

AN ORDINANCE

Authorizing and approving the execution and delivery of a Service Agreement between The City of Philadelphia and the Philadelphia Authority for Industrial Development relating to the provision by the Philadelphia Authority for Industrial Development of certain project-related services to promote, among other things, the growth and expansion of business, commerce and tourism within The City of Philadelphia in connection with the development of a multipurpose sports and entertainment facility, including an arena to accommodate National Basketball Association games, and family entertainment, community, retail and other uses; authorizing and approving the obligation of The City of Philadelphia to pay in full when due the Service Fee and other amounts payable under the Service Agreement and covenanting to make necessary appropriations for such purposes; and authorizing City officials to take necessary or appropriate actions to accomplish the intent and purpose of the ordinance, all under certain terms and conditions.

WHEREAS, The City of Philadelphia (the “City”) has determined that the health, safety, and general welfare and economic development, stability and prosperity of the people of the City and the Commonwealth of Pennsylvania (the “Commonwealth”) are directly dependent upon the continued encouragement, promotion, attraction, development, stimulation, growth and expansion of business, commerce and tourism within the boundaries of the City; and

WHEREAS, the City has determined that the attraction and retention of professional sports franchises encourages, fosters and stimulates the greater health, safety, and general welfare, and the economic development, stability and prosperity of the people of the City and the Commonwealth, keeps the City and the Commonwealth competitive and viable in the attraction, retention and further growth of the City’s tourism, convention and other businesses, provides recreational, educational, cultural, entertainment and other opportunities for the people of the City and the Commonwealth, and generally serves as a valuable asset to the City and the Commonwealth and their respective citizens, merchants, business interests and sports fans; and

WHEREAS, the City has determined that the interests of the public will best be served by securing for the City the agreement of the Philadelphia 76ers, L.P., a Delaware limited partnership, or its successor as holder of the National Basketball Association franchise known as the “Philadelphia 76ers” (the “76ers”), to continue to play its home professional basketball games in a new basketball arena in the City; and

WHEREAS, in furtherance of the various purposes recited above, the City has determined to have a new, modern, high-quality basketball arena designed, developed, constructed and operated within the City; and

WHEREAS, in connection therewith the City plans to: (i) acquire fee simple title to all or a portion of certain parcels commonly known as (a) 1001-1025 Filbert Street, Philadelphia, Pennsylvania, (b) 1001-1019 Market Street, Philadelphia, Pennsylvania, and (c) 1025 Market Street, Philadelphia, Pennsylvania (collectively, the “Existing Arena Site”), and (ii) enter into a Ground Lease Agreement (the “Ground Lease”) with the Philadelphia Authority for Industrial Development (“PAID”) providing for the leasing by the City to PAID of all or portions of the Existing Arena Site and certain other parcels of land and/or subsurface and aerial areas owned or

to be acquired by the City (as more particularly described and/or depicted in the Ground Lease, the “Arena Site”); and

WHEREAS, the City has requested that PAID further assist the City by taking a leasehold interest in the Arena Site pursuant to the Ground Lease, and simultaneously subleasing such Arena Site and leasing the multipurpose sports and entertainment facility, including an arena to accommodate National Basketball Association games, and family entertainment, community, retail and other uses (the “Arena Facility”) to be developed at the Arena Site to CBL Arena LLC, a Delaware limited liability company, an affiliate of the 76ers (“CBL”), pursuant to a Sublease and Development Agreement (the “Sublease and Development Agreement”) to be by and between PAID and CBL; and

WHEREAS, PAID has agreed to undertake to assist in the development of the Arena Facility at the Arena Site as a public assembly facility pursuant to its statutory powers; and

WHEREAS, in connection with such undertaking, the City and PAID have determined that PAID will, with the cooperation of the City, promote the economic and commercial development of the City and the other public purposes recited above by providing certain project development, management and oversight services in connection with development of the Arena Facility; and

WHEREAS, The Council of the City has determined that it is in the best interests of the City to: (i) authorize and approve the execution and delivery of a Service Agreement (the “Service Agreement”) by and between the City and PAID; and (ii) authorize and approve the performance by the City of its obligation to pay in full when due the Service Fee (as defined herein) and other amounts payable under the Service Agreement; and

