE**

Please use the form provided in Exhibit 2.

### **3.4 PRICING**

Proposer shall use the form included in Exhibit 3 for this section. The pricing structure(s) proposed must comply with applicable federal laws, regulations and Internal Revenue Service guidance relating to qualified management agreements for preservation of the tax-exempt status of special obligation revenue bonds to be issued by WCPA in connection with the Arena.

### **3.5 RELEVANT EXPERIENCE**

Describe the Proposer's relevant experience as it relates to projects of this type.

### **3.6 EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM**

Proposers are encouraged to use its best efforts with regard to EBO participation.

## **4. INSTRUCTIONS ON RFP PROCESS**

### **4.1 USE OF INFORMATION**

All correspondence about this RFP and the Initiative should be limited to the Principal Contact listed in Section 4.2 or other designated WCPA personnel or agents.

**4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS**

Matthew Schnipke, Deputy Director with WCPA is the single point of contact (the “Principal Contact”) for all matters relating to this RFP. Proposer should direct all inquiries to the Principal Contact at: Matthew Schnipke (matthew.schnipke@co.warren.oh.us) with a copy to Candace Miller (Candace.Miller@co.warren.oh.us). Proposer should not, under any circumstances, contact any WCPA personnel (including senior WCPA management or WCPA employees with whom Proposer has an existing business or personal relationship) to discuss this RFP without the Principal Contact’s prior written consent. The utmost discretion is expected of Proposer and all other RFP recipients. Any recipient attempting to circumvent this process will risk elimination from further participation in the selection process.

**4.3 SCHEDULE OF ACTIVITIES**

- In order to accelerate the selection and implementation, the WCPA has developed an estimated timeline for this submittal and selection process. The WCPA will move as quickly and efficiently as possible to determine the feasibility of each Proposal and to move forward with negotiations and ultimately conclude an agreement accordingly.
- As a result, the WCPA requests that Proposer make a dedicated team available to participate in the Proposal development and evaluation processes as necessary to participate in the activities to meet the deadlines provided in the table below.
- It is the WCPA’s option to conduct interviews with finalists. However, in no way is the WCPA obligated to interview finalists.
- The WCPA reserves the right to modify or update this schedule at any point in time. **In no event shall the deadline for submission of the Proposal be changed except by written modification by the WCPA Purchasing Department.**

Activity	Date
Publish RFP	September 28, 2023
Proposer Questions Deadline	October 6, 2023
WCPA Response to Questions	October 9 – October 11, 2023
Proposal Submission Deadline	October 13, 2023
Finalist Selections – Optional	October 23, 2023
Finalist Presentations – Optional (WCPA’s Discretion)	TBD
Negotiations	November 3, 2023
Agreement Finalization	November 17, 2023

Several of the activities identified in the above table are described in more detail in the remainder of this Section 4.

#### **4.4 PRE-SUBMITTAL CONFERENCE**

No Pre-Submittal Conference is scheduled for this RFP.

#### **4.5 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION**

Proposer may submit an initial set of questions based on its review of this RFP, by adhering to the format template provided in Exhibit 4 and submitted as an attached WORD document or as part of the body of the email (no pdf documents), and sending it via email by 5:00 pm on the date listed in Section 4.3 Schedule of Activities. Questions received after this time and date will not be answered. This email should be sent to the individual(s) listed in Section 4.2 Principal Contacts and Information Requests, with the subject heading: "Your company's name – RFP for Arena Management Services – Questions". The WCPA will deliver the responses to the questions via electronic mail on or before the date listed in Section 4.3 Schedule of Activities. To ensure the fair and consistent distribution of information, no individual answers will be given. Any questions or concerns not submitted by the stated time and date will be deemed waived and may be disregarded.

#### **4.6 PROPOSAL SUBMISSIONS**

Proposer shall ELECTRONICALLY submit an original response to this RFP on or before the date specified in Section 4.3 Schedule of Activities **at 12:00 noon EST**, to the addressee provided below:

Mr. Matthew Schnipke, Deputy Director, Warren County Port Authority  
E-Mail address: Matthew.Schnipke@co.warren.oh.us

With Copy to: Candace Miller  
E-Mail address: Candace.Miller@co.warren.oh.us

**PROPOSALS SUBMITTED AFTER THE DEADLINE SET FORTH IN SECTION 4.3 ABOVE, OR WHICH STATE THAT INFORMATION WILL BE PROVIDED 'AT A LATER DATE', OR WHICH ARE OTHERWISE INCOMPLETE OR FAIL TO COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS RFP, WILL BE DISQUALIFIED FROM PARTICIPATION IN THIS RFP PROCESS.**

Proposals may not be amended after the submission deadline.

Notwithstanding any legends on the Proposal or any other statements to the contrary, all materials submitted in connection with Proposer's response to this RFP will become the property of the WCPA and may be returned only at the WCPA's option; provided, the WCPA shall be entitled to retain copies of any materials which the WCPA deems a record subject to Ohio public records laws, as they may be amended from time to time.

**THE WCPA RESERVES THE RIGHT TO EXTEND THE SUBMISSION DEADLINE IF SUCH ACTION IS CONSIDERED NECESSARY BY THE WCPA.**

**Proposal Format.** The WCPA expects the Proposal to be a compilation of various documents, including but not limited to the RFP response templates set forth in the Exhibits in this RFP. Proposer shall use Microsoft Office file formats in preparing its Proposal to the maximum extent possible. All pages should be formatted to print on 8 ½" x 11" paper, unless another format is provided by the response template. Proposer responses should be specific, factual, brief and to the point.

**Proposal Expiration Date.** Proposals in response to this RFP shall remain valid for three (3) months from the Proposal due date. The WCPA may request an extension of time if needed.

**Proposer Data; Confidentiality.** The confidentiality of information and data contained in the Proposer's Proposal shall be subject to and governed by the Ohio Public Records Act and any other Public Records laws, as they may be amended from time to time, and with which the WCPA is legally obligated to comply (including a Freedom of Information Act Request under "FOIA"). All materials submitted in response to this RFP may become public record, subject to inspection after the RFP evaluation and award process has concluded. The Proposer may request that materials submitted as part of the Proposer's Proposal be treated as proprietary or confidential (provided, the WCPA in no way guarantees that such proprietary or confidential designation will ultimately exempt any material from disclosure as a public record). Any material which the Proposer requests be treated as proprietary or confidential must be clearly identified as such and easily separable from the rest of the Proposal. Cost and/or pricing information shall not be considered proprietary or confidential. Nor will the Proposer's Proposal in its entirety be deemed proprietary or confidential.

**Deadline Extension.** The WCPA reserves the right to extend the submission deadline (or any other deadline in the RFP process), if such action is considered necessary by the WCPA.

**Ambiguity, Conflict, or other Errors in the RFP.** If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify, in writing pursuant to Section 4.5, the WCPA of such error and request modification or clarification of the document. The Proposer shall include the RFP name, page number and the applicable paragraph title. The WCPA will issue revisions to the RFP via electronic mail. The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the Proposal or any ambiguity, conflict, discrepancy, etc. shall be deemed waived.

**Withdrawing or Amending a Proposal.** At any time prior to the scheduled deadline for receipt of Proposals, the Proposer may withdraw or amend its Proposal by submitting a written request from the authorized representative whose name and signature appears on the Proposal. A written request to withdraw or amend the Proposal must be submitted to the individual and address to whom/which the Proposal was submitted in accordance with the section above titled "PROPOSAL SUBMISSION AND DUE DATE."

**Acceptance/Rejection of Proposals.** The WCPA reserves the right to accept or reject, in whole or in part, any or all Proposals submitted, to cancel or postpone this RFP or awards made pursuant to it. The WCPA shall reject the Proposal of any Proposer that is determined to be non-responsive.

**Informalities/Irregularities.** The WCPA reserves the right to waive irregularities, informalities or variances in a Proposer's Proposal when the WCPA determines that it will be in WCPA's best interest to do so. Any such waiver shall not modify any remaining RFP specifications or excuse the Proposer from full compliance with the RFP specifications and other contract requirements if the Proposer is awarded the QMA.

**Proposer indebted to the WCPA.** No QMA will be knowingly awarded to any organization which, in the WCPA's sole discretion, is in arrears to the WCPA upon any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the WCPA, or which has failed to perform faithfully on any previous contract with the WCPA.

**Tax Payments.** The WCPA is exempt from federal excise, state and local taxes on all purchases and will issue tax exemption certificates, upon request.

#### **4.7 FINALIST SELECTIONS & PRESENTATIONS (OPTIONAL)**

The WCPA may select a number of the RFP Proposer-finalists who will be asked to give an oral presentation of its Proposal to the WCPA. However, the WCPA is not obligated to interview any finalist. If interviews are conducted, these Proposers will be selected based on an evaluation of their Proposals against the criteria described in Section 5 of this RFP. Proposers that are not selected to progress to the oral presentations likely will be excluded from further consideration. For this reason, Proposers are strongly encouraged to make as complete and compelling a Proposal as possible. The Proposer who fails to comply risks being dropped from further consideration without having an opportunity to improve its offer.

Details pertaining to any oral presentations will be confirmed after Proposal submission, however the presentations are tentatively scheduled to begin on the date listed in Section 4.3 herein.

If Proposer is one of the finalists asked to give an oral presentation, Proposer should prepare a comprehensive presentation that concentrates on the business and technical aspects of the Proposal. **PROPOSER'S PROPOSAL WILL NOT BE ALTERED OR ENHANCED DURING THE ORAL PRESENTATION.**

Appropriate visual and written materials are expected, but the format will be left to the discretion of the Proposer. A soft copy of all presentation materials must be delivered to the Principal Contact at least one business day before the beginning of the presentation. Proposer should also bring a sufficient number of printed copies of the materials for the WCPA attendees at the presentation.

The WCPA may provide a last-minute agenda or other direction for the Proposer's presentation based on the WCPA's initial review of the Proposals.

#### **4.8 CONTRACT AWARD**

The award of the QMA will be made on the basis of the best Proposal, as solely determined by the WCPA, which meets all WCPA requirements and criteria set forth in the solicitation, and is in the best interests of the WCPA, as determined by the WCPA in its sole discretion. The WCPA will only accept Proposals for the services requested. The Proposal submitted in response to this solicitation is not a legally binding document; however, the QMA, which will be based on information provided in the Proposal, becomes legally binding once all parties have signed it. Any QMA resulting from this RFP shall be subject to the WCPA General Terms and Conditions set forth in this solicitation and any additional terms imposed by WCPA. The successful Proposer shall be required to execute the QMA originated by the WCPA and satisfy all contract requirements as specified by the WCPA. One or more QMAs may be awarded under this RFP, and any QMA awards and amounts are subject to the availability and appropriation of funds.

#### **4.9 MODIFICATION OR TERMINATION OF RFP PROCESS**

Subject to the rules, regulations and policies governing the WCPA's procurement processes, including with respect to providing notification and, where applicable, providing the opportunity to revise Proposals, the WCPA reserves the right to, in its sole discretion, discontinue, amend, supplement, or otherwise change this RFP, the process used for evaluation, and/or the expected timeline at any time and for any reason, and makes no commitments, implied or otherwise, that this process will result in a business transaction with any provider. In the event the WCPA discontinues, amends, supplements, or otherwise changes the RFP, the process used for evaluation, and/or the expected timeline, addenda will be provided to all Proposers who timely responded to the original RFP.

#### **4.10 SUPPLEMENTAL INFORMATION**

If, after issuance of this RFP, additional relevant material is produced by or becomes available to the WCPA, such material will (where appropriate) be transmitted to all RFP Proposers for their consideration. The WCPA will make modifications by issuing a written addendum, which will be delivered by electronic mail. Any revisions to the solicitation will be made only by an addendum issued by the WCPA. It is the responsibility of the Proposer to provide WCPA with a valid electronic mail address for receipt of all such communications and should consider such information in its Proposal. The WCPA will assume that all changes or additional requirements transmitted have been taken into account in Proposer's Proposal (including with respect to pricing), unless otherwise specified.

#### **4.11 NO REPRESENTATIONS OR WARRANTIES**

The WCPA makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP or otherwise provided by the WCPA through the RFP process. Proposer is responsible for making its own evaluation of information and data contained in this RFP or otherwise provided by the WCPA, and for preparing and submitting responses to the RFP. The WCPA has attempted to validate the information provided in this RFP, but it is possible that Proposer may detect inconsistencies or potential errors. While Proposer should identify these potential issues in its questions or in an appendix to its Proposal, Proposer should use the information provided on an "as-is" basis for its initial Proposal. Information regarding the WCPA and the Initiative may be revised or updated, and republished for inclusion in a final response.

#### **4.12 PROPOSAL PREPARATION COSTS**

The Proposer will be responsible for all costs it incurs in connection with this RFP process (including but not limited to Proposal preparation, personnel time, travel-related costs, and other expenses) and any subsequent agreement negotiations.

### **5. EVALUATION MODEL**

#### **5.1 QUALIFYING PROPOSALS**

WCPA will review each submitted Proposal to determine whether it is a Qualifying Proposal. A Qualifying Proposal is one that meets all of the criteria set forth below. All Proposals that ARE NOT a

Qualifying Proposal may be disqualified from this RFP process, in the WCPA’s sole discretion. A Qualifying Proposal is a Proposal that:

- Was submitted (in the form and format required) by the due date as specified in Section 4.3.
- Conforms to the requirements of this RFP.
- Submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions. Proposals containing terms and conditions other than those contained herein may be considered nonconforming.
- Signed by an authorized representative of your organization. Unsigned Proposals will be considered nonconforming.
- Illustrates the Proposer’s expertise and ability to comply with all requirements and obligations set forth in the sample QMA attached as Exhibit 5 to this RFP.

