

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and entered into on the ____ day of April 2013, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky, created pursuant to KRS Chapter 67A ("Lexington") and the LEXINGTON CENTER CORPORATION, a Kentucky nonprofit corporation ("LCC"), with offices located at 430 West Vine Street, Lexington, Kentucky 40507.

WITNESSETH:

WHEREAS, LCC was created as a corporate agency of Lexington, to among other duties, manage and maintain Rupp Arena in downtown Lexington, Kentucky; and

WHEREAS the Commonwealth of Kentucky, pursuant to HB 265 of the 2012 Kentucky General Assembly has committed to provide Lexington with funds totaling \$1,250,000 in each of the fiscal years 2013 and 2014 for the planning and design of the renovation of Rupp Arena as part of the Lexington Downtown Redevelopment Planning and Design capital project, through a Memorandum of Agreement with the Department of Local Government; and

WHEREAS, it has been determined that LCC should be used as the entity to manage the expenditure of these funds for their intended purpose, with appropriate oversight by the members of the Rupp District Coordinating Committee (the "Committee").

NOW THEREFORE, that for and in consideration of the mutual promises and covenants herein expressed, Lexington and the LCC agree as follows:

1. This agreement shall be in effect until all of its terms are fulfilled unless otherwise terminated. Lexington may terminate this Agreement at any time in the event that the Commonwealth of Kentucky and/or the Department of Local Government fails to provide the funds indicated in paragraph 3, below; or in the event that the Memorandum of Agreement

between the Department of Local Government and Lexington for funding is terminated; or in the event that the LCC breaches this Agreement by failing to perform a material requirement.

2. LCC must fully comply with any and all restrictions and requirements placed upon the funds or their use by the Commonwealth of Kentucky and will ensure that all funds are used for the planning and design of Rupp Arena (the "Project"). The LCC will ensure that it takes actions consistent with the Memorandum of Agreement between the Department of Local Government and Lexington, which is attached hereto and incorporated herein by reference as Exhibit "A" (the "MOA"), and shall fully assist Lexington with complying with all terms of said agreement, including but not limited to the appropriate expenditure and reporting and accounting for all funds. Subject to the funds being provided to Lexington by the Commonwealth of Kentucky's Department of Local Government (the "DLG") and Lexington's Council budgeting and allocating its local match, Lexington will provide LCC with the following funds: (a) Fiscal Year 2013 -- \$1,250,000 of DLG funding and \$1,250,000 towards the required local match, (b) Fiscal Year 2014 -- \$1,250,000 of DLG funding and \$1,250,000 towards the required local match. Additional funds are to be contributed by the LCC in the amount of \$125,000 in each Fiscal Year 2013 and 2014, and the Lexington Convention and Visitors Bureau in the amount of a total of \$75,000 in Fiscal Year 2013 and \$125,000 in Fiscal Year 2014.

3. The initial payment of funds shall be distributed beginning on or before May 15, 2013, at which time an amount of at least \$750,000, will be provided to LCC. The remaining funds shall be distributed to LCC on a quarterly pro rata basis beginning on or before June 1, 2013 and continuing until all of the funds have been distributed, unless the funds are not timely available from the DLG.

3. LCC acknowledges and understands that Lexington's matching funds are being provided through Lexington-Fayette Urban County Government General Obligation Public Project Bonds (Build America Bonds — Direct Payment to Issuer) Series 2010A (the "Bonds") and LCC is in receipt of a legal opinion from the law firm of Steptoe and Johnson, (the "Opinion") opining that (i) the use of the proceeds from the Bonds for Lexington's matching funds pursuant to HB 265 of the 2012 Kentucky General Assembly is an appropriate use of the Bond proceeds and (ii) listing those limitations and restrictions placed on the expenditure of such funds by such Bond documents. In entering into this Memorandum of Agreement, LCC is relying on the Opinion. LCC agrees that it shall ensure that all Bond funds are expended in accordance with such limitations and restrictions as noted in the Opinion.

LCC shall indemnify, save and hold harmless Lexington and its officers, employees and agents from any and all liability related to any claim that the funding restrictions or requirements were not followed or that any of the funds provided pursuant to this agreement were not expended appropriately, and shall be fully and solely responsible for returning any such funds sought or claimed by the Commonwealth of Kentucky and/or the DLG on this basis. In the event that LCC fails to use the Bond funds provided by Lexington in the manner prescribed in the Opinion, it shall be obligated to return those funds to Lexington.

In addition, to the extent permitted by existing Kentucky law, LCC shall assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of LCC or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier under or in connection with this agreement and shall indemnify, save, hold harmless and defend Lexington and its elected and appointed officials, employees, agents, volunteers, and successors in

interest from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by LCC's performance or breach of the agreement provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the LCC; and (b) not caused by the negligence or willful misconduct of Lexington.

4. The LCC shall submit all expenditures of funds to the Rupp District Coordinating Committee for approval. Such approval shall be in advance of the expenditure for all funds received after the initial distribution of funds by Lexington and for any expenditure which has yet to be incurred. The Committee shall be comprised of the following members: Lexington's Chief Development Officer, Lexington's Commissioners of Finance and Planning, the Rupp Project Director, the President of the Lexington Downtown Development Authority, the President of the Lexington Convention & Visitors Bureau, and the University of Kentucky's representative.

5. To the extent required by law, LCC must obtain any services or goods procured with any of the funds through an appropriate competitive process.

7. LCC shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify

Lexington and its officers, agents and employees against any claim or liability arising from and based on LCC's violation of any such laws, ordinances or regulations.

8. LCC represents that it has filed any necessary federal, state or local income tax returns required by law in the legally prescribed time and manner.

9. LCC shall provide Lexington's Commissioner of Finance and Chief Development Officer with a written quarterly summary of the expenditure of any and all funding received pursuant to this Agreement by no later than the tenth business day following the end of each quarter and shall also timely provide any and all information requested by Lexington or the Commonwealth or DLG related to the funding. In addition, LCC shall regularly provide Lexington's Commissioner of Finance and Chief Development Officer status updates of the Project and as otherwise requested by Lexington or the DLG, and shall provide it with copies of all contracts and agreements related to the Project. LCC shall provide Lexington, the DLG, and/or the Kentucky General Assembly with any information and/or documentation related to the Project upon request, and shall provide reports or summaries if requested.

10. Books of accounts shall be kept by the LCC and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions related to the funds provided under this Agreement. Lexington and Commonwealth shall have free and complete access to the books, papers and affairs of the LCC related to the Project and these funds at all reasonable times. LCC acknowledges and agrees that contractual and other final documents related to the funds will be subject to the Kentucky Open Records law.

11. Lexington may designate such persons as may be necessary to monitor and evaluate the services rendered by the LCC. Lexington, its agents and employees, shall, at all

reasonable times, have reasonable access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of LCC.

12. LCC shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex or age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause each of its subcontracting agencies to do so.

13. If applicable, LCC shall comply with the provisions of Section 2-24 of the Code of Ordinances of the Lexington-Fayette Urban County Government pertaining to investments.

14. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed hereon.