WHEREAS, The City is authorized to enter into the Service Agreement to enable the development of the Arena Facility which shall promote the health, safety, and general welfare, and economic development, stability and prosperity of the City and of the people of the City and Commonwealth and the other public purposes recited above; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

1. The Council of the City (the “Council”) hereby: (i) authorizes and approves the execution and delivery of the Service Agreement, which shall be substantially in the form of Exhibit “A” hereto, with PAID; and (ii) authorizes and approves the performance by the City of its obligation to pay in full when due the Service Fee payable under the Service Agreement (the “Service Fee”) and other amounts payable under the Service Agreement, which Service Fee and other amounts will become due to the extent that PAID incurs obligations and costs in connection with providing services to the City for the development of the Arena Facility including, without limitation, pursuant to the Sublease and Development Agreement that are not timely paid or reimbursed by CBL or other third parties.

2. The Director of Finance is hereby authorized to execute and deliver, on behalf of the City, the Service Agreement in substantially the form of Exhibit A hereto, with such changes as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the

terms of this Ordinance. No amendment or supplement to the Service Agreement which increases any obligation of the City shall be executed unless first approved by ordinance of the Council.

3. The Service Agreement authorized by this Ordinance shall be executed in conjunction with PAID's execution and delivery of the Sublease and Development Agreement with respect to the Arena Facility. The Service Agreement shall not be executed and delivered by the City until the Director of Finance has approved the terms of the Sublease and Development Agreement.

4. The City covenants to budget and make appropriations beginning in Fiscal Year 2025 and in each and every fiscal year thereafter in such amounts as shall be required in order to timely pay all Service Fee payments due and payable and to pay timely all other amounts due and payable under the Service Agreement.

5. As long as PAID has any outstanding obligations, or unreimbursed costs or expenditures, under the Sublease and Development Agreement and other related documents executed and delivered in connection with the Arena Facility and in connection with the execution and delivery of or pursuant to the Ground Lease and/or the Sublease and Development Agreement, the City covenants unconditionally to pay all Service Fee payments and all other amounts due as provided for under the Service Agreement to PAID only out of current revenues of the City, which payments shall not be suspended, abated, reduced, abrogated, waived, diminished or otherwise modified in any manner or to any extent whatsoever and regardless of any rights of set-off, recoupment or counterclaim that the City may have against PAID, CBL or any other party or parties and regardless of any contingency, act of God, event or cause whatsoever and notwithstanding any circumstances or occurrence that may arise after the date thereof.

6. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Service Agreement.

7. The Director of Finance and all other proper officials of the City are hereby authorized, jointly and severally, on behalf of the City, to execute all other documents as may be necessary in order to accomplish the intent and purpose of this Ordinance and to take all actions as may be required by the Constitution and the laws of the Commonwealth of Pennsylvania in order to effectuate the transaction approved hereby with respect to the Arena Facility.

8. The City Solicitor shall file copies of the executed Service Agreement, and all amendments thereto, with the Clerk of Council.

9. This Ordinance shall take effect immediately.

EXHIBIT "A"

Form of Service Agreement

SERVICE AGREEMENT
BETWEEN
PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT
AND
THE CITY OF PHILADELPHIA, PENNSYLVANIA

Dated as of [_____, 202_]

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SERVICE AGREEMENT

This Service Agreement (this “Service Agreement”) made and entered into as of the [] day of [], 202[], between PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a public body and a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (the “Authority”), and THE CITY OF PHILADELPHIA, PENNSYLVANIA, a corporation and body politic, and city of the first class of the Commonwealth of Pennsylvania (the “City”).

WITNESSETH:

WHEREAS, the Authority is a public body and a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania (the “Commonwealth”) and organized pursuant to the Pennsylvania Economic Development Financing Law, Act No. 102 of the General Assembly of the Commonwealth approved August 23, 1967 (P.L. 251), as amended and supplemented (the “Act”); and

WHEREAS, under the Act, the Authority has all powers necessary or appropriate to carry out and effectuate the purposes and provisions of the Act, including, among others, the power to promote economic and commercial development of the City; and

WHEREAS, the City and the Authority have determined that the health, safety, and general welfare and economic development, stability and prosperity of the people of the City and the Commonwealth are directly dependent upon the continued encouragement, promotion, attraction, development, stimulation, growth and expansion of business, commerce and tourism within the boundaries of the City; and