**5.2 EVALUATION OF QUALIFYING PROPOSALS**

An evaluation team composed of representatives of the WCPA and its consultants will evaluate Proposals on a variety of quantitative and qualitative criteria. The criteria, and their associated weights, upon which the evaluation of the Proposals will be based, are as follows:

<b>Evaluation Category</b>	<b>Questions/Areas of Evaluation within Categories</b>	<b>Total Possible Points per Question</b>	<b>Total Possible Points</b>
<b>Company Reviews and References</b>			10
	Two (2) customer references for similar work (1 points per positive reference)	2	
	Two (2) examples of local experience for similar work (1 points per example)	2	
	List of verifiable clients or references that have engaged the vendor in similar work (1 point for each, with a maximum of six (6))	6	

<b>Business Operations Requirements</b>			20
	Registered to do business in State of Ohio	4	
	Ability to promote and sell the Arena	4	
	Standard Operating Procedure Manual attached	4	
	Professional website	4	
	Ability to take online reservations	4	
<b>Programming</b>			50
	Plan for hosting of tournaments and other ice skating activities with special interest groups, private groups, hockey clubs and/or school interests to assure the best overall, well-rounded hockey program for the community, while incorporating public play reservations and rentals, lessons, clinics, special events and camps in the overall program for the benefit of citizens of all ages and backgrounds.	10	
	Plan for ice hockey development program: both private instruction and involvement with community centers/other youth/adult development programs.	10	
	Plans for Arena staffing/programming/marketing for civic events including local entertainment and conferences and national touring events of the same type.	10	
	Plans for operation of recreational and competitive ice hockey programs such as but not limited to the following: senior and junior/youth, recreation and competitive league, age and/or gender-specific programs and activities, instructional ice hockey and ice skating development programs clinics and academies, special events, etc.	20	



<b>Maintenance</b>			10
	Detailed plan outlining how the Operator will: Keep facilities and play areas clear of trash and debris. Maintenance reporting through WCPA work order systems. Routine inspection and maintenance of tennis courts, buildings, parking lot and grounds. Repair and replacement of ice rinks, nets, stapes, posts, benches, public seating and Ice rink Zamboni repair and maintenance as required.	8	
	Plan to work with WCPA to handle other repairs.	2	
<b>Reporting</b>			10
	Detailed plan to report meaningful financial and operational impacts to WCPA on a quarterly basis. What metrics will be measured? How will you measure progress?	10	
<b>Pricing and Negotiated Terms and Conditions</b>	Upon completion of the above assessment, WCPA will enter into contract negotiations with one or more firms regarding pricing and other negotiated terms and conditions, as applicable.	50	50

**5.3 EQUAL OPPORTUNITY EMPLOYER; NONDISCRIMINATION**

The WCPA is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age, or handicap status in employment or in the provision of services. Nor shall the successful Proposer discriminate on the basis of race, color, national origin, sex, religion, age, or handicap status in employment or in the provision of services pursuant to the final QMA.

**5.4 GOVERNING LAW**

Any QMA resulting from the Proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Ohio. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of the Agreement shall be instituted and litigated in the courts of the State of Ohio, located in Warren County, Ohio without regard to conflicts of laws principles.

## **5.5 NON-APPROPRIATION**

The WCPA's obligations under the final awarded QMA shall be subject to annual appropriation by the WCPA, and shall terminate immediately as of the first day of any fiscal year in which the WCPA does not, for any reason, appropriate funds in an amount sufficient to meet its obligations under the QMA.

### **INSTRUCTIONS TO PROPOSERS**

Proposers shall submit their signed Proposal Electronically via e-mail INDICATING ON THE SUBJECT LINE: THE REQUEST FOR PROPOSAL NUMBER.

Proposers must comply with all applicable licensing requirements. Upon award notification and prior to execution of a final QMA with the selected Proposer, the successful Proposer will be required to submit, along with the required insurance and other required documentation, a copy of its current County Business Tax Receipt/License or an application for such.

Issuance of this RFP does not obligate WCPA to contract, in whole or in part, for services specified herein. The WCPA reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all Proposals. Proposers will be notified of any cancellation, and cancellation of this RFP by e-mail.

To request additional information concerning this solicitation, please see Section 4.5 Initial Questions Submission, Final Questions Submission.

All materials submitted pursuant to this RFP shall become the property of the WCPA.

To the extent permitted by law, all proposals submitted in response to this RFP shall be kept confidential until the Proposal evaluation process is complete and the intent to award is announced. Until the intent to award is announced, no information regarding any Proposal will be released to anyone except members of the Evaluation Committee, who are responsible for evaluating the Proposals, WCPA's Developer, CCP of Ohio, LLC and other appropriate WCPA staff. All information provided shall be considered by the Evaluation Committee in evaluating the Proposal and making a recommendation to enter into the final QMA with the selected Proposer.

The officers and directors of the WCPA are the only individual who can legally sign contracts on behalf of the WCPA. Costs chargeable to the proposed QMA shall not be incurred before receipt of a fully executed QMA. The WCPA shall not be liable for any cost incurred by the Proposer in responding to this RFP.

**EXHIBIT 1 – NON-COLLUSION AFFIDAVIT**

The Proposer, by its officers and its agents or representatives present at the time of submitting this Proposal, being duly sworn on their oaths say, that neither they nor any of them have in any way, directly or indirectly, entered into any arrangement or agreement with any other Proposer, or with any officer of the WCPA or any of its representative whereby such affiant or affiants or either of them has paid or is to pay such other Proposer or officer any sum of money, or has given or is to give to such other Proposer or officer anything of value whatever, or such affiant or affiants or either of them has not directly or indirectly, entered into any arrangement or agreement with any other proposer or person into the letting of the QMA sought for by the attached prices that no inducement of any form or character other than that which appears on the face of the Proposal will be suggested, offered, paid or delivered to any person whomsoever to influence the acceptance of the Proposal or awarding of the QMA, nor has this Proposer any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the Proposer sought by this Proposal.

**Submitted By:**

**Firm Name** \_\_\_\_\_

**Authorized Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**SIGNATURES**

**If PROPOSER is:**

**A. An Individual**

**By** \_\_\_\_\_  
**(SEAL)**

**(Individual's Name) Doing business as**

**Business Address:**

**Phone Number:** \_\_\_\_\_

**B. A Partnership**

By \_\_\_\_\_  
(SEAL)

(Firm Name)

(General Partner)

**Business Address:**

**Phone Number:** \_\_\_\_\_

**C. A Corporation**

By \_\_\_\_\_  
(SEAL)

(Corporation Name)

(State of Incorporation)

By \_\_\_\_\_  
(Name of Person Authorized to Sign)

Title \_\_\_\_\_

Attest \_\_\_\_\_  
(Secretary)

**Business Address:**

**Phone Number:** \_\_\_\_\_

**D. A Joint Venture**

**By** \_\_\_\_\_  
(Name)

**Business Address:**

**By** \_\_\_\_\_  
(Name)

**Business Address:**

**Each joint venture member must sign. The manner of signing for each individual partnership and corporation that is party to joint venture should be in manner indicated above.**

## **EXHIBIT 2 – CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE**

### **PROPOSING FIRM'S DISCLOSURE OF CRIMINAL AND CIVIL PROCEEDINGS**

Describe all ongoing and past civil and criminal proceedings within the last 10 years. Indicate the status of current proceeding and the outcome of closed or completed actions. Also, describe, if any, how the outcome of actions impacted company business operations. Attach additional pages if necessary.

Note: If no civil and criminal proceedings within the last 10 years, indicate here and return this attachment with your Proposal.

## EXHIBIT 3 – PRICE FORM





**EXHIBIT 5 – WARREN COUNTY PORT AUTHORITY QUALIFIED MANAGEMENT AGREEMENT  
FOR SPORTS AND ENTERTAINMENT ARENA**

**SPORTS AND EVENT ARENA OPERATING AGREEMENT**

This Sports and Event Arena Operating Agreement (this “Agreement”) is entered into as of \_\_\_\_\_, 2023 (“Effective Date”), by and between the Warren County Port Authority, a port authority and body corporate and politic duly created, organized, and existing under the Constitution and laws of the State of Ohio (the “Port Authority”), and \_\_\_\_\_ a \_\_\_\_\_ with principal place of business at \_\_\_\_\_ (the “Arena Operator”), (each a “Party” and collectively referred to as the “Parties”).

**RECITALS**

WHEREAS, the Port Authority, through itself or one or more agents, is acquiring, developing, constructing, furnishing, equipping and providing for the operation of an ice hockey facility and event complex, including the primary arena building and all structures and amenities appurtenant thereto and all equipment and fixtures installed therein known as “Renaissance Event Center” (as more fully described herein, the “Arena” or the “Project”) to be located at the intersection of the south east corner of Union Road and SR-122 in the City of Middletown, Ohio on the property more fully described on Exhibit A attached; and

WHEREAS, the Port Authority will issue tax-exempt special obligation revenue bonds and taxable special obligation revenue bonds in the aggregate principal amount of \$[\_\_\_\_\_] (collectively, the “Bonds”), a portion of the proceeds of which will be used to pay the costs of the construction of the Arena; and

WHEREAS, the Bonds will be issued under and pursuant to the terms of a Trust Indenture (the “Indenture”), between the Port Authority and US Bank, as trustee (the “Trustee”); and

WHEREAS, the Arena Operator is engaged in the business of managing and operating ice hockey facilities and event complexes and is experienced in the various components of operating and managing event complexes; and

WHEREAS, the Port Authority desires to engage the Arena Operator to undertake and be responsible for the day-to-day operation and management of the Arena and all revenue generating activities including, but not be limited to, leagues, tournaments, camps, clinics, developmental classes, rentals, related to ice hockey, figure skating and other athletic endeavors that can conceivably be played on ice, and concerts and other community events including but not limited to commencement activities, reunions, community meetings and ceremonies.

NOW THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

**1. DEFINED TERMS**

Except as defined elsewhere in this Agreement, all capitalized terms used herein where the rules of grammar would not otherwise so require shall have the meanings ascribed to them in the Master Glossary of Terms attached hereto as Exhibit B and incorporated herein by reference.

**2. ENGAGEMENT OF ARENA OPERATOR AND COMMENCEMENT OF MANAGEMENT OF ARENA**

A. Engagement of Arena Operator to Manage the Arena. The Port Authority hereby engages the Arena Operator as the Port Authority’s independent contractor, subject to the terms of this Agreement, to exclusively supervise, direct, promote, operate and manage the Arena, and the Arena Operator undertakes and agrees to perform,

as an independent contractor of and for the account of the Port Authority, all the Services and to comply with all of the provisions of this Agreement.

**B. Management Commencement Date and Takeover Activities.**

1) The Arena Operator will assume management and operation of the Arena at 12:00:01 AM on the Management Commencement Date.

2) Commencing on the Effective Date and continuing until the Management Commencement Date, the Arena Operator will undertake the following activities (collectively, the "Takeover Activities"): (i) recruiting, relocating, training, and employing certain management staff required for the Arena; (ii) assisting the Port Authority (as requested) in applying for and procuring (in the Arena Operator's name and/or the Port Authority's name as required by local authorities) all licenses and permits required for the operation of the Arena; and (iii) any other activities customarily required in order to assume management responsibilities of a sports and event facility including marketing all aspects of the Arena.

**3. SCOPE OF SERVICES; OPERATION OF ARENA AFTER MANAGEMENT COMMENCEMENT DATE**

A. Authority, Duties and Obligations of Arena Operator. On and after the Management Commencement Date, the Arena Operator shall have the exclusive authority and duty to direct, supervise, manage, promote and operate the Arena in an efficient and economical manner, to recommend to the Port Authority the programs and policies to be followed in connection with the use and promotion of the Arena, and to protect and preserve the assets that comprise the Arena, all in accordance with the provisions of: (i) Applicable Law; (ii) Industry Practices; (iii) this Agreement; (iv) the User Guidelines; (v) the Annual Business Plan and Approved Budgets; and (vi) the Indenture Obligations (collectively, the "Arena Operator Standards"). Subject to the provisions of this Agreement and provided that the Arena Operator is in compliance with the Arena Operator Standards, the Arena Operator shall have the discretion and control in all matters relating to the management and operation of the Arena. Without limiting the generality of the foregoing, the Arena Operator shall have the authority and duty, as long as it is consistent with the terms of this Agreement and the Arena Operator Standards, to perform and provide the following services (collectively, the "Services"):

1) Recruit, employ, relocate, pay, train, supervise, and discharge all employees and personnel necessary for the operation of the Arena ("Employees") in a manner consistent with the Arena Operator's practices at other comparable multi-sports park facilities managed and operated by the Arena Operator or its Affiliates (taking into account locational differences). Included in the foregoing shall be the determination of all personnel policies, which shall be in writing. Arena Operator shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and the Arena Operator shall have authority to hire, terminate, and discipline, any and all personnel working at the Arena. Arena Operator shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage, and promote the Arena in a manner consistent with Arena Operator's policies and procedures, and the operations of other similar facilities. Arena Operator shall assign to the Arena a competent, full-time general manager. Prior to the Arena Operator's appointment of such general manager, Arena Operator shall consult with the Port Authority with respect to the qualifications of the proposed general manager. Notwithstanding anything to the contrary in this Agreement, if at any time, the general manager of the Arena (i) performs in a manner inconsistent with the Arena Operator's policies and procedures; (ii) makes management decisions against the best interest of the operation of the Arena; or (iii) violates any applicable laws or regulations; then the Port Authority may by written request to the Arena Operator effectuate the removal and replacement of the general manager of the Arena. A request for removal and replacement of the general manager of the Arena by the Port Authority shall not unreasonably be denied or delayed by the Arena Operator.

- 2)
- 3) Subject the approval of the Port Authority, not less frequently than annually, establish all prices, price schedules, rates and rate schedules, rents, lease charges, and, in connection with the same and in accordance with the Cash Management Agreement, supervise, direct and control the collection, receipt and giving of receipts for all services or income of any nature from the Arena and its operations.
- 4) Supervise and maintain complete books and records, including but not limited to the books of accounts and accounting procedures of the Arena, the original or an accurate and current copy of which shall at all times be kept at the Arena.
- 5) Enter into and administer Temporary Use Agreements for the Arena under the following parameters:
  - (i) [All Temporary Use Agreements shall be in the Port Authority’s name.]
  - (ii) To the extent the pricing for Temporary Use is uniform for all or substantially all Temporary Users, and the proposed use is an arrangement that is not available for use on the same basis to natural persons not engaged in a trade or business, the maximum allowable term of any separate Temporary Use Agreement is 100 days of use. Days of use are counted based on actual days of use covered by the Temporary Use Agreement, as opposed to, for example, the total time elapsed between the execution of the Temporary Use Agreement and the final use allowed under the Temporary Use Agreement. Further, a Temporary Use Agreement that is renewed absent objection by one of the parties is treated as a new Temporary Use Agreement each time it is renewed for purposes of the 100-day limitation. Any use during any calendar day is treated as use during that day. To the extent there is an insubstantial number of Temporary Uses with specially negotiated pricing, the 100-day period described above is a 50-day maximum.
  - (iii) As further limitations, no separate Temporary User will be allowed to use the Arena in an amount that exceeds 10% of the expected aggregate use of the Arena in any calendar year, and the aggregate use of the Arena by Temporary Users whose use does not meet the limitations set out in (ii) above shall not exceed 10% of the expected aggregate use of the Arena in any calendar year. Generally, the percentage of use for this purpose is the aggregate hours of the Arena actually used by the Temporary Users divided by the total hours of the Arena actually used by all users of the Arena, as reflected in the Annual Business Plan.
  - (iv) No Temporary Use Agreement shall be entered into unless the Temporary Users and the proposed Temporary Use are consistent with the Port Authority’s User Guidelines in effect from time to time during the term of this Agreement. The Port Authority retains the right to enforce its User Guidelines and to cause any Temporary Use Agreement to be terminated by Arena Operator in the event that any Temporary Use or Temporary User is deemed in the reasonable judgement of the Port Authority, to be in violation of the User Guidelines.
- 6) Negotiate and enter into, on behalf of the Port Authority and in the name of the Port Authority, service contracts and licenses required in the ordinary course of business in operating the Arena, including, but not limited to tournament operator agreements, referee assignor agreements, camp and clinic vendor agreements, and other Services which the Arena Operator deems advisable (“Service Contracts”).

- 7) Supervise and purchase or arrange for the purchase in the most economical manner of all inventories, provisions, and Operating Supplies, which, in the normal course of business, are necessary and proper to operate the Arena in accordance with the Annual Business Plan (defined herein below).
- 8) Timely prepare and submit to the Port Authority the Annual Business Plan as described below in Section 9.
- 9) Perform such other tasks as are customary and usual in the operation of a sports and event facility of a class and standing consistent with the Arena's Athletic Surfaces.
- 10) Provide risk management services in accordance with the terms of this Agreement and otherwise assist the Port Authority in ensuring the acquisition and maintenance of insurance consistent with the Master Insurance Schedule attached hereto as Exhibit C (the "Master Insurance Schedule").
- 11) Use commercially reasonable efforts to advertise, promote, and market the Arena.
- 12) Monitor and ensure the Arena's compliance in all material respects with Applicable Law, including without limitation obtaining and maintaining in its own name all permits necessary for the Arena Operator to fulfill its obligations hereunder.
- 13) Promptly investigate and provide a written report to the Port Authority, the Designated Agent and applicable insurance carrier(s) as to all alleged accidents and/or alleged claims for damages, of which the Arena Operator becomes directly aware in the course of its operation of the Arena, related to the Arena, its use, operation, management and maintenance (including any personal injury or property damage occurring to or claimed by any tenant or third party on or with respect to the Arena). Such written report shall include the estimated cost of repair, if applicable. The Arena Operator shall acquaint itself with all terms and conditions of all insurance policies applicable to ownership, operation, management and maintenance of the Arena and reasonably cooperate with all insurance carriers. The Arena Operator shall promptly forward to the Port Authority and any insurance carrier any summons, subpoena or other similar legal documents served upon the Arena Operator with copies to the Designated Agent.
- 14) Promptly notify the Port Authority and the Designated Agent of any dumping, use or leakage of any Hazardous Substances in or near the Arena of which the Arena Operator has actual knowledge or becomes aware.
- 15) Cause an inventory to be taken at least annually of all major furniture, equipment, materials, supplies, maintenance tools and any other major equipment or material used by the Arena Operator in connection with the operation and management of the Arena or its Athletic Surfaces and deliver such inventory to the Port Authority. The Arena Operator shall not sell, lease or otherwise dispose of any such major property without the prior consent of the Port Authority.
- 16) Provide recommendations to the Port Authority with respect to the FFE requirements of the Arena, and, to the extent approved as part of any Approved Arena Capital Budget, or to the extent otherwise agreed in writing by the Port Authority with respect to costs which are likely to exceed the Approved Arena Capital Budget, manage the specification and procurement of the FFE for the Arena.
- 17) Take all commercially reasonable and prudent steps necessary or desirable to protect the intellectual property of the Arena and its trademarks, trade names, service marks, service names, patents, trademarks or copyrights or other intellectual property, including registration of the same in the name of the Port Authority.

18) As applicable, enter into, maintain or comply with any other agreements or arrangements as the Port Authority or the Arena Operator deems necessary or appropriate to facilitate the availability of amenities to Arena guests other than and in addition to the amenities available as part of the Arena.

19) Notify the Port Authority in a timely manner of any occurrence, event, condition or circumstance of which the Arena Operator has knowledge that could reasonably be expected to have a material adverse effect on the business or operations of the Arena.

20) Arena Operator hereby acknowledges and accepts the right of Port Authority to retain final decision-making authority and accountability for scheduling decisions on the Arena.

B. Negative Covenants of Arena Operator. Notwithstanding anything in this Agreement to the contrary and unless consented to in writing by the Port Authority, the Arena Operator shall not have the authority to (1) commence, institute, defend, litigate, or settle any legal proceeding to which the Port Authority (or any of its Affiliates), or the Trustee is a party (except with respect to the Arena Operator's own private interests); (2) take any other action that is inconsistent with the scope of its duties and obligations hereunder; (3) permit the presence, use, storage, handling or disposal of any Hazardous Substances on the Arena premises or in violation of Applicable Law and, regardless of whether or not a given Hazardous Substance is permitted on the Arena premises under Applicable Law, the Arena Operator shall not bring on the premises any Hazardous Substances other than as approved and needed in the normal course of business of the Arena; or (4) represent or hold itself out as having the authority to do any of the foregoing.

C. Compliance with Arena Operator Standards. In the Arena Operator's performance of its obligations hereunder and any other contract entered into with respect to the Arena, the Arena Operator shall, and shall cause its Employees, agents and contractors to comply in all material respects with the Arena Operator Standards.

D. Indenture. The Arena Operator acknowledges and agrees that the management and operation of the Arena and the Port Authority's obligations under this Agreement are subject certain terms and conditions set forth in the Indenture, a true and accurate copy of which is attached hereto as Exhibit D. Consistent with the Port Authority's obligations pursuant to the Indenture, the Arena Operator agrees to cooperate with the Port Authority in performing all obligations of the Port Authority under the Indenture.

E. Service Contracts. Each Service Contract must meet the following requirements:

1) The Service Contract shall incorporate the terms of this Agreement to the extent applicable to the Services to be performed by the contractor and shall (i) require that such portion of the Services be performed in accordance with the requirements of this Agreement; (ii) include a waiver of all rights the contracting parties may have against one another or that the contractor may have against the Port Authority or any Port Authority Indemnified Person for any bodily injury, death or loss or damage to property; (iii) contain an indemnification provision and limitation on liability provision in favor of the Port Authority acceptable to the Port Authority; (iv) require the contractor to carry and maintain insurance in accordance with the requirements of this Agreement; (v) shall not contain any provision that is inconsistent with this Agreement; and (vi) provide that such Service Contract shall be modified to the extent such modification is determined in the opinion of counsel to the Port Authority with nationally recognized expertise in tax-exempt financing matters to be necessary to preserve the tax-exempt status of interest on bonds issued by the Port Authority to finance or refinance the cost of construction of the Arena.

2) With respect to a Service Contract that gives rise to Gross Operating Revenues, the Arena Operator shall, pursuant to one or more Collateral Control Agreements satisfactory to Trustee, the Port Authority, and the Collateral Agent, (i) agree to irrevocably direct payments that include amounts that are Gross Operating Revenues to the Collections Account, (ii) pledge to the Collateral Agent, for the benefit

of the Port Authority's and the further benefit of the Trustee and the holders of the Bonds as assignees of the Port Authority, Arena Operator's interest in all accounts, chattel paper, general intangibles, instruments or receivables and proceeds thereof to secure the payment obligations due to the Port Authority pursuant to such the Service Contract; and (iii) acknowledge in the Collateral Control Agreements that (I) the Arena Operator is acting as an independent contractor of the Port Authority, (II) payment of obligations due to the contractor under the Service Contract shall be made solely out of amounts Operating Revenues or amounts disbursed by the Trustee for the payment of Operating Expenses; (III) the Port Authority shall not have any pecuniary liability out of its separate assets (other than amounts and assets held under the Indenture) for the obligation or expenditure evidenced by such Service Contract; and (IV) the contractor will not take action against any person for payment of amounts due under such Service Contract except to request amounts and assets of the Arena and amounts reserved for the payment of Operating Expenses, in each case, in accordance with the requisition procedures and limitations set out in the Collateral Control Agreement or Indenture.

3) A Service Contracts involving the provision of services by an agent or contractor shall further provide that:

- (i) each respective agent or contractor shall have sole responsibility for all other obligations to or for its employees arising from or connected with employment, including but not limited to, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal unemployment taxes, employment taxes and all other taxes and governmental assessments, and for paying all workers' compensation insurance and benefits;
- (ii) each respective agent or contractor providing services at the Arena shall assume the responsibility for timely compliance with Arena Operator Standards regarding its services and employees;
- (iii) the Port Authority shall not have any legal or financial responsibilities with respect to any agent or contractor, or any of their respective employees; and
- (iv) language in substantially the following form will be included: "PERSONS EMPLOYED, RETAINED OR ENGAGED BY [NAME OF AGENT OR CONTRACTOR OR ANY PERMITTED SUBCONTRACTOR OF SUCH AGENT OR CONTRACTOR] TO CONDUCT SERVICES AT THE ARENA SHALL IN EVERY INSTANCE BE EMPLOYEES OF [NAME OF CONTRACTOR OR ANY PERMITTED SUBCONTRACTOR OF SUCH CONTRACTOR] AND UNDER NO CIRCUMSTANCES SHALL ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE ARENA, THE CONDUCT OF BUSINESS AND OPERATIONS OF THE ARENA, OR ANY CONSTRUCTION, MAINTENANCE OR OPERATION THEREOF BE CONSIDERED EMPLOYEES OF THE PORT AUTHORITY, THE DESIGNATED AGENT, THE COLLATERAL AGENT, OR THE TRUSTEE FOR ANY PURPOSE WHATSOEVER."

F. Employees. Subject to compliance with the Annual Business Plan, the Arena Operator shall have complete authority over pay scales and all benefit plans for Employees as long as the pay scales and benefits plans are reasonable and competitive in the market, consistent with those at comparable sports and event facilities managed by the Arena Operator or its Affiliates and in the aggregate do not result in Employee cost overruns under the Annual Business Plan. Except for its payment of expenses included as part of the Annual Business Plan paid

solely from the sources provided therefore under the Indenture, the Port Authority shall not have any legal or financial responsibilities with respect to any Employees or any of Arena Operator's agents and contractors, or their respective employees, who provide services to the Arena Operator in connection with the Arena; rather, the Arena Operator shall have sole responsibility for all obligations to or for its Employees arising from or connected with employment, including but not limited to, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal unemployment taxes, employment taxes and all other taxes and governmental assessment, and for paying all worker's compensation insurance and benefits and shall assume the responsibility for timely compliance with all Applicable Law regarding its Employees. PERSONS EMPLOYED, RETAINED OR ENGAGED BY THE ARENA OPERATOR IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT SHALL IN EVERY INSTANCE BE THE EMPLOYEES OF THE ARENA OPERATOR AND UNDER NO CIRCUMSTANCES SHALL ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE ARENA, THE CONDUCT OF BUSINESS AND OPERATIONS OR THE ARENA OR ANY MAINTENANCE OR OPERATION THEREOF BE CONSIDERED EMPLOYEES OF THE PORT AUTHORITY, THE DESIGNATED AGENT, THE TRUSTEE, OR THE COLLATERAL AGENT FOR ANY PURPOSE WHATSOEVER.

G. Certain Independent Contractors. Subject to compliance with Section 3.E above, the Arena Operator may hire independent contractors to provide such professional services as the Arena Operator deems necessary or appropriate in the ordinary course of business in connection with the operation of the Arena and at an expense approved by the Port Authority and itemized in the Annual Business Plan; provided, however, that any independent contractors so engaged shall be subject to approval by the Port Authority (which approvals shall not be unreasonably withheld or delayed).

H. Arena Access. Representatives of the Port Authority, the Designated Agent, the Trustee, the Project Consultant and their respective agents, attorneys, accountants, employees, invitees, or licensees (collectively, "Representatives") shall have at all times during the Term (i) full and complete access to the Arena, including all non-public sections of the Arena, subject to reasonable limitations as to the number of persons that may be permitted to be given access and the timing of such access (including at least 24 hours prior written notice); (ii) the right to tour any portion of the Arena, to observe and to permit others to observe the various Services performed by the Arena Operator, provided only that such tours shall be conducted in compliance with the Arena Operator's safety standards and Applicable Law and shall not unreasonably interfere with the Arena Operator's ability to perform its obligations hereunder; (iii) the right to conduct inspections of all or part of the Arena, at reasonable intervals during normal business; and (iv) the right to inspect and copy any and all books and records of the Arena Operator pertaining to the operation of the Arena and to discuss the operation of the Arena with appropriate Representatives of the Arena Operator or any contractor. The Arena Operator shall cooperate with the Port Authority, the Designated Agent, the Trustee, Project Consultant and their respective Representatives in such inspections and the Port Authority, the Designated Agent, the Trustee, Project Consultant and their respective Representatives shall conduct such inspections or cause such inspections to be conducted so as not to unreasonably interfere with the Arena Operator's performance of its obligations hereunder. The Arena Operator shall and shall cause each subcontractor to provide any of the Port Authority, the Designated Agent, the Trustee or Project Consultant, at any time upon reasonable request with any Arena information so requested.

I. Cash Management Agreement. Notwithstanding anything to the contrary contained herein, the Arena Operator and the Port Authority agree that each is bound by the Cash Management Agreement, which Cash Management Agreement shall set forth the Arena Operator's rights and obligations with respect to and the manner of any disbursement or withdrawal of amounts, in the various amounts and accounts (including the Collections Account and the Operating Account as provided therein), and is in substantially the form as attached hereto as Exhibit E. In the event of any inconsistencies between the Cash Management Agreement and this Agreement, the provisions of this Agreement shall control.



#### **4. OPERATING EXPENSES PAID BY ARENA OPERATOR FROM REVENUES**

A. Operating Expenses Incurred by Arena Operator on Behalf of the Port Authority. The Services provided by the Arena Operator in the performance of its obligations, and Operating Expenses incurred, under this Agreement shall be for the benefit of the Port Authority and for its account, except the Services referred to in Section 5 of this Agreement which shall be rendered and performed by the Arena Operator or its Affiliates at their expense and not separately charged to the Port Authority, except as otherwise provided in Section 5.

B. Arena Operator Not Obligated to Advance Own Funds. Except with respect to any liability of Arena Operator described in Section 18, neither the Arena Operator nor any of its Affiliates shall be obligated to advance any of its own amounts to or for the account of the Port Authority, nor to incur any costs unless the Port Authority shall have furnished the Arena Operator with the amounts necessary for the discharge of such liability prior to incurring the liability. If the Arena Operator shall have advanced any amounts in payment of an expense in the maintenance and operation of the Arena, the Arena Operator shall promptly provide the Port Authority with written notice upon making the Port Authority such advances and the Port Authority shall reimburse the Arena Operator for such advances no later than five (5) business days after receipt of such notice. Notwithstanding the foregoing, the Arena Operator shall pay from its own amounts the expenses described in Section 5 of this Agreement.

#### **5. SUPPORT SERVICES PAID BY ARENA OPERATOR'S HOME OFFICE/AFFILIATES**

After the Management Commencement Date, the normal consulting services of the corporate officers and employees of the Arena Operator's Affiliates, including its corporate executives for operations, sales and marketing, finance and administration, real estate, and accounting, to be rendered from time-to-time to the Arena Operator in connection with the management and operation of the Arena, shall be provided by the Arena Operator's Affiliates to the Arena Operator at the Arena Operator's sole cost and expense and not charged to the Port Authority.

#### **6. COMPLIANCE WITH APPLICABLE LAW**

A. Compliance by Arena Operator. The Arena Operator will comply with Applicable Law, including but not limited to all laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any governing authority and the requirements of any insurance companies covering any of the risks against which the Arena is insured. In addition, the Arena Operator will be responsible to ensure that the operation of the Arena is at all times in compliance with Applicable Law, and the costs associated with such compliance shall be included as Operating Expenses unless any noncompliance is determined to have been caused by the gross negligence or willful misconduct of the Arena Operator, in which event the Arena Operator will pay such costs directly or will reimburse the Port Authority for such costs and will indemnify the Port Authority pursuant to Section 18 of this Agreement for any such costs. If the cost of compliance exceeds \$1,000 in any instance, the Arena Operator shall promptly notify the Port Authority, and the Port Authority shall promptly approve payment of such costs operating amounts or otherwise, subject to the limitations on Port Authority's liability set forth in the Indenture, provide the Arena Operator with the amounts for the payment of such costs.