WHEREAS, the City and the Authority have determined that the attraction and retention of professional sports franchises encourages, fosters and stimulates the greater health, safety and general welfare, and the economic development and prosperity of, the people of the City and the Commonwealth, keeps the City and the Commonwealth competitive and viable in the attraction, retention and further growth of the City’s tourism, convention and other businesses, provides recreational, educational, cultural, entertainment and other opportunities for the people of the City and the Commonwealth, and generally serves as a valuable asset to the City and the Commonwealth and their respective citizens, merchants, business interests and sports fans; and

WHEREAS, the Authority and the City have determined that the Authority will, with the cooperation of the City, promote the economic and commercial development of the City by providing certain project development, management and oversight services in connection with development of a multipurpose sports and entertainment facility, including an arena to accommodate National Basketball Association games, and family entertainment, community, retail and other uses, to be located in the East Market Street section of the City as more particularly described in the Sublease and Development Agreement (as hereafter defined) (the “Arena Facility”); and

WHEREAS, the Arena Facility will be developed at the Arena Site (as hereafter defined) as a public assembly facility pursuant to the Authority’s statutory powers; and

WHEREAS, in connection therewith the City plans to: (i) acquire fee simple title to all or a portion of certain parcels commonly known as (a) 1001-1025 Filbert Street, Philadelphia, Pennsylvania, (b) 1001-1019 Market Street, Philadelphia, Pennsylvania, and (c) 1025 Market Street, Philadelphia, Pennsylvania (collectively, the “Existing Arena Site”), and (ii) enter into a Ground Lease Agreement with the Authority (the “Ground Lease”) providing for the leasing by the City to Authority of all or portions of the Existing Arena Site and certain other parcels of land and/or subsurface and aerial areas owned or to be acquired by the City (all as more particularly described and/or depicted in the Ground Lease, the “Arena Site”); and

WHEREAS, the City has requested that Authority further assist the City by taking a leasehold interest in the Arena Site, and simultaneously subleasing such Arena Site and leasing the Arena Facility to be developed on the Arena Site to CBL (as hereafter defined) pursuant to the Sublease and Development Agreement (each as hereafter defined); and

WHEREAS, the City Council of the City (the “City Council”), by Ordinance (Bill No. _____), adopted _____, 202_, and approved by the Mayor on _____, 202_ (the “Ordinance”) has: (i) authorized and approved the execution and delivery of this Service Agreement; and (ii) authorized and approved the performance by the City of its obligation to pay in full when due the Service Fee (as hereafter defined) and other amounts payable hereunder; and

WHEREAS, the execution and delivery of this Service Agreement and the performance of their respective obligations hereunder has been in all respects duly and validly authorized by the Authority and the City;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter contained, the parties hereto, intending to be legally bound, agree as follows:

Article I DEFINITIONS

Section 101. Definitions of Terms. Unless otherwise defined herein, all words and terms defined in the recitals hereto shall have the meanings set forth therein. In addition, the following terms shall have the following meanings unless the context otherwise requires:

“**76ers**” shall mean Philadelphia 76ers, L.P., a Delaware limited partnership.

“**Arena Project Authority Documents**” shall mean the Ground Lease, the Sublease and Development Agreement, the Non-Disturbance Agreement, the Authority’s Completion Guaranty, the Conditional Completion Guaranty, the Guaranty, the Direct Operating Covenants Agreement and any other instrument or agreement entered into by, granting rights to, or effectively imposing obligations upon, the Authority, and executed and delivered in connection with the Arena Facility and in connection with the execution and delivery of or pursuant to the Ground Lease and/or the Sublease and Development Agreement.

“**Authority’s Completion Guaranty**” shall mean the completion guaranty from an acceptable completion guarantor in favor of the Authority as more particularly specified and defined in the Sublease and Development Agreement.

“**CBL**” shall mean CBL Arena LLC, a Delaware limited liability company, an affiliate of the 76ers.

“**Conditional Completion Guaranty**” shall mean the completion guaranty from Guarantor or such other person(s) acceptable to Authority, in favor of the Authority as more particularly specified and defined in the Sublease and Development Agreement.