B. The Port Authority's Right to Contest or Postpone Compliance. With respect to a violation of any Applicable Law, the Port Authority shall have the right to contest Arena Operator's method or cost of compliance, and to postpone compliance pending the determination of such contest.

C. Arena Operator's Right to Terminate Agreement. Notwithstanding anything in this Agreement to the contrary and subject to Section 12.C, if within five (5) business days of receiving the Arena Operator's written request, the Port Authority fails to approve the changes, repairs, alterations, improvements, renewals or replacements to the Arena which the Arena Operator determines in its reasonable judgment are necessary to (i) protect the Arena and the Arena Operator from liability exposure; (ii) ensure material compliance with any applicable code requirements pertaining to life safety systems requirements; or (iii) ensure material compliance

with Applicable Law, including, but not limited to, all state, local, or federal employment law, including but not limited to the Americans with Disabilities Act, then the Arena Operator, then Arena Operator may terminate this Agreement by providing written notice to the Port Authority and to the Trustee (“Notice of Termination Due to Non-Compliance with Laws”). Such termination shall be effective as of the date set forth in the Notice of Termination Due to Non-Compliance with Laws, provided such termination date shall not be sooner than ten (10) business days after delivery of the Notice of Termination Due to Non-Compliance to the Port Authority and Trustee, and provided further, that such Notice of Termination Due to Non-Compliance may be revoked by mutual written agreement of the Arena Operator and the Port Authority or Trustee in the event that non-compliance is cured to the Arena Operator’s reasonable satisfaction.

## **7. OPERATING ACCOUNT AND OPERATING FUNDS**

A. Collection of Gross Operating Revenues. The Arena Operator will collect when due all rents, fees, charges and other amounts that constitute Gross Operating Revenues received or receivable on the Port Authority’s or the Trustee’s account in connection with the management and operation of the Arena and deposit such amounts (or cause such amounts to be deposited) in the Collections Account established pursuant to and in accordance with the Cash Management Agreement and Collateral Control Agreement, as applicable. Except as set forth in the Cash Management Agreement or Collateral Control Agreement, as applicable, the Arena Operator shall have no check writing, drafting or withdrawal authority with respect to the Collections Account and shall otherwise exert no control over any amounts deposited in the Collections Account.

B. Payment of Operating Expenses. The Arena Operator shall pay Operating Expenses and certain other costs when and as the same become due from the Operating Account established pursuant to the Cash Management Agreement and in accordance with the provisions thereof.

C. Remittance of Funds. Gross Operating Revenues collected by the Arena Operator remaining after payment of Operating Expenses and not otherwise applied to the Collections Account or a Reserve Fund in accordance with the Cash Management Agreement shall be remitted to the Trustee in the amounts and at the times specified pursuant to the Cash Management Agreement.

## **8. BOOKS, RECORDS AND FINANCIAL STATEMENTS**

A. Accounting System. The Arena Operator shall keep full and adequate books of account and other records reflecting the results of operation of the Arena on an accrual basis, all substantially in accordance with FASB and applicable Accounting Standards. The books of account and all other records relating to, or reflecting the operation of, the Arena shall be kept at the Arena or stored by suitable electronic means and shall be available to the Port Authority and its Representatives at all reasonable times for examination, audit, inspection and transcription. All of such books and records, including, but not limited to, books of accounts, user records and front office records, at all times shall be the property of the Port Authority and shall remain accessible to the Port Authority. Upon termination of this Agreement, all the books and records shall be turned over to the Port Authority to ensure the orderly continuation of the operation of the Arena, but after such termination the books and records shall be available to the Arena Operator at all reasonable times for inspection, audit, examination and transcription.

B. Financial Statements. The Arena Operator shall deliver to the Port Authority within fifteen (15) calendar days after the end of each month (the “Accounting Period”) a profit and loss statement showing the results of the operation of the Arena and its Arena for such Accounting Period and the Fiscal Year to date and a balance sheet as of the close of such month. The Arena Operator shall deliver to the Port Authority within forty-five (45) calendar days after the end of each Fiscal Year a profit and loss statement showing the results of operation of the Arena during such Fiscal Year and Net Operating Income, for such Fiscal Year and a balance sheet for the Arena as of the close of such Fiscal Year. If the Port Authority elects to conduct an audit, the Arena Operator shall cooperate with the Independent Auditor (so as to allow the Independent Auditor to deliver audited financial statements to the Port Authority within ninety (90) calendar days after the end of each Fiscal Year. Any disputes as

to the contents of any such statements, or as to any accounting matter under this Agreement, shall be determined by an independent auditor mutually agreed upon by the Port Authority and the Arena Operator (the “Independent Auditor”), whose decision shall be final and conclusive on the Arena Operator and the Port Authority, the expense for which shall be an Operating Expense.

## 9. ANNUAL BUSINESS PLAN

A. Preparation of Annual Business Plan. The Arena Operator shall submit to the Port Authority a forecast of performance for the balance of the year in which the Management Commencement Date occurs. Subsequently, at least ninety (90) calendar days prior to the end of each Fiscal Year, the Arena Operator shall submit an annual business plan for the succeeding Fiscal Year (the “Annual Business Plan”). At a minimum, the Annual Business Plan shall include: (i) an operating budget showing estimated Gross Operating Revenues (including details regarding operating hours and the pricing for use of the Arena), department profits, Operating Expenses and Net Operating Income for the forthcoming Fiscal Year for the Arena and its Arena (including any revenues from the sale of Arena assets); (ii) a marketing plan; and (iii) an annual capital budget. All such items such be in reasonable detail and, where appropriate, with the basis for all assumptions expressly set forth. The Port Authority shall review the Annual Business Plan and either approve or notify the Arena Operator of any objections to the Annual Business Plan in writing within fifteen (15) calendar days of the Port Authority’s receipt of the Annual Business Plan. The parties will attempt to resolve in good faith any objections by the Port Authority within thirty (30) calendar days following the Arena Operator’s receipt of the Port Authority’s disapproval. The Annual Business Plan, however, is always subject to the Port Authority’s approval. Once approved by the Port Authority the operating budget and capital budget, as so approved, shall be the Approved Annual Operating Budget and Approved Arena Capital Budget, respectively, for the applicable Fiscal Year.

B. Annual Business Plan Disputes. If the Arena Operator and the Port Authority are unable to agree upon an Annual Business Plan or any details of such plan, then the final Annual Business Plan shall be determined by the Port Authority, whose determination shall be conclusive and binding upon the parties.

C. Deviations. The Arena Operator shall diligently pursue all feasible measures to enable the Arena to adhere to the Annual Business Plan; provided, however, the Port Authority acknowledges and agrees that the Arena Operator will not be responsible for the payment of any variances from the Annual Business Plan if the variance is instructed solely by the Port Authority. If the Arena Operator determines that circumstances require that there be material changes in the Annual Business Plan, the Arena Operator shall so notify the Port Authority as soon as practically possible after the need for such changes becomes apparent. Such determination is made when the annual amount in a specified department described below is forecasted to exceed the budgeted amount set forth in the Annual Business Plan as reflected in the monthly forecast. For purposes of this Section 9.C.: (i) a variation of more than ten percent (10%) below or in excess of the amount set forth in the Annual Business Plan for either the sales and marketing department or the repairs and maintenance department, or (ii) a variation of more than five percent (5%) in excess of the amount set forth in the Annual Business Plan for any other major deduction category in calculating Operating Profit (e.g., a department such as general and administrative), shall be considered to be a material deviation. Any such material change shall be subject to the Port Authority’s approval; provided, however, the Port Authority’s approval shall not be required to the extent such material deviation consists of: (a) expenses otherwise contemplated under this Agreement which are deducted from Operating Profit; (b) expenses which are nondiscretionary by virtue of being determined by a third party or governmental entity, such as minimum wages under collective bargaining agreements, utility costs and sales taxes; (c) the amount of increased expenses resulting directly from increases in volume, provided that departmental profit margins and Operating Profit margins are not diminished or otherwise negatively affected; or (d) expenditures as may be required if the Arena Operator reasonably believes such expenditure to be required by any emergency situation imminently threatening life, health or safety (provided that the Arena Operator shall notify the Port Authority of such emergency and the need for such expenditure in advance or if not possible in advance then as soon as practicable). Notwithstanding anything in this Agreement to the contrary, the Arena Operator is not warranting or guaranteeing in any respect results of any Annual Business Plan in the operation of the Arena.

## 10. FEES AND REIMBURSEMENTS

A. Arena Operator's Management Fee. In consideration of the Services the Arena Operator is to render under this Agreement, the Arena Operator will be paid the Arena Operator's Management Fee in the amounts set forth on Exhibit F attached hereto and incorporated herein by reference.

B. Technical, Procurement or Other Services. Service fees for technical or procurement services for the Arena shall be paid to the Arena Operator or its Affiliates if and only if the Port Authority requests such services of the Arena Operator, or any other services beyond the scope of Services to be provided pursuant to this Agreement ("Extra Services"). The amount of fees shall be agreed to in writing by the Port Authority and the Arena Operator prior to commencing such Extra Services. Technical services include renovation coordination, design review, construction management and related services. Procurement services relate to purchase and installation of furniture, fixtures, equipment, and operating equipment of the Athletic Surfaces. Other services may include such services as revenue management, IT support, human resource-related support and so forth.

## 11. INSURANCE

A. NOTWITHSTANDING ANY PROVISION OF THIS SECTION 11 TO THE CONTRARY, IN THE EVENT OF A DISCREPANCY BETWEEN THE REQUIREMENTS OF THIS SECTION 11 AND THE REQUIREMENTS SET FORTH IN THE MASTER INSURANCE SCHEDULE, THE PROVISIONS OF THE MASTER INSURANCE SCHEDULE AS AMENDED FROM TIME TO TIME SHALL CONTROL. THE MASTER INSURANCE SCHEDULE SHALL BE DEEMED TO BE AMENDED WHENEVER THE INSURANCE CONSULTANT MAKES A FINAL RECOMMENDATION AS TO ANY CHANGES THEREIN AND AGREED TO BY BOTH PARTIES.

B. Insurance Coverage. The Arena Operator shall procure and maintain from and after the occurrences or dates set forth in the Master Insurance Schedule the insurance policies in accordance with and as provided in the Master Insurance Schedule. These insurance policies will be in the names of, and name as additional insureds, the parties set forth in in the Master Insurance Schedule, including the Arena Operator, the Port Authority and the Trustee. The Arena Operator shall be responsible for obtaining the insurance coverages identified in Section [\_\_\_] of the Master Insurance Schedule. Any insurance required to be provided by the Arena Operator under this Section 11.B. may be provided under the blanket insurance policy of the Arena Operator, which policy covers other multi-sports park facilities managed by the Arena Operator. All premiums, costs and expenses shall be allocated among the properties participating under such program in accordance with generally accepted underwriting standards. The Port Authority assumes no responsibility for, or interest in, additional premiums or proceeds (other than standard audit adjustments) generated by the blanket insurance policy of the Arena Operator. The Port Authority shall be provided certificates evidencing the insurance coverages required pursuant to this Section 11.B. or the Master Insurance Schedule on or before ten (10) business days after the Management Commencement Date, and upon any and all subsequent renewals of such insurance policies. The Port Authority shall have the right at any time for any reasonable period of time to place property and casualty insurance coverage, and with the consent of the Arena Operator (which shall not be unreasonably withheld or delayed) any other required coverage under this Section 11.B. If the Port Authority notifies the Arena Operator that the Port Authority shall place the insurance coverage, the Arena Operator shall cooperate with the Port Authority and shall terminate, with advance notice to the Port Authority, any overlapping insurance coverage.

C. Forms of Insurance. All insurance policies and renewals thereof that are required to be carried hereunder shall comply with the Master Insurance Schedule.

D. Waiver of Subrogation. Neither the Arena Operator nor the Port Authority shall assert against the other, and do now waive with respect to each other, or against any other entity or person named as additional insureds on any policies carried under this Section 11, any claims for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to

property arising out of the operation or maintenance of the Arena, to the extent that the same are covered by the insurance required under this Section 11. Each policy of insurance shall contain a specific waiver of subrogation reflecting the provisions of this Section 11.D., and a provision to the effect that the existence of the preceding waiver shall not affect the validity of any such policy or the obligation of the insurer to pay the full amount of any loss sustained. The Port Authority and the Arena Operator acknowledge that they have agreed on the adequacy of the amounts of any insurance coverage provided under this Agreement as detailed in Exhibit C.

## 12. TERM

A. Term. This Agreement shall be for a period commencing on the Management Commencement Date, and unless sooner terminated as provided below, shall expire \_\_\_\_ (\_\_) year[s] after the Management Commencement Date (the “Initial Term”).

B. Renewal Terms: This Agreement shall automatically renew for successive periods of \_\_\_\_ (\_\_) year(s) each (individually a “Renewal Term” and collectively “Renewal Terms”), unless terminated by the provisions of this Agreement or upon not less than \_\_\_\_\_ (\_\_) days written notice by either Party prior to the end of the current Term. Any reference in this Agreement to “Term” shall be deemed to be a reference to the Initial Term and any Renewal Term. Notwithstanding anything herein to the contrary, the obligations of the Port Authority hereunder are subject to annual appropriation by the Port Authority, and this Agreement shall be subject to non-renewal or earlier termination, as applicable, based upon any failure or refusal of the Port Authority to appropriate funds necessary to meet its obligations hereunder.

C. Early Termination. The Port Authority and the Arena Operator acknowledge that, but for the Term of this Agreement and the parties’ commitment to the contemplated relationship for the Term of this Agreement, the Arena Operator would not have made the significant investments of money and time necessary to commence and conduct services under this Agreement and foregone other opportunities. If this Agreement is terminated by Port Authority prior to the expiration of the Initial Term for any reason other than the Arena Operator Default (as defined below), or pursuant to Section 14, then the Port Authority shall pay to the Arena Operator the Termination Fee (as defined below). The Port Authority and the Arena Operator further acknowledge and agree that the Arena Operator’s damages in the event of a termination of this Agreement would be difficult to determine, therefore the Termination Fee is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. In addition, in the event of any early termination, the following terms shall apply:

- 1) The Arena Operator shall continue to operate the Arena in good faith in accordance with the terms of this Agreement until the effective date of such termination.
- 2) On the effective date of any early termination, the Arena Operator shall cease all activities at the Arena and shall have no further obligations under this Agreement and shall peacefully vacate and surrender the Arena to the Port Authority on the effective date of such termination.
- 3) After the notice of termination is given, and prior to the date the Arena Operator ceases activities at the Arena, the Arena Operator shall be paid any and all fees or expenses due it pursuant to this Agreement, and the Arena Operator shall cooperate with the Port Authority in the orderly transfer of management to the Port Authority or the Port Authority’s designee.
- 4) Regardless of the reason for termination of this Agreement, the Arena Operator shall assign and transfer to the Port Authority:
  - (i) any interest which the Arena Operator may have or claim in and to all of the Port Authority’s books and records, plans and specifications, architectural or engineering drawings, contracts, leases and other documents respecting the Arena

that are not the Arena Operator's proprietary information and are in the custody and control of the Arena Operator;

- (ii) all of the Arena Operator's right, title and interest in and to all licenses and permits, if any, held by the Arena Operator in connection with the operation of the Arena but only to the extent such assignment or transfer is permitted under the law of the state in which the Arena is located; and
- (iii) all contracts relating to the Arena Operator's services not otherwise in the Port Authority's name.

D. Non-Solicitation of Employees. During the Term and for a period ending twelve (12) months from the termination or expiration of this Agreement: (1) the Port Authority shall not, directly or indirectly, hire or solicit for hire (whether as an employee, consultant or otherwise) any Key Employees of the Arena Operator without the prior written consent of the Arena Operator; and (2) the Arena Operator shall not, directly or indirectly, hire or solicit for hire (whether as an employee, consultant or otherwise) any Key Employees of the Port Authority without the prior written consent of the Arena Operator. For the purposes of this Section 12.D., "solicit for hire" shall not include a general advertisement for employment not directed at Employees of the Arena Operator.

E. Termination Fee. The "Termination Fee" shall be the sum of the Arena Operator's Management Fee estimated to be received for the Fiscal Year in which the termination occurs. No Termination Fee shall be due in a situation of uncured Arena Operator Default.

### **13. DEFAULT AND REMEDIES**

A. Arena Operator Default. The happening and continuance of the following events constitute a default by Arena Operator under this Agreement (an "Arena Operator Default"): (1) Arena Operator fails to observe and perform its obligations under any Cash Management Agreement; (2) Arena Operator fails to observe or perform its obligations under any other covenants or conditions contained in this Agreement, and such failure continues for a period of thirty (30) calendar days after receipt by Arena Operator of a written notice of default from the Port Authority ; (3) the Arena Operator (a) files a petition in bankruptcy or a petition to take advantage of any insolvency act; (b) makes an assignment for the benefit of creditors; or (c) consents to the appointment of a receiver for itself or of the whole or any substantial part of its property or has a receiver or trustee appointed for it or for the whole or any substantial part of its property; (4) the Arena Operator dissolves, ceases to exist or voluntarily abandons, deserts, vacates or discontinues providing Services and performing under this Agreement for a period of thirty (30) calendar days. Upon the occurrence of an Arena Operator Default, the Port Authority shall have the following rights and remedies:

- 1) Terminate this Agreement;
- 2) Without prejudice to any other rights or remedies, suspend Arena Operator's rights and obligations to complete its performance under this Agreement until such time as the Arena Operator is able to demonstrate to the Port Authority's reasonable satisfaction that it can meet its obligations under this Agreement;
- 3) Provide and/or engage a replacement to provide any or all of the delayed or unsatisfactory Services and hold Arena Operator responsible for the costs of such performance;
- 4) Assign one or more of the Port Authority's Representatives to supervise and work with the Arena Operator to correct and mitigate the effects of Arena Operator Default;

5) Withhold payment of any amounts otherwise due to the Arena Operator in a sufficient amount to set off against any damages caused to the Port Authority as a consequence of Arena Operator Default;

6) Sue for (a) the collection of amounts for which the Arena Operator may be in default or for damages for its failure to perform; (b) sue for specific performance of the obligations of Arena Operator; (c) have access to, inspect, examine and make copies of the books, records, accounts, and financial data of the Arena Operator pertaining to the Arena; and (d) seek any other available relief at law or in equity; and

7) Following any breach or default by Arena Operator resulting in termination of this Agreement by the Port Authority pursuant to the terms of this Agreement, Arena Operator shall refund to the Port Authority any pre-paid Management Fees on a prorated basis.

Except as otherwise provided for in this Agreement, the exercise of one or more of the rights and remedies under this Agreement shall not preclude the exercise of any other right or remedy at law or in equity.

B. Port Authority's Default. Subject to Section 10.(B)(2), this Agreement may be terminated by the Arena Operator, at its option, upon the happening of any of the following events (a "Port Authority Default"): (1) failure of the Port Authority to pay or reimburse the Arena Operator as stipulated in this Agreement; (2) material breach, default, or noncompliance by the Port Authority with any other covenants contained in this Agreement; (3) the making by the Port Authority of a general assignment for the benefit of creditors; (4) a petition or application by either party to any tribunal for the appointment of a trustee, custodian, receiver or liquidator of all or substantially all of its business, estate or assets; or (5) the commencement by the Port Authority of any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment or debt, dissolution or liquidation law of any jurisdiction, whether now or later in effect. Arena Operator's sole and exclusive remedy for an event of Port Authority Default shall be to terminate this Agreement.

C. Right to Cure.

1) Notwithstanding the Arena Operator's rights to terminate this Agreement upon a Port Authority Default and prior to the Arena Operator terminating this Agreement, the Arena Operator agrees to provide the Trustee and the Port Authority with written notice of Port Authority Default, and, in the event of a Port Authority Default under Sections 13.B.1. or 13.B.2. the Arena Operator agrees to provide the Trustee and the Port Authority with a period of thirty (30) calendar days after the date that the Arena Operator delivers such notice to the Port Authority and Trustee to permit the Port Authority or Trustee to cure or diligently pursue the cure of any such Port Authority Default under this Agreement. However, in the event of a Port Authority Default under Section 13.B.2., and in the case of such breach that cannot with due diligence be corrected within such thirty (30) calendar day period but can be wholly corrected within a period of time not materially detrimental to the rights of the Arena Operator, it shall not constitute a Port Authority Default if corrective action is instituted by the Port Authority or the Trustee within the applicable period and diligently pursued until the failure is corrected, provided that the failure to cure same within ninety (90) calendar days after origination shall constitute a Port Authority Default. In no event shall the Trustee be required to remedy any such Port Authority Default. The Arena Operator hereby consents to the replacement of the Port Authority by Trustee and the continuation of this Agreement.

2) Notwithstanding the Port Authority's rights to terminate this Agreement upon Arena Operator Default and prior to the Port Authority terminating this Agreement, the Port Authority agrees to provide the Arena Operator with written notice of Arena Operator Default, and, in the event of Arena Operator Default under Section 13.A.(1), the Port Authority agrees to provide the Arena Operator with a period of thirty (30) calendar days after the date that the Port Authority delivers such notice to the Arena Operator to permit the Arena Operator to cure or diligently pursue the cure of any such Arena Operator Default under this Agreement. However, in the case of such breach that cannot with due diligence be

corrected within such thirty (30) calendar day period but can be wholly corrected within a period of time not materially detrimental to the rights of the Port Authority, it shall not constitute Arena Operator Default if corrective action is instituted by the Arena Operator within the applicable period and diligently pursued until the failure is corrected, provided that the failure to cure same within ninety (90) calendar days after origination shall constitute Arena Operator Default; and further provided that this subsection shall be inapplicable to payment defaults.

D. Casualty. Subject to the requirements of Section \_\_\_\_ of the Indenture, if the Arena shall be substantially destroyed during the Term of the Agreement, by fire or other casualty through no fault of the Arena Operator, and the Port Authority shall elect, for any reason, not to rebuild the Arena, then the terms of this Agreement shall cease and terminate as of the date of such destruction and no Termination Fee shall be applicable. If the Arena shall be partially destroyed during the Term of this Agreement, by fire or other casualty, and the Port Authority shall elect to temporarily close all or a portion of the Arena for repair and restoration, then the Arena Operator shall continue to manage the Arena and shall be entitled to all fees described in Section 10, including a monthly management fee during the period of reconstruction. The proceeds of any business interruption insurance shall be included in Gross Operating Revenues for the period for which such proceeds are payable. Upon completion of the reconstruction, the Arena Operator shall return to its normal management fee as set forth in Section 10. Notwithstanding the foregoing, in the event that Arena Operator damages or otherwise destroys the Arena, Arena Operator shall at its own expense repair, restore, or replace the damaged or destroyed Arena with due diligence to the condition substantially the same as prior to such damage or destruction, subject to the satisfaction of the Port Authority.

E. Condemnation. Subject to the requirements of Section \_\_\_\_ of the Indenture, if the whole or a substantial portion of the Arena shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such a portion of the Arena, shall be taken or condemned as to make it imprudent or unreasonable, in either party's reasonable opinion, to use the remaining portion as an Arena of the type and class immediately preceding such taking or condemnation, then, in either of such events, the terms of this Agreement shall cease and terminate as of the date of such taking or condemnation and no Termination Fee shall be applicable. Any condemnation award or similar compensation shall be the property of the Port Authority, provided that the Arena Operator shall have the right to bring a separate proceeding against the condemning authority for any damages and expenses specifically incurred by the Arena Operator as a result of such condemnation.

#### **14. RESERVED**

#### **15. ASSIGNMENT**

Except as provided in Section 19.A. of this Agreement, neither party shall assign or transfer or permit the assignment or transfer of this Agreement without the prior written consent of the other.

#### **16. TAXES**

All real estate and ad valorem property taxes, assessments and similar charges on or relating to the Arena during the Term of this Agreement shall be paid by the Arena Operator on behalf of the Port Authority as an Operating Expense before any fine, penalty or interest is added to the same or lien placed upon the Arena or this Agreement, unless payment of such taxes, assessments or charges is, in good faith, being contested and enforcement of the same is stayed. The Arena Operator shall, within the earlier of thirty (30) calendar days of payment or ten (10) business days following written demand by the Port Authority, furnish the Port Authority with copies of official tax bills, assessments and evidence of payment or contest of the same.



**17. INDEMNIFICATION AND LIMITATION OF LIABILITY**

A. Indemnification of the Port Authority by Arena Operator. The Arena Operator shall hold harmless, indemnify and defend the Port Authority and its Affiliates and their respective agents, employees, officers, directors and shareholders (individually, an “Port Authority Indemnified Person” and collectively, the “Port Authority Indemnified Persons”), the Trustee and its officers, directors, agents, attorneys and employees (each a “Trustee Indemnified Person”), and the Collateral Agent and its officers, directors, agents, attorneys and employees (each a “Collateral Agent Indemnified Person” and, together with the Port Authority Indemnified Persons and the Trustee Indemnified Persons, each an “Indemnified Person” and collectively “Indemnified Persons”), from and against any Liabilities, brought or asserted by any third person, at law or in equity, against or incurred by the Indemnified Person, arising by reason of any Arena Operator-Indemnified Liability (defined below). The Arena Operator may apply the proceeds of any available insurance to the payment of any claim under the indemnity set forth in this Section 18. The provisions of this Section 18 shall survive the expiration or termination of this Agreement and shall be binding upon the Arena Operator’s successors and assigns.

B. Exclusion. Notwithstanding anything in this Section 18 to the contrary, Arena Operator shall not be obligated to indemnify any Indemnified Person to the extent that the Arena Operator-Indemnified Liability is determined by a court of competent jurisdiction by final and non-appealable judgment to have directly resulted from the willful misconduct, gross negligence, or fraud of such Indemnified Person.

C. Procedure for Indemnification. In the event that any action or proceeding is brought against any Indemnified Person with respect to which indemnity may be sought hereunder, the Arena Operator, upon written notice from the Indemnified Person, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Person, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Person shall have the right to review and approve or disapprove prior to any such compromise or settlement. Each Indemnified Person shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof. The Arena Operator shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Person may only employ separate counsel at the expense of the Arena Operator if in the judgment of such Indemnified Person a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

D. Use and Benefit of Funds held under the Indenture. Except as may be derived from insurance proceeds as set forth in subsection (E), below, the Arena Operator acknowledges and agrees that its obligation to defend, indemnify and hold the Indemnified Persons harmless from and against Arena Operator-Indemnified Liabilities shall not be funded from amounts or Funds held under the Indenture or diminished in any respect by the availability of such Funds or the use or application by the Port Authority of such Funds to satisfy any Liabilities (including Arena Operator-Indemnified Liabilities) hereunder and that such use or application by the Port Authority or the Trustee of Funds under the Indenture for such purpose in accordance with the provisions of the Indenture shall not affect in any manner the Arena Operator’s obligation to pay or reimburse the Port Authority therefor. This paragraph shall apply regardless of whether Funds held under the Indenture at any time include any money provided by the Arena Operator.

E. Sources of Funds. It is the Port Authority’s and the Arena Operator’s intent to look first to the insurance coverage required pursuant hereto for both legal defense and payment of any Liabilities, subject to the provisions of this Section. Notwithstanding any indemnity language to the contrary, in the event that any Liability arises which is covered by the insurance required pursuant to the Indenture or this Agreement, the Arena Operator shall cause such insurance coverages to be paid in accordance with such policies, and to the extent of such payment, the procedures related to indemnity above shall not apply; provided that the foregoing shall not have any effect whatsoever on an Indemnified Person’s underlying right to indemnity. As to any Liabilities paid by insurance, the Parties agree to waive all rights of subrogation, regardless of whether the negligence or fault of the other party or other party’s agents, officers, or employees causes or is alleged to have caused such claim, liability, loss or damage.

For avoidance of doubt, the Port Authority shall be required to look to the Extraordinary Expense Fund, if ever, only if and to the extent (i) the Arena Operator is not required to indemnify the Port Authority or any Indemnified Person for any Liability pursuant to this Section and (ii) such Liability is not fully paid by applicable insurance.

F. Defined Terms. The following definitions shall apply for purposes of this Agreement:

1) “Arena Operator-Indemnified Liability” (singular) or “Arena Operator-Indemnified Liabilities” (plural) means Liabilities arising from: (a) the acts or omissions of Arena Operation, any Key Employees, or Arena Operator’s Employees, agents, representatives or contractors, or the Employees of such agents, representatives or contractors, which results in any claim including those for bodily injury, death or property damage occurring on, in or in conjunction with the business of the Arena, to the extent not covered by insurance; (b) the Arena Operator’s acts or omissions in the selection, hiring, training discharge or supervision of any employees, agent, representatives or contractors; (c) any action taken by the Arena Operator, its employee or agent, which is beyond the scope of the Arena Operator’s authority under this Agreement; or (d) the happening of any event of Arena Operator Default hereunder; (e) Employment-Related Liabilities (defined below); (f) a violation of any Applicable Law; or (g) any losses suffered as a result of theft, embezzlement, fraud or other dishonesty by the Arena Operator, its agents, representatives, contractors or Employees.

2) “Employment-Related Liabilities” means all Liabilities arising out of the Arena Operator’s or any other person’s (including, without limitation, any Revenue Contractor’s, contractors, or subcontractor’s) labor and employment-related activities (such as, by way of illustration, screening, testing, investigating, interviewing, hiring, training, supervising, discharging, and paying all personnel necessary to maintain and operate the Project, employment discrimination, wage & hour disputes, civil rights, unfair labor practices, OSHA and ADA compliance. For avoidance of doubt, Employment-Related Liabilities shall constitute Arena Operator-Indemnified Liabilities without regard to any fault, negligence, misconduct, action or inaction on the part of the Arena Operator.