“**Direct Operating Covenants Agreement**” shall mean the Direct Operating Covenants Agreement by and among the 76ers, the Authority and the City, which shall include the Play Covenants (as defined in the Sublease and Development Agreement).

“**Event of Default**” shall mean any of the events described in Section 601 hereof.

“**Excluded Amounts**” shall mean any amounts required to be paid, or expenses incurred, by the Authority with respect to the Arena Project Authority Documents, the Arena Facility or any related transactions which are due to: (i) reimbursement obligations of the Authority to the City pursuant to Section 11.6 of the Ground Lease, or (ii) obligations of the Authority to pay or remit funds to the City pursuant to Sections 4.3 or 16.2 of the Ground Lease; provided that Excluded Amounts shall not include any amount payable to Tenant or any of its affiliates.

“**Fiscal Year**” shall mean the annual accounting year of the City, which currently begins on July 1 of each year.

“**Guarantor**” shall have the meaning set forth in Sublease and Development Agreement.

“**Guaranty**” shall mean the guaranty agreement from Guarantor in favor of the Authority as more particularly specified and defined in the Sublease and Development Agreement.

“**Non-Disturbance Agreement**” shall mean the Non-Disturbance Agreement entered into by and among the City, the Authority and CBL.

“**Service Fee**” shall mean the Service Fee payable from the City hereunder as set forth in Section 401 hereof. For each applicable Fiscal Year, the Service Fee shall include the related Service Fee Components, if any.

“**Service Fee Components**” shall mean amounts required to be paid, or otherwise incurred, by the Authority (other than general Authority overhead, but including funds advanced or expended by the Authority in its discretion in anticipation of reimbursements or other payments from third parties, or to address delays or shortfalls in payments to, or for the benefit of, the Authority or the City from third parties) pursuant to, or otherwise in relation to, the Arena Project Authority Documents, the Arena Facility and any related transactions to the extent not funded or reimbursed by third parties within five (5) days of becoming due. Amounts payable by the City pursuant to its covenant in Section 505 hereof constitute Service Fee Components. Excluded Amounts are not eligible to be Service Fee Components.

“**Sublease and Development Agreement**” shall mean the Sublease and Development Agreement to be by and between the Authority and CBL.

“**Tenant**” shall have the meaning set forth in Sublease and Development Agreement.

Article II
REPRESENTATIONS AND WARRANTIES

Section 201. Representations and Warranties of the Authority. The Authority hereby represents and warrants as follows:

(a) it is a public body and a body corporate and politic duly organized and existing under the laws of the Commonwealth with the power to enter into this Service Agreement and to carry out its obligations hereunder and has duly authorized the execution and delivery of this Service Agreement;

(b) the execution and delivery of this Service Agreement by the Authority and the performance of all covenants and agreements of the Authority contained in this Service Agreement and of all other acts and things required under the Constitution and laws of the Commonwealth to make this Service Agreement a valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms, are authorized by the Act and have been duly authorized by proceedings of the Authority adopted or passed at meetings thereof duly called and held;

(c) the Arena Facility and the transactions described in the Arena Project Authority Documents will further the public purposes of the Act and the purposes for which the Authority was created and continues to exist; and

(d) this Service Agreement has been duly executed on behalf of the Authority by its duly authorized officers and is the legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, except as enforcement may be limited by bankruptcy, reorganization, receivership, insolvency, moratorium or other similar laws or legal or equitable principles affecting creditors’ rights generally.

Section 202. Representations and Warranties of the City. The City hereby represents and warrants as follows:

(a) it is a corporation and body politic and a city of the first class of the Commonwealth duly organized and existing under the laws of the Commonwealth with the power to enter into the transactions contemplated by this Service Agreement and to carry out its obligations hereunder and, pursuant to the Ordinance, has duly authorized the execution and delivery of this Service Agreement;

(b) execution and delivery of this Service Agreement by the City and the performance of all covenants and agreements of the City contained in this Service Agreement and of all other acts and things required under the Constitution and laws of the Commonwealth to make this Service Agreement a valid and binding obligation of the City in accordance with its terms, are authorized by the Philadelphia Home Rule Charter and the Act and have been duly authorized by the Ordinance duly adopted by the City Council and approved by the Mayor; and

(c) this Service Agreement has been duly executed on behalf of the City by its duly authorized Director of Finance and is the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as enforcement may be limited by bankruptcy, reorganization, receivership, insolvency, moratorium or other similar laws or legal or equitable principles affecting creditors' rights generally.

Article III

THE GROUND LEASE AND SUBLEASE AND DEVELOPMENT AGREEMENT

Section 301. Execution of the Ground Lease and Sublease and Development Agreement. The Authority will execute and deliver the Ground Lease and Sublease and Development Agreement.

Section 302. Agreements with CBL and other Parties; Repayment of City. Provided the City is current in the performance of all of its obligations to the Authority hereunder, the City shall have the right to pursue all remedies which the Authority may have against CBL under the Arena Project Authority Documents or any third party, subject to the provisions of the Arena Project Authority Documents, in the event the City makes any payment required hereunder, and the Authority hereby expressly assigns such rights to the City. If the Authority receives any payments from third parties in reimbursement of payments that the Authority has made under the Arena Project Authority Documents and for which the City has made payments to the Authority hereunder, it shall promptly pay such amounts to the City to the extent necessary to reimburse the City for any unreimbursed amounts the City has paid pursuant to this Service Agreement, subject to the provisions of the Arena Project Authority Documents.

Section 303. Amendments. None of the Arena Project Authority Documents shall be amended in a manner which materially adversely affects the City without the prior written consent of the City.

Article IV

SERVICE FEE

Section 401. Service Fee. In consideration of the undertakings by the Authority under this Service Agreement including its undertakings pursuant to the Arena Project Authority Documents, the City agrees to pay the Service Fee in each applicable Fiscal Year to the Authority at such times in order that all Service Fee Components may be timely paid by the Authority.

The Service Fee shall be payable only out of the current revenues of the City, and the City agrees to provide for the payment of the Service Fee and include the same in its annual operating budget for each Fiscal Year.

If the current revenues are insufficient to pay the total Service Fee in any Fiscal Year as the same becomes due and payable, the City covenants to include amounts not so paid in its operating budget for the ensuing Fiscal Year in order to provide sufficient current revenues to pay in each ensuing year such balance due in addition to the amount of Service Fee due for such ensuing year.

The City covenants to make appropriations in each of its Fiscal Years in such amounts as shall be required in order to make all Service Fee payments due and payable hereunder in each of the City's Fiscal Years.

In no event shall the due dates for payments of the Service Fee hereunder be accelerated.

The Tenant shall be an intended third party beneficiary for the limited purpose of exercising the rights of the Authority to enforce the obligations of the City to the Authority set forth in this Section 401 and such rights shall not terminate upon the expiration or earlier termination of this Service Agreement.

Section 402. Notices to the City. The Authority shall provide to the City:

(a) On or about January 2, 2025, and on or about each January 2 thereafter until termination of this Service Agreement in accordance with Section 705 hereof, written notice of the Service Fee (including its payment date), if any, expected to be due or incurred in the Fiscal Year beginning on the next July 1.

(b) From time to time, as applicable, written notice of any new Service Fee Component to become due (including its payment date). The Authority shall use reasonable efforts to provide such notice to the City within ten (10) business days of becoming aware of the same.

Section 403. No Set-Off. The obligation of the City to make the payments required under this Service Agreement shall be absolute and unconditional. The City will pay without suspension, abatement, reduction, abrogation, waiver or diminution all payments required hereunder regardless of any cause or circumstance whatsoever, which may now exist or may hereafter arise, including, without limitation, any defense, set-off, recoupment or counterclaim which the City may have or assert against the Authority or any other person. The Tenant shall be an intended third party beneficiary for the limited purpose of exercising the rights of the Authority to enforce the obligations of the City to the Authority set forth in this Section 403 and such rights shall not terminate upon the expiration or earlier termination of this Service Agreement.

Section 404. Authority Payments under Sublease and Development Agreement; Insurance and Condemnation Proceeds. Authority Payments (as defined in the Sublease and Development Agreement) received by the Authority, for purposes of this Service Agreement, shall be treated as being applied against general overhead and operating costs of the Authority and shall not be taken into account in determining any Service Fee.

Any insurance or condemnation proceeds (or proceeds of sale in lieu of condemnation) received by the Authority with respect to the Arena Facility, including any portion thereof, or otherwise in connection with the Arena Project Authority Documents, to the extent consistent with the Authority's contractual requirements (including Authority's rights, obligations and requirements under the Arena Project Authority Documents) and the otherwise permitted uses thereof, shall be used to the extent reasonably practicable to mitigate costs and expenses of the Authority in order to reduce the size of the Service Fee for the applicable Fiscal Year or Fiscal Years.

Article V
FURTHER AGREEMENTS

Section 501. Compliance With Laws.

(a) The City covenants that all actions heretofore and hereafter taken by the City or by the Authority upon the request of any officer of the City in connection with the transactions contemplated hereby, including the making of contracts, have been and will be in full compliance with all pertinent laws, ordinances, rules, regulations and orders applicable to the City. The City acknowledges that any review by the Authority's staff or counsel of any action heretofore or hereafter taken by the City has been or will be solely for the protection of the Authority. Such reviews shall not prevent the Authority from enforcing any of the covenants made by the City.

(b) The Authority agrees that in its performance under this Service Agreement it shall comply with Sections 2 through 8 and 10 through 13 of the provisions attached to the Ground Lease as Exhibit "C", to the extent applicable. References to Landlord therein shall mean the City. References to Lease therein shall mean this Service Agreement. References to "sublease" therein shall be deemed to mean "contract," and references to "sublessee" shall be deemed to mean "contractor."

Section 502. No Personal Recourse against Authority; Assumption of Financial Responsibility.

(a) In the exercise of the power of the Authority and its members, officers, employees and agents under this Service Agreement, the Arena Project Authority Documents or any other documents executed by the Authority in connection with the transactions contemplated hereby including (without limiting the foregoing) the application of moneys and the investment of funds, neither the Authority nor its members, officers, employees or agents shall be accountable to the City for any action taken or omitted by it or them except actions constituting bad faith, willful misconduct, gross negligence, fraud or deceit of the Authority or of any member, officer, employee or agent. The Authority and such other persons shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the City for any claims against any member, officer, employee or agent of the Authority alleging personal liability on the part of such person based on this Service Agreement, the Arena Project Authority Documents or any other documents executed by the Authority in connection with the transactions contemplated hereby.

(b) To the extent authorized by applicable law, and in consideration of the service being rendered by the Authority to the City pursuant to the Act, the City agrees to indemnify, defend and hold harmless the Authority and each of its directors, officers, employees, agents and representatives (each an "Indemnified Party" and collectively, the "Indemnified Parties"), against any and all suits, claims or causes of action (collectively, "Claims"), and all liabilities, losses, costs, expenses, judgments and amounts paid in settlement (including without limitation, reasonable attorneys' fees) of every kind (collectively, "Losses"), relating to or arising in connection with the Authority's entering into this Service Agreement, the Arena Project Authority Documents (to the extent that a party to any Arena Project Authority Document fails to

provide reasonable and timely indemnification against Claims or Losses and the Claims or Losses are not covered under an insurance policy maintained by a third party for the benefit of the Authority pursuant to the terms of the Arena Project Authority Documents), or any other documents executed by the Authority in connection with the transactions contemplated hereby, the performance of any of the Authority's obligations hereunder or thereunder, any acts or omissions with respect to the Authority's interest under this Service Agreement, the Arena Project Authority Documents or any other documents executed by the Authority in connection with the transactions contemplated hereby; except in each case to the extent that the Claims and Losses are finally determined by a court of competent jurisdiction to have been directly caused by the willful misconduct, gross negligence, bad faith or fraud of any such Indemnified Party.

(c) In the event any such Claim is made or action brought against any Indemnified Party, the City shall assume the defense of the Claim and any action brought thereon, and the City shall pay all expenses incurred therein; or the Authority, with the consent of the City Solicitor, may assume the defense of any such Claim or action, the reasonable costs of which shall be paid by the City; provided, however, that Counsel selected by the Authority to conduct such defense shall be approved by the City and further provided that the City may engage its own Counsel to participate in the defense of any such action.

(d) The City shall have the right to control the defense of any legal proceedings involving any Claims (other than Claims relating to the inherent powers of the Authority), but shall keep the Authority advised as to all material developments in such proceedings. Notwithstanding anything herein to the contrary, the City shall not be required to indemnify or defend any Indemnified Party against any Claims or Losses to the extent such Claim or Loss is the result of the willful misconduct, bad faith, gross negligence, fraud or deceit of the Authority or such Indemnified Party; provided, however, the Authority's taking of any action, or the failure to take any action, which it is permitted to take under the terms of this Service Agreement, the Arena Project Authority Documents or any of the documents executed by the Authority in connection with the transactions contemplated thereby, shall under no circumstances be deemed to constitute willful misconduct, bad faith, gross negligence, fraud or deceit; and furthermore, the taking of any action by the Authority at the written direction of the City shall not under any circumstances be deemed to constitute willful misconduct, bad faith, gross negligence or fraud.

(e) The City shall not be obligated under paragraphs (b), (c) or (d) unless the Indemnified Party has given the City prompt and timely notice of matters contemplated thereby; provided however, the failure to so notify the City will not relieve the City from any obligation under paragraph (b), (c), or (d) except to the extent such failure has materially injured the ability of the City to defend such matter successfully or to minimize the economic exposure resulting therefrom. Nothing in this Section shall be deemed to preclude the City from asserting any claim against an Indemnified Party for expenses that are finally determined by a court of competent jurisdiction to have been directly caused by such Indemnified Party's willful misconduct, bad faith, gross negligence or fraud.

Section 503. No Waiver of Immunity. Nothing herein shall waive or amend any defense or immunity which the City or the Authority, their officers, employees or agents may have under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8541 et seq. or the Commonwealth Agency Law, 42 Pa. C.S.A. §8521 et seq.

Section 504. Non-Competitively Bid Contract Bidding Requirements. Pursuant to Section 17-1408 of the Philadelphia Code, the Authority shall abide by the provisions of Philadelphia Code Chapter 17-1400 in awarding any contract(s) pursuant to this Service Agreement as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to the Authority as if the Authority were listed in that subsection.

Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by the Authority by the Senior Vice President, General Counsel of Philadelphia Industrial Development Corporation (“PIDC”) on behalf of the Authority; any approvals required to be performed by the Director of Finance shall be performed by the Authority by the [Senior Vice President and Chief Financial Officer of PIDC] on behalf of the Authority; and any approvals required to be performed by the Mayor shall be performed by the Authority by the Executive Vice President of PIDC on behalf of the Authority.

Section 505. Payment of Authority Fees. Notwithstanding anything to the contrary contained in the Arena Project Authority Documents, the City agrees to pay promptly when due to the Authority all fees, costs and expenses reasonably incurred by the Authority, including but not limited to reasonable attorneys’ fees and expenses, whenever incurred, in connection with the negotiation, execution and delivery of any of the Arena Project Authority Documents, the administration of the Arena Premises (as defined in the Sublease and Development Agreement) and the Arena Project Authority Documents, and the performance of any Authority duties or obligations under any of the Arena Project Authority Documents.

Section 506. Authority Audits. The Authority shall furnish to the City a copy of its annual audited financial statements, and, if requested, shall permit any duly authorized representative of the City to make reasonable examinations of its accounts and records relating to this Service Agreement and the transactions contemplated hereby.

Article VI EVENTS OF DEFAULT AND REMEDIES

Section 601. Events of Default. Each of the following shall constitute an Event of Default hereunder:

- (a) The failure of the City to make any payment of the Service Fee due pursuant to Section 401 of this Service Agreement;
- (b) The failure of the City to make any other payment or to perform any other covenant, condition or agreement herein on its part to be performed; and
- (c) If the City proposes or makes an assignment for the benefit of creditors or a composition agreement with all or a material part of its creditors, or a trustee, receiver, executor, conservator, liquidator, sequestrator or other judicial representative, similar or dissimilar, is appointed for the City or any of its assets or revenues, or there is commenced any proceeding in liquidation, bankruptcy, reorganization, receivership, arrangement of debts, debtor rehabilitation, creditor adjustment or insolvency, state or federal, by or against the City and if such is not vacated,

dismissed or stayed on appeal within sixty (60) days (provided that any such assignment, agreement, appointment or proceeding commenced under the First Class City Revenue Bond Act or the Municipal Utility Inventory and Receivables Financing Act, and/or any acceleration of the payment obligations in respect of any bonds, notes or other evidence of indebtedness issued under either aforementioned Act, shall not be an Event of Default hereunder).

Section 602. Notice of Defaults; Opportunity to Cure Such Defaults. No default under Section 601(b) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given to the City by the Authority, and the City shall have had 30 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, if the default cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the City within the period and diligently pursued until the default is corrected.

Section 603. Remedies. If any Event of Default shall occur and be continuing, the Authority may at its option exercise any one or more of the following remedies: (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Authority, and require the City to perform its duties and obligations under this Service Agreement; (b) by action or suit in equity require the City to account as if it were the trustee of an express trust for the Authority; or (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Authority.

In no event (including an acceleration of any payment obligations of the Authority under the Arena Project Authority Documents) shall the due dates for payments of the Service Fee hereunder be accelerated.

The Tenant shall be an intended third party beneficiary for the limited purpose of exercising the rights of the Authority to enforce the remedies set forth in this Section 603 and such rights shall not terminate upon the expiration or earlier termination of this Service Agreement.

Section 604. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Service Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 605. No Additional Waiver Implied by One Waiver. In the event the breach of any agreement contained in this Service Agreement should be waived by either party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Article VII
MISCELLANEOUS

Section 701. Notices.

(a) Except as otherwise permitted herein, all communications hereunder shall be in writing and, unless otherwise required under this Service Agreement, shall be sufficiently given or made if delivered personally to the Person who is to receive the same or if mailed to such person by certified mail, return receipt requested, addressed as follows:

(i) if to the Authority:

Philadelphia Authority for Industrial Development
c/o Philadelphia Industrial Development Corporation
3500 Centre Square West
1500 Market Street
Philadelphia, PA 19102
Attention: Chairman

With a copy to:

Philadelphia Authority for Industrial Development
c/o Philadelphia Industrial Development Corporation
3500 Centre Square West
1500 Market Street
Philadelphia, PA 19102
Attention: General Counsel

(ii) if to the City:

City of Philadelphia
c/o Director of Finance
1401 John F. Kennedy Boulevard
MSB - Room 1330
Philadelphia, PA 19102-1693

With copies to:

Law Department
City of Philadelphia
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
Attention: City Solicitor

City Treasurer
City of Philadelphia
1401 John F. Kennedy Boulevard
MSB - Room 640
Philadelphia, PA 19102-1693

Section 702. Severability. If any provision of this Service Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 703. Counterparts. This Service Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Service Agreement.

Section 704. Benefit of Service Agreement. This Service Agreement shall inure to the benefit of and shall be binding upon the Authority, the City and their respective successors and assigns; provided that the Tenant shall be an intended third party beneficiary for the limited purpose of exercising the enforcement rights of the Authority against the City with respect to Sections 401, 403, and 603 and enforcing its consent rights in Section 708 (for which Tenant will be entitled to full rights to directly enforce), and such rights shall not terminate upon the expiration or earlier termination of this Service Agreement.

Section 705. Termination. This Service Agreement shall terminate on such date as the Arena Project Authority Documents have terminated and the Authority no longer has any surviving obligations thereunder. Notwithstanding the foregoing, the City's obligations under Section 502 hereof shall survive any such termination.

Section 706. Governing Law. This Service Agreement shall be governed by, and construed in accordance with, the substantive laws of the Commonwealth.

Section 707. Entire Agreement. This Service Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Authority and the City with respect to the subject matter hereof.

Section 708. Amendments and Supplements.

(a) This Service Agreement can be modified or amended only by a writing signed by both parties and approved by Tenant in writing; provided that the Authority and the City may modify or amend this Service Agreement without such consent from Tenant if such modification or amendment does not modify or amend Sections 401, 403, 603, 704 or this Section 708 or otherwise change Tenant's rights under the Sublease and Development Agreement. The Tenant shall be an intended third party beneficiary of this Section 708 for the limited purpose of enforcing its rights to consent as set forth in this Section 708 and such rights shall not terminate upon the expiration or earlier termination of this Service Agreement.

(b) To the extent required by law, any