G. Survival. The rights of any Indemnified Person to indemnity hereunder shall survive termination of this Agreement and in the case of any Indemnified Person such person’s dissolution, merger or death.

H. Third-Party Beneficiaries. To the extent of their rights hereunder to indemnification and exculpation from pecuniary liability, each Indemnified Person (other than a Party) is a third-party beneficiary of this Agreement entitled to enforce such rights in his, her, it’s or their own name.

## **18. THE PORT AUTHORITY AND THE TRUSTEE.**

A. Consent to Assignment “Step-in Rights”. The Arena Operator acknowledges and consents to the collateral assignment of this Agreement by the Port Authority to the Trustee to secure performance by the Port Authority of its obligations under the Indenture and other Bond Documents (the “Collateral Assignment”) and agrees to execute and deliver such documents as the Trustee may reasonably require to evidence the Collateral Assignment and the rights of the Trustee with respect to this Agreement (including notice and extended cure rights and the right of the Trustee to assume this Agreement). The Arena Operator recognizes the Trustee as a secured party under the Collateral Assignment entitled to exercise or enforce such rights (including consent rights), and upon exercise by the Trustee under the Collateral Assignment. Nothing herein shall be construed, however, to require the Trustee to perform any obligations of the Port Authority or the Arena Operator under this Agreement. Provided that the actual Arena Operator’s Management Fees are paid to the Arena Operator as provided in this Agreement, to the extent the Arena Operator is entitled thereto, the Arena Operator agrees to perform all obligations of this Agreement for or for the benefit of any one or more of the permitted assignees. Port Authority or the Arena Operator recognize the Trustee, and its Collateral Agent as third party beneficiaries of this Agreement for the avoidance of doubt by reason of such Collateral Assignment or transfer have full right, power and authority to enforce the provisions of this Agreement, each in their own name or in the name of the Port Authority and to

exercise all rights and remedies of the Port Authority hereunder. In no event shall the Trustee have any obligations hereunder by virtue of such assignment. The Trustee shall have the same rights, protections, immunities and indemnities hereunder as accorded to it under the other Bond Documents.

B. Limitations. THE ARENA OPERATOR ACKNOWLEDGES AND AGREES THAT THE TRUSTEE IS NOT LIABLE OR OBLIGATED IN ANY MANNER TO PAY OR CAUSE TO BE PAID TO THE ARENA OPERATOR ANY FEES (INCLUDING, BUT NOT LIMITED TO ARENA OPERATOR’S MANAGEMENT FEES UNDER THIS AGREEMENT), COSTS, PENALTIES, DAMAGES, LIQUIDATED DAMAGES, EXPENSES INDEMNITIES, OR REIMBURSEMENTS OR TO MAKE ANY OTHER PAYMENTS OR ADVANCE FUNDS UNDER THIS AGREEMENT AT THE ARENA OPERATOR’S DIRECTION, REQUEST, OR OTHERWISE BY THE TERMS THEREOF, OR INCUR OR CAUSE TO BE INCURRED ANY EXPENSE IN PURSUING ANY COURSE OF ACTION, IN CONNECTION WITH THE ARENA OR ANY OTHER MATTER WITHIN THE SCOPE OF OR CONTEMPLATED BY THIS AGREEMENT EXCEPT ONLY TO THE EXTENT THAT MONIES ARE HELD BY THE TRUSTEE AND AVAILABLE FOR SUCH PURPOSE AS EXPRESSLY SET FORTH IN THE INDENTURE AND THEN ONLY TO THE EXTENT THAT FUNDS ARE AVAILABLE EXPRESSLY FOR SUCH PURPOSE UNDER THE PRIORITY OF PAYMENTS SET FORTH IN THE INDENTURE (“AVAILABLE MONEYS”). TO THE EXTENT THAT FUNDS OR PROPERTY ARE HELD BY THE TRUSTEE BUT NOT AVAILABLE OR SUFFICIENT FOR SUCH PURPOSE, THE ARENA OPERATOR WILL BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM THE PORT AUTHORITY AND MAY BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM ANY OTHER PERSON.

C. Notice. The Arena Operator agrees that any notice required to be provided to the Port Authority or the Trustee under this Agreement shall be given to the Port Authority and Trustee by the method specified in this Agreement to the following addresses:

IF TO THE PORT AUTHORITY:

Warren County Port Authority  
Attn: Executive Director  
406 Justice Drive  
Lebanon, Ohio 45036

IF TO THE TRUSTEE:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Third-Party Beneficiaries. The Arena Operator and the Port Authority acknowledge and agree that the Port Authority, the Port Authority Indemnified Persons, and the Trustee and its officers, directors, employees, and agents are intended third-party beneficiaries of all rights and privileges of the Port Authority set forth in this Agreement and shall have the right to seek enforcement of the same directly against the Arena Operator in the same manner as if the Port Authority or the Trustee were each a party hereto. From and after such time as the Arena Operator has been notified by the Port Authority or the Trustee in writing in accordance with this Agreement, the Port Authority or the Trustee, as the case may be, shall be deemed and treated as “the Port Authority” under this Agreement and shall have all of the rights, entitlements, and privileges, and, subject to Section 19.B., all of the duties, and obligations, of the Port Authority hereunder; provided, however, that the Trustee, as the case may be, shall not be accountable for or deemed to have made any of the representations or warranties of the Port Authority under this Agreement nor liable for any action or omission of the Port Authority occurring prior to delivery of the aforesaid notice that has not been specifically identified in a then-current notice from the Arena Operator to the Trustee. This Section 19.D. shall not be construed as giving rise to separate duplicate claims, complaints and causes of action on the part of the Port Authority and the Trustee for the same alleged breach of this Agreement by the Arena Operator, and the Port Authority and Trustee agree that they will not bring separate duplicate claims, complaints or causes of action against the Arena Operator arising out of the same alleged breach of this Agreement by the Arena Operator.

E. Public Records Law. Notwithstanding any term of this Agreement to the contrary, the Port Authority and the Arena Operator acknowledge that the Port Authority is an “authority” for purposes of the Ohio Public Records Law (“OPRL”) and that this Agreement, and confidential information received from the Arena Operator that is covered by this Agreement will be considered public records and will be subject to disclosure under the OPRL, except for information falling within one of the exemptions therefrom. The Port Authority is required to and shall comply with all Applicable Laws including, without limitation, the OPRL in relation to any records, documents and information related to the Port Authority’s dealings and relationship with the Arena Operator. Nothing in this Agreement shall be deemed or construed as a limitation on the Port Authority’s discretion relating to compliance with the OPRL or other Applicable Law. Nevertheless, the Port Authority will use reasonable efforts to provide notice to the Arena Operator of any request under the OPRL but shall have no liability arising out of its failure to do so in a timely manner or at all.

## **19. SECURITY**

A. Grant of Security Interest. The Arena Operator hereby grants to the Collateral Agent, for the benefit of Port Authority and the further benefit of the Trustee and the Bondholders as assignees of the Port Authority, a lien on and security interest in all right, title and interest of the Arena Operator, whether now owned or existing or hereafter created, acquired or arising, in and to the Operating Account and Collections Account for the Arena created for or in the name of the Arena Operator, accounts, chattel paper, instruments (including promissory notes), documents, general intangibles, health care insurance receivables, letter of credit rights, supporting obligations, supporting evidence and documents relating to any of the above described property, including without limitation, computer programs, disks, tapes and related electronic data processing media, and all rights of the Arena Operator to retrieve the same from third parties, written applications, credit information, account cards, payment records, correspondence, delivery and installation certificates, invoice copies, delivery receipts, notes, and other evidences of indebtedness, insurance certificates and the like, together with all books of account, ledgers, and cabinets in which the same are reflected or maintained; accessions and additions to, and substitutions and replacements of, any and all of the foregoing; and proceeds and products of the foregoing, and all insurance of the foregoing and proceeds thereof, in each case giving rise to or evidencing Gross Operating Revenues directly related to the Arena Operating Account and Collections Account for the Arena, to secure the Secured Obligations (collectively, the “Arena Operator Collateral”).

B. Obligations Hereby Secured. The lien and security interest herein granted and provided for is made and given to secure, and shall secure, the payment and performance of (a) any and all indebtedness, obligations, and liabilities of whatsoever kind and nature of the Arena Operator to each and all Indemnified Persons (each a “Secured Party” and collectively, the “Secured Parties”) under this Agreement (whether arising before or after the filing of a petition in bankruptcy), whether direct or indirect, absolute or contingent, due or to become due, and whether now existing or hereafter arising and howsoever held, evidenced, or acquired, and whether several, joint, or joint and several, and (b) any and all expenses and charges, legal or otherwise, suffered or incurred by any Secured Party in collecting or enforcing any of such indebtedness, obligations, or liabilities or in realizing on or protecting or preserving any security therefor, including, without limitation, the lien and security interest granted hereby.

C. Arena Operator Covenants; Section 19.C. Default. The Arena Operator hereby covenants and agrees with, and represents and warrants to, the Secured Parties that:

- 1) The Arena Operator has full right, power, and authority to enter into this Agreement and to perform each and all of the matters and things herein provided for.
- 2) The Arena Operator’s chief executive office and principal place of business in the United States is at, and the Arena Operator keeps and shall keep all of its books and records relating to Arena Operator Collateral only at [REDACTED].

3) The Arena Operator shall not change its legal name, change its jurisdiction of organization, move its chief executive office or maintain a place of business at a location other than those specified in Subsection 2., above, without first providing to the Collateral Agent a written notice thereof at least thirty (30) calendar days prior to making such change or move; provided, that the Arena Operator shall at all times maintain its chief executive office in the United States of America and, with respect to any other such change, the Arena Operator shall have taken all action necessary or reasonably requested by the Collateral Agent to maintain the lien and security interest of the Collateral Agent in the Arena Operator Collateral at all times fully perfected and in full force and effect.

4) The Arena Operator agrees to execute and deliver to the Collateral Agent such further agreements, assignments, instruments, and documents and to do all such other things as the Collateral Agent may request as necessary or appropriate to assure the Collateral Agent its lien and security interest in the Arena Operator Collateral including, without limitation, (i) such financing statements, and amendments thereof or supplements thereto, and such other instruments and documents as may be necessary or appropriate to perfect its security interest and comply with the Uniform Commercial Code of the State of Ohio (as amended from time to time, the "UCC") and any other Applicable Law, (ii) such agreements with respect to patents, trademarks, copyrights, and similar intellectual property rights as the Collateral Agent may request to comply with the filing requirements of the United States Patent and Trademark Office and the United States Copyright Office, and (iii) such Collateral Control Agreements with respect to all "Deposit Accounts," "Investment Property," "Letter-of-Credit-Rights," and "Electronic Chattel Paper," (as each such capitalized term is defined in the UCC) and use reasonable commercial efforts to cause the relevant depository institutions, financial intermediaries, and issuers to execute and deliver such Collateral Control Agreements, as the Collateral Agent may request. The Arena Operator hereby authorizes the Collateral Agent to file any and all financing statements covering the Arena Operator Collateral or any part thereof as the Collateral Agent may require, including financing statements describing the Arena Operator Collateral. The Collateral Agent may order lien searches from time to time against the Arena Operator and the Arena Operator Collateral, and the Arena Operator shall promptly reimburse the Collateral Agent for all reasonable costs and expenses incurred in connection with such lien searches. In the event for any reason the law of any jurisdiction other than the Arena Operator's current jurisdiction of organization or the jurisdiction identified in the schedules attached hereto as of the date hereof becomes or is applicable to the Arena Operator Collateral or any part thereof, or to any of the Secured Obligations, the Arena Operator agrees to execute and deliver all such instruments and documents and to do all such other things as the Collateral Agent may request as necessary or appropriate to preserve, protect, and enforce the lien and security interest of the Collateral Agent under the law of such other jurisdiction. The Arena Operator agrees to mark its books and records to reflect the lien and security interest of the Collateral Agent in the Arena Operator Collateral.

5) In addition to any other powers of attorney contained herein, and effective upon the occurrence and during the continuance of any Section 19.C. Default (as defined below), the Arena Operator hereby appoints the Collateral Agent, its nominee, and any other Person whom the Collateral Agent may designate, as the Arena Operator's attorney in fact, with full power and authority to sign the Arena Operator's name on verifications of receivables and other Arena Operator Collateral; to send requests for verification of Arena Operator Collateral to the Arena Operator's customers, account debtors, and other obligors; to endorse the Arena Operator's name on any checks, notes, acceptances, money orders, drafts, and any other forms of payment or security that may come into the Collateral Agent's possession or on any assignments, or other instruments of transfer relating to the Arena Operator Collateral or any part thereof; to sign the Arena Operator's name on any invoice or bill of lading relating to any Arena Operator Collateral, on claims to enforce collection of any Arena Operator Collateral, on notices to and drafts against customers and account debtors and other obligors, on schedules and assignments of Arena Operator Collateral, on notices of assignment and on public records; to notify the post office authorities to change the address for delivery of the Arena Operator's mail to an address designated by the Collateral Agent; to receive, open and dispose of all mail addressed to the Arena Operator; and to do all things necessary to carry out this

Agreement; provided nothing herein shall obligate the Collateral Agent or any Secured Party to take any such action. Collateral Agent agrees not to exercise such power except during a Section 19.C. Default which is continuing. The Arena Operator hereby ratifies and approves all acts of any such attorney and agrees that neither the Collateral Agent nor any such attorney will be liable for any acts or omissions nor for any error of judgment or mistake of fact or law other than such person's gross negligence, willful misconduct or fraud. The Collateral Agent may file one or more financing statements disclosing its security interest in any or all of Arena Operator Collateral without the Arena Operator's signature appearing thereon. The Arena Operator also hereby grants the Collateral Agent a power of attorney to execute any such financing statements, or amendments and supplements to financing statements, on behalf of the Arena Operator without notice thereof to the Arena Operator. The foregoing powers of attorney, being coupled with an interest, are irrevocable until the Secured Obligations have been fully paid and performed in full and satisfied and this Agreement has terminated.

6) Unless waived by the Controlling Party, the Arena Operator shall be in default under this Agreement giving rise to the remedies described in this Section 19.C. upon the occurrence of an Arena Operator Default (a "Section 19.C. Default" hereunder).

7) Upon the occurrence and during the continuation of any Section 19.C. Default, the Collateral Agent shall have, in addition to all other rights provided herein or by law, the rights and remedies of a Collateral Agent under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Arena Operator Collateral), and further the Collateral Agent may, without demand and without advertisement, notice, hearing, or process of law, all of which the Arena Operator hereby waives, at any time or times, sell and deliver all or any part of Arena Operator Collateral (and any other property of the Arena Operator attached thereto or found therein) held by or for it at public or private sale, for cash, upon credit, or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion. In addition to all other sums due the Collateral Agent hereunder, the Arena Operator shall pay the Collateral Agent all reasonable and documented costs and expenses incurred by the Collateral Agent, including reasonable and documented legal fees and court costs, incurred in connection with liquidating or enforcing payment of Arena Operator Collateral or the Secured Obligations or in the prosecution or defense of any action or proceeding by or against the Collateral Agent or the Arena Operator concerning any matter arising out of or connected with this Agreement or Arena Operator Collateral or the Secured Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Arena Operator in accordance with Section 21.L. at least ten (10) days before the time of sale or other event giving rise to the requirement of such notice; provided, that no notification need be given to the Arena Operator if the Arena Operator has signed, after a Section 19.C. Default has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Collateral Agent shall not be obligated to make any sale or other disposition of Arena Operator Collateral regardless of notice having been given. The Collateral Agent or any Secured Party may be the purchaser at any such sale. To the extent permitted by Applicable Law, the Arena Operator hereby waives all of its rights of redemption from any such sale. The Collateral Agent may postpone or cause the postponement of the sale of all or any portion of Arena Operator Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Collateral Agent may further postpone such sale by announcement made at such time and place. The Collateral Agent has no obligation to prepare Arena Operator Collateral for sale. The Collateral Agent may sell or otherwise dispose of Arena Operator Collateral without giving any warranties as to Arena Operator Collateral or any part thereof, including disclaimers of any warranties of title or the like, and the Arena Operator acknowledges and agrees that the absence of such warranties shall not render the disposition commercially unreasonable.

8) Without in any way limiting the foregoing, upon the occurrence and during the continuation of any Section 19.C. Default, and to the extent permitted by Applicable Law, the Collateral Agent shall have the right, in addition to all other rights provided herein or by law, to take physical possession of any and all of Arena Operator Collateral and anything found therein, the right for that purpose to enter without legal process any premises where Arena Operator Collateral may be found (provided such entry be done lawfully), and the right to maintain such possession on the Arena Operator's premises or to remove Arena Operator Collateral or any part thereof to such other places as the Collateral Agent may desire. Upon the occurrence and during the continuation of any Section 19.C. Default, and to the extent permitted by Applicable Law, the Collateral Agent shall have the right to exercise any and all rights with respect to all Deposit Accounts of the Arena Operator, including, without limitation, the right to direct the disposition of the amounts in each Deposit Account and to collect, withdraw, and receive all amounts due or to become due or payable under each such Deposit Account. Upon the occurrence and during the continuation of any Section 19.C. Default, and to the extent permitted by Applicable Law, the Arena Operator shall, upon the Collateral Agent's demand, promptly assemble Arena Operator Collateral and make it available to the Collateral Agent at a place designated by the Collateral Agent. If the Collateral Agent exercises its right to take possession of Arena Operator Collateral, the Arena Operator shall also at its expense perform any and all other steps requested by the Collateral Agent to preserve and protect the security interest hereby granted in Arena Operator Collateral, such as placing and maintaining signs indicating the security interest of the Collateral Agent, appointing overseers for Arena Operator Collateral, and maintaining Arena Operator Collateral records.

D. Collateral Agent. The Collateral Agent shall be the Collateral Agent under this Agreement and the Arena Operator acknowledges and consents to the appointment of the Collateral Agent as "Collateral Agent" and authorizes the Collateral Agent to act as the agent of the Arena Operator, and acknowledges that the Collateral Agent has been appointed by the Port Authority and by the Trustee under the Indenture, for purposes of acquiring, holding and enforcing any and all liens or security interests on collateral granted by the Arena Operator, any Revenue Contractor or any Person to secure any of their respective obligations under the Bond Documents, together with such powers as are reasonably incidental thereto. In this connection, the Collateral Agent, pursuant to the Indenture, or any Bond Document for purposes of holding or enforcing any lien or security interest on any collateral (or any portion thereof) under any of the foregoing, or for exercising any rights and remedies thereunder at the direction of the Controlling Party, shall be entitled to the benefits and protections of all provisions of the Indenture (including, without limitation, any and all rights to indemnity prior to taking action) as if set forth in full herein, mutatis mutandis, with respect thereto. It is further agreed:

1) The powers conferred upon the Collateral Agent hereunder are solely to protect its interest in Arena Operator Collateral on behalf of the Secured Parties and shall not impose on it or any Secured Party any duty to exercise such powers. To the extent that at any time that the Collateral Agent is deemed to take possession of Arena Operator Collateral, the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Arena Operator Collateral in its possession or control if such Arena Operator Collateral is accorded treatment substantially equivalent to that which the Collateral Agent accords its own property, consisting of similar type assets, it being understood, however, that the Collateral Agent shall have no responsibility for ascertaining or taking any action with respect to calls, conversions, exchanges, maturities, tenders, or other matters relating to any such Arena Operator Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters. The grant of the security interest in Arena Operator Collateral hereunder constitutes an assignment of rights only and not an assignment of any duties or obligations of the Arena Operator in any way related to Arena Operator Collateral, and the Collateral Agent shall have no duty or obligation to discharge any such duty or obligation. The Collateral Agent shall have no responsibility for taking any necessary steps to preserve rights against any parties with respect to any Arena Operator Collateral or initiating any action to protect Arena Operator Collateral against the possibility of a decline in market value. Neither the Collateral Agent nor any party acting as attorney for the Collateral Agent shall be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct.

2) Failure by the Collateral Agent to exercise any right, remedy, or option under this Agreement or any other agreement between the Arena Operator and the Collateral Agent or any other Secured Party or provided by law, or delay by the Collateral Agent in exercising the same, shall not operate as a waiver; and no waiver by the Collateral Agent shall be effective unless it is in writing and then only to the extent specifically stated. The rights and remedies of the Collateral Agent under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Collateral Agent may have.

3) With respect to any request permitted to be made by the Collateral Agent pursuant to Section 19.C.4. through Section 19.C.8., each of the Port Authority and the Arena Operator acknowledge and agree that the Collateral Agent is not responsible or required to make any such request or demand or to take action to maintain or perfect any security interest provided for hereunder, except upon instruction of the Arena Operator, the Port Authority, or the Controlling Party under the Indenture. In the case of conflicting instructions, instructions of the Trustee shall control over instructions made by the Arena Operator or Port Authority, and instructions by the Controlling Party shall control over instructions made by either the Trustee, the Port Authority or the Arena Operator.

E. Application of Proceeds. The proceeds and avails of Arena Operator Collateral at any time received by the Collateral Agent after the occurrence and during the continuation of any Section 19.C Default shall, when received by the Collateral Agent in cash or its equivalent, be applied by the Collateral Agent as follows:

1) **FIRST**, to the payment and satisfaction of all sums paid and costs and expenses incurred by the Collateral Agent hereunder or otherwise in connection herewith, including such monies paid or incurred in connection with protecting, preserving or realizing upon Arena Operator Collateral or enforcing any of the terms hereof, including attorneys' fees and court costs, together with any interest thereon (but without preference or priority of principal over interest or of interest over principal), to the extent the Collateral Agent is not reimbursed therefor by the Arena Operator; and

2) **SECOND**, to the transfer of amounts as provided that such transfers shall be made by the Collateral Agent solely in accordance with the Agreement; and

3) **THIRD**, to the payment and satisfaction of the remaining Secured Obligations, whether or not then due (for further application in accordance with the requirements of the Indenture and the Bond Documents) in each case as may be directed by the Controlling Party; and

4) **FOURTH**, any surplus remaining after the full payment and satisfaction of the foregoing shall be returned to the Port Authority or to whomsoever the Collateral Agent, acting solely at the written direction of the Controlling Party, determines is lawfully entitled thereto.

The Arena Operator shall remain liable to the Collateral Agent and the Secured Parties for any deficiency.

## **20. MISCELLANEOUS**

A. Severability. If any portion of this Agreement shall be declared invalid by order, decree or judgment of a court, this Agreement shall be construed as if such portion had not been inserted in this Agreement except when such construction would operate as an undue hardship to the Arena Operator or the Port Authority or Trustee or constitute a substantial deviation from the general intent and purpose of the parties as reflected in this Agreement.

B. Performance. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the



same shall continue and remain in full force and effect. No waiver by either Party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such Party.

C. Relationship. The relationship of the Port Authority and the Arena Operator shall be that of an independent contractor. Nothing contained in this Agreement shall be construed to create an agency, partnership or joint venture between them or their successors in interest. Neither Party shall borrow money in the name of, or pledge the credit of, the other.

D. Meetings. The Port Authority shall meet with representatives of the Arena Operator, from time-to-time, so that the Arena Operator and the Port Authority may discuss the status of operations and future plans, recommendations and projections. The meetings will be held at mutually convenient dates and locations.

E. Consents. Except as otherwise provided in this Agreement, whenever in this Agreement the consent or approval of the Port Authority or the Arena Operator is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent or approval shall be in writing only and shall be duly executed by an authorized officer or agent of the party granting such consent or approval.

F. Mediation and Arbitration. THIS SECTION 21.F. IS RESERVED SOLELY FOR THE RESOLUTION OF DISPUTES ARISING UNDER THIS AGREEMENT BETWEEN THE PORT AUTHORITY AND THE ARENA OPERATOR AND UNDER NO CIRCUMSTANCES SHALL IT BE DEEMED OR CONSTRUED AS REQUIRING PORT AUTHORITY OR ANY PORT AUTHORITY INDEMNIFIED PERSON TO SUBMIT TO ARBITRATION OF ANY DISPUTE DIRECTLY OR INDIRECTLY INVOLVING ANY OF THEM BUT THE PORT AUTHORITY MAY ELECT TO DO SO IN ITS SOLE DISCRETION. Any controversy, dispute or claim arising out of or relating to this Agreement or the performance, enforcement, breach, termination or validity of this Agreement, including the determination of the scope of this agreement to arbitrate, shall first be submitted to nonbinding mediation. The venue for mediation shall be in the City of Middletown, Ohio. The mediation process shall be administered by a mutually acceptable mediator selected consistent with (but not under the jurisdiction of) the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (the "AAA") unless otherwise mutually agreed to by the Parties. If any dispute remains unresolved between the parties after the mediation process has been completed, either Party may then pursue all remedies available at law or in equity.

G. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Port Authority and shall be binding and inure to the benefit of the Arena Operator and its permitted assigns.

H. Headings. Headings of sections of this Agreement are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular sections to which they refer.

I. Incorporation of Recitals. The recitals set forth in the preamble of this Agreement are by this reference incorporated in this Agreement as if fully set forth in this Agreement.

J. Force Majeure. Any one or more of the following events or circumstances that, alone or in combination, adversely affects the operation of the Arena, shall be considered a "Force Majeure" event: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, acts of terrorism, rebellion, riots or other civil unrest; or any other event beyond the Arena Operator's or the Port Authority's, as the case maybe, reasonable control. A party shall be excused from performance of any provision of this Agreement to the extent that such party's ability to comply with such provision is materially impacted by such a Force Majeure event.

K. Notices. Notices, statements and other communications to be given under the terms of this Agreement shall be in writing and delivered by hand against receipt or sent by certified or registered mail, return receipt requested, or by Federal Express or other similar overnight delivery service, addressed as follows, or at such other address as from time-to-time designated by the party receiving the notice:

If to the Port Authority:

Warren County Port Authority

\_\_\_\_\_  
\_\_\_\_\_

Attn.: [\_\_\_\_\_]

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

If to the Arena Operator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

L. Entire Agreement. This Agreement, together with other writings signed by the parties expressly stated to be supplementing to this Agreement and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, and may be changed only by a writing signed by the parties to this Agreement.

M. Arena Operator’s Authority Limited. The Arena Operator’s authority shall be derived wholly from this Agreement, and the Arena Operator has no authority to act for or represent the Port Authority except as specified in this Agreement.

N. Exclusive Compensation. The payments to be made to the Arena Operator under this Agreement shall be in lieu of all other or further compensation or commissions of any nature for the services described in this Agreement, and this Agreement shall be considered as a special agreement between the parties covering the appointment and compensation of the Arena Operator to the exclusion of any other method of compensation unless otherwise agreed to in writing.

O. Time of the Essence. Time is of the essence with respect to this Agreement.

P. Attorneys’ Fees. In the event of any litigation arising out of this Agreement, the prevailing Party shall be entitled to reasonable costs and expenses, including but not limited to attorneys’ fees.

**21. QUALIFIED MANAGEMENT AGREEMENT**

This Agreement is intended to be and shall constitute a services contract not resulting in private business use of the Arena within the meaning of Section 141(b)(6) of the Code and Section 1.141-3(b)(4) of the Income Tax

Regulations and shall be interpreted in accordance with the requirements thereof. Additionally, the Arena Operator acknowledges that the Arena has been financed, and future capital improvements to the Arena may be financed, with proceeds of obligations the interest on which is not includable in gross income for purposes of federal income taxation ("Tax-Exempt Bonds"). In order to maintain the tax-exempt status of any Tax-Exempt Bonds, notwithstanding any other provision of this Agreement to the contrary, the Arena Operator agrees as follows:

A. The Port Authority will at all times exercise a significant degree of control over the Arena by retaining the right to approve the Annual Business Plan, including the Approved Operating Budget and Approved Arena Capital Budget, including Capital Expenditures with respect to the Arena, each disposition of property that is part of the Arena, rental rates charged by the Arena, Service Contracts, and the general nature and type of the Arena.

B. The Port Authority shall bear the risk of loss upon Force Majeure damage or destruction of the Arena. The Port Authority shall bear the risk that Operating Expenses exceed Gross Operating Revenue for any period. For this purpose and the removal of doubt, Operating Expenses include the Management Fee. In accordance with Rev. Proc. 2017-12, the amount and the timing of the payment of the Management Fee do not take into account any excess of Operating Expenses over Gross Operating Revenues and do not take into account for any fiscal period both Gross Operating Revenues and Operating Expenses.

C. This Agreement shall not in any way be construed to be a lease but is merely a recitation of contract provisions. Moreover, the Arena Operator agrees that during the Term and following termination of this Agreement for any reason, it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the Port Authority with respect to the Arena. Accordingly, by way of example and not limitation, the Arena Operator agrees that it is not entitled to and will not take any depreciation or amortization, investment tax credit, or deduction for any payment as rent with respect to the Arena. This provision will survive termination of the Agreement.

D. Absent approval of the Port Authority, except as expressly contemplated, hereby the Arena Operator will not subcontract any part of the services to be provided by it hereunder.

E. Notwithstanding Section 21.M., if the Port Authority notifies the Arena Operator that, based upon written advice from Bond Counsel, it is necessary that the Arena Operator cease an activity at the Arena, otherwise take affirmative action at the Arena or agree to amend this Agreement in order to preserve the excludability of the interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, then the Arena Operator shall agree to the amendments to this Agreement necessary to comply with the federal tax requirements, and/or cease such activity or otherwise take such action as necessary to comply with the federal tax requirements.

F. Arena Operator represents, warrants and covenant that as of the Effective Date and throughout the Term, none of its directors and officers serve or will serve on the Board of the Port Authority.

**22. EFFECTIVENESS.**

The effectiveness of this Agreement is contingent upon the issuance of the Bonds by the Port Authority and the purchase and sale of the Arena and the Land by the Port Authority on or about [\_\_\_\_], 2023. If the issuance of the Bonds by the Port Authority and the purchase and sale of the Arena and the Land by the Port Authority does not occur by [\_\_\_\_], 2023, this Agreement shall automatically terminate without any further action by the Parties hereto and shall be of no further force or effect.

IN WITNESS WHEREOF, the parties have executed this Arena Operating Agreement as of the day and year first set forth above.

**WARREN COUNTY PORT AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ARENA OPERATOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**

[TO BE PROVIDED]

**EXHIBIT B****MASTER GLOSSARY OF TERMS**

1. “Accounting Period” has the meaning set forth in Section 8.B. of the Agreement.
2. “Affiliates” (or “Affiliate”) shall mean any parent, subsidiary, affiliated or related corporation or other entity under the control of, or under common control with, the Arena Operator, or any officer, director, employee or member of the Arena Operator; provided, however, that for the purposes of any person to whom this Agreement may be assigned under Section 16 of this Agreement, officers, directors, employees and members shall not be deemed to be Affiliates. For purposes of this definition, the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power: (i) to vote more than 50% of the voting equity securities of any such entity; or (ii) to direct or cause the direction of the management and policies of any such entity, whether through the ownership of voting equity securities, by contract or otherwise.
3. “Annual Business Plan” has the meaning set forth in Section 9.A. of the Agreement
4. “Applicable Accounting Standards” means either generally accepted accounting principles or, when required by Applicable Law, government accounting standards, in each case consistently applied.
5. “Applicable Law” means all laws, statutes, acts, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all governmental authorities, that now or hereafter may be applicable to the Port Authority, the Arena, or Arena Operator and the acquisition, maintenance, use and operation thereof, including those relating to employees, zoning, building, health, safety, Hazardous Substances, natural resources, and environmental matters, and accessibility of public facilities.
6. “Approved Arena Capital Budget” shall mean the capital budget approved by the Port Authority as part of the Annual Business Plan pursuant to Section 9.A, and covering the estimated Capital Renewals for the subsequent Operating Year which indicates in reasonable detail the replacements of, or additions to, FFE (as defined below), and the nature of the special projects covered by the applicable Approved Arena Capital Budget.
7. “Approved Annual Operating Budget” shall mean the operating budget approved by the Port Authority as part of the Annual Business Plan pursuant to Section 9.A and covering the anticipated operating expenses and revenues of the Arena for the applicable period, maintenance of any reserve amounts required by the Indenture or the Port Authority from time to time, including, as an example, the Extraordinary Expense Fund.
8. “Approved Budgets” means collectively the Approved Arena Capital Budget and the Approved Annual Operating Budget.
9. “Arena” means that certain approximately [\_\_\_\_\_] square foot arena building containing three ice rinks, common athletic areas including locker rooms, bathrooms, office space (including Arena Operator’s office space) general circulation areas, concession areas, exterior common areas, entertainment lawns, open areas, sidewalks and other improvements.
10. “Arena Operator’s Management Fee” means the fee described in 10.A., and more particularly detailed in Exhibit F hereof.
11. “Arena Operator Collateral” has the meaning set forth in Section 19.A.
12. “Arena Operator-Indemnified Liabilities” has the meaning set forth in Section 17.F.

13. “Athletic Surfaces” means [ ].
14. “Available Moneys” has the meaning set forth in Section 18.B.
15. “Beneficial Owner” or “Beneficial Owners” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including Persons holding Bonds through nominees, depositories or other intermediaries).
16. “Bond” or “Bonds” means the Port Authority issued tax-exempt revenue bonds and taxable revenue bonds as contemplated under the Agreement.
17. “Bond Documents” has the meaning set forth in the Indenture.
18. “Capital Renewals” shall mean a collective term for (a) normal capital replacements of, or additions to, FFE, and (b) special projects designed to maintain the Arena in a first-class condition in accordance with the Arena Operator Standards contemplated by this Agreement, which projects will generally comprise replacements of, or additions to, FFE, but may include revisions and alterations to the Arena; most of the expenditures for such special projects will be capitalized, but a portion of such projects may be currently expended, such as the purchase of smaller items of FFE, or expenditures which are ancillary to the surfaces and which are ancillary to the overall Approved Arena Capital Budget.
19. “Cash Management Agreement” means the Cash Management Agreement dated [\_\_\_\_\_], 2023, among the Trustee, the Port Authority and the Arena Operator, a true and correct copy of which is attached hereto as Exhibit F.
20. “Collateral Agent” means the collateral agent designated as such pursuant to any Collateral Control Agreement.
21. “Collateral Assignment” has the meaning set forth in Section 18.
22. “Collateral Control Agreement” or “Collateral Control Agreements” mean any agreement entered into between Trustee and Port Authority and Arena Operator as security for the Bonds, relating to the collection and distribution of revenues and other assets associated with the Arena.
23. “Collections Account” means an account designated as a collections account under any Collateral Control Agreement.
24. “Controlling Party” means the Beneficial Owners of a majority in aggregate principal amount of the Bonds then Outstanding.
25. “Designated Agent” means [\_\_\_\_\_], the Port Authority’s representative and its successors, which is empowered to give or withhold any consents or approvals required by Port Authority or to impose conditions upon any consent or approval but cannot take any action expressly reserved for Port Authority under the Indenture.
26. “Extraordinary Expense Fund” means the Extraordinary Expense Fund established by Section \_\_\_\_\_ of the Indenture.
27. “Fiscal Year” means the twelve (12) month period terminating on December 31 of each year, or any other annual accounting period hereafter selected and designated by the Port Authority as its Fiscal Year.

28. “Force Majeure” or a “Force Majeure Event” has the meaning set forth in Section 21.J. of the Agreement.

29. “Funds” means any one or more, as the case may be, of the separate special funds established by the Indenture or by any Supplemental Indenture.

30. “Furniture, Fixtures, and Equipment” or “FFE” shall mean all furniture, furnishings, light fixtures, outfitting’s, apparatus, equipment and all other items of personal property customarily installed in, held in storage for use in, used in or required for use in connection with the operation of the Arena.

31. “Gross Operating Revenues” means [[NTD – DEFINITION TO BE CONFIRMED UPON DETERMINATION OF MANAGEMENT FEE STRUCTURE TO ASSURE COMPLIANCE WITH TEB all revenue and income of any kind derived directly or indirectly from operations at the Project, properly attributable to the period under consideration, determined in accordance with generally accepted accounting principles and a uniform system of accounts (except that in determining the amount deposited into the Revenue Fund, such determination shall be made on a cash basis and except that revenues paid with respect to use of any part of the Project with respect to particular months or other period will be considered properly attributable to those months or other period even if received by the Trustee before or after), except that the following shall not be included in determining Gross Operating Revenues:

- a) receipts from the financing, sale or other disposition of capital assets and other items not in the ordinary course of the Project’s operations and income derived from securities and other property acquired and held for investment;
- b) proceeds of any insurance, including the proceeds of any Business Interruption Insurance
- c) proceeds of any financing; and
- d) interest earned on funds held in any fund or account.]

32. “Hazardous Substances” means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, Mold, bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Regulations.

33. “Indenture” means the trust Indenture, dated as of, [\_\_\_\_\_], 2023, by and between the Port Authority and the Trustee, as originally executed and as the same may be from time to time amended, restated, modified and supplemented in accordance with the terms thereof.

34. “Indenture Obligations” means the obligations of the Port Authority or its agents, including Arena Operator, arising under the Indenture relating to the use and operation of the Project and Gross Operating Revenue derived therefrom.

35. “Independent Auditor” has the meaning set forth in Section 8.B. of the Agreement.

36. “Industry Practices” means those practices, methods, and actions consistent with the highest industry standards and in the same manner as is customary and usual in the operation and management of



comparable sports and event facilities with comparable financial resources and budgetary parameters and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use. In addition, if applicable, Industry Practices shall include those written operating policies and practices adopted from time to time by the Arena Operator and provided in writing to the Port Authority prior to the effective date of any such policies and practices.

37. “Initial Term” has the meaning set forth in Section 12.A. of the Agreement.

38. “Key Employees” means (to the extent such positions exist): (a) at the Arena level, any salaried manager, and (b) at the corporate level, positions at or above the manager.

39. “Liabilities” means any and all fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, reasonable fees and expenses of attorneys, accountants, consultants and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) in any way related to the Arena to which the Indemnified Parties, or any of them, may become subject under any statutory law or regulation (including federal or state securities laws and regulations and federal tax laws or regulations) or at common law or otherwise.

40. “Management Commencement Date” shall be on the date of [                      ].

41. “Master Insurance Schedule” means Exhibit C of the Agreement.

42. “Net Operating Income” shall mean [the monetary amount resulting from subtracting Operating Expenses from Gross Operating Revenue.]

43. “Notice of Termination Due to Non-Compliance with Laws” has the meaning set forth in Section 6.C. of the Agreement.

44. “Operating Expenses” shall mean [NTD – DEFINITION TO BE CONFIRMED UPON DETERMINATION OF MANAGEMENT FEE STRUCTURE TO ASSURE COMPLIANCE WITH TEB (a) expenses paid or incurred by Arena Operator in connection with the performance of its obligations under this Agreement, including, but not limited to: (i) all expenses incurred by Arena Operator in the operation of the Arena at any time during the Term; (ii) all Arena personnel costs incurred by Arena Operator or any of its Affiliates; (iii) all costs of Arena Operator corporate personnel to the extent engaged solely in activities solely for the benefit of the Arena; (iv) the reasonable and equitable per diem charge for personnel of Arena Operator or any of its Affiliates assigned to special projects for the Arena; (v) all costs incurred by Arena Operator or any of its Affiliates in performing its services under this Agreement, including without limitation air and ground transportation, meals, lodging, taxis, gratuities, document reproduction, printing, promotional materials, stationery, postage, long distance telephone calls and facsimiles; (vi) payments made or incurred by Arena Operator or any of its Affiliates, or their respective employees to any third party for goods and services in the ordinary course of business in the operation of the Arena; (vii) insurance premiums and insurance broker fees, insurance retentions/deductibles, insurance adjusting fees and related expenses, and the costs of procuring, administering and maintaining the insurance referred to in Section 9.2; (viii) the cost of compliance with laws and regulations, and legal and accounting expenses (including, without limitation, audits) and attorneys’ fees and costs (including insurance retentions/deductibles) and (ix) all taxes imposed by any Governmental Authority against any reimbursements payable to Arena Operator under this Agreement for expenses incurred for Port Authority’s account, including the other Operating Expenses listed in this definition. In addition, Operating Expenses shall include the following: (A) all real estate and ad valorem property taxes, assessments and similar charges on or relating to the Arena; (B) the cost of any Capital Equipment and Capital Improvements; (C) any reserve for (x) the replacement of furniture, fixtures and equipment or (y) any future capital expenditures; (D) principal, interest or any other amounts payable by Port Authority in connection with any financing secured by or in connection with the Arena; (E) depreciation and amortization expenses

(determined in accordance with Applicable Accounting Standards); (F) emergency repairs, as set forth in Section 6; (G) pre-existing obligations, including legal liabilities, pending or future liabilities that arose from claims occurring prior to the Effective Date; (H) costs and expenses incurred by Port Authority in the ownership, management and supervision of the Arena, including overhead for staff, and for legal, accounting and consulting services in the ordinary course of business; (I) costs and expenses associated with any improvement, alteration, addition or change to the Arena; and (J) any other costs and expenses of Port Authority that are not directly related to Arena Operator's operation of the Arena. Notwithstanding anything herein to the contrary, to the extent that Arena Operator centrally or through an Affiliate provides certain corporate overhead-type services, including without limitation services related to IT, finance, legal, payroll or human resources, Arena Operator shall be permitted to include within the definition of "Operating Expenses" an expense equal to the reasonable cost of such expenses incurred by Arena Operator or its Affiliates in their respective reasonable discretion. Except to the extent contrary to the express terms of such definition, Operating Expenses shall be determined in accordance with Applicable Accounting Standards.]

45. "Operating Profit" shall mean the excess, during each Fiscal Year (and proportionately for any period less than a Fiscal Year), of Gross Operating Revenues over expenses and deductions incurred in the operation of the Arena by the Arena Operator in fulfilling its duties under this Agreement during such period.

46. "Party" or the "Parties" means the Port Authority and the Arena Operator.

47. "Port Authority Indemnified Person" and "Port Authority Indemnified Persons" has the meaning ascribed to that term in Section 18 hereof

48. "Project" has the meaning set forth in the Recitals of the Agreement, and is synonymous with Arena.

49. "Project Consultant" means CCP of Ohio, LLC.

50. "Renewal Term" has the meaning set forth in Section 12.B. of the Agreement.

51. "Representatives" has the meaning set forth in Section 3.H. of the Agreement.

52. "Reserve Fund" refers to one or more reserve funds established pursuant to the Indenture or from time to time as part of any Annual Business Plan for purposes of establishing debt service reserves, operating reserves, capital expenses and the like.

53. "Revenue Contractor" means any Person that from time to time, in accordance with the requirements of the Indenture and the Bond Documents, may be authorized by contract to conduct operations generating Gross Operating Revenues.

54. "Service Contracts" has the meaning ascribed to that term in Section 3.A.5.

55. "Services" has the meaning ascribed to that term in Section 3.A .

56. "Tax-Exempt Bonds" has the meaning set forth in Section 21 of the Agreement.

57. "Takeover Activities" has the meaning ascribed to that term in Section 2.B.2.

58. "Termination Fee" has the meaning set forth in Section 12.E. of the Agreement.

59. “Temporary Use” means use of the Arena or any part thereof that is granted pursuant to a Temporary Use Agreement.

60. “Temporary Use Agreements” mean any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, sponsor agreements, concession agreements, and similar contracts granting any person or party the right to use any part of the Arena.

61. “Temporary Users” mean a person or party granted rights to use any part of the Arena pursuant to a Temporary Use Agreement entered into pursuant to the terms of this Agreement.

62. “User Guidelines” or “Port Authority’s User Guidelines” mean those certain guidelines and policies adopted by the Port Authority from time to time with respect to the use and operation of the Arena to reflect and respect community and family values, comply with Applicable Laws, preserve the Arena in good condition and repair, and support the effective operation of the Arena.

**EXHIBIT C**  
**MASTER INSURANCE SCHEDULE**

[INSERT]

**EXHIBIT D**  
**INDENTURE**

**EXHIBIT E**

**CASH MANAGEMENT AGREEMENT**

[TO BE ATTACHED]

**EXHIBIT F**  
**CASH MANAGEMENT AGREEMENT**

[TO BE ATTACHED]

**EXHIBIT G**

**ARENA OPERATORS MANAGEMENT FEE SCHEDULE**



**EXHIBIT 6 – MWBE PARTICIPATION**

**The Proposer, by its officers and its agents or representatives present at the time of filing this Proposal, being duly sworn on their oaths say, that they agree – if selected – that they are committed to using minority and women owned businesses as subcontractors whenever possible.**

**Submitted By:**

**Firm Name** \_\_\_\_\_

**Authorized Signature** \_\_\_\_\_

**Date** \_\_\_\_\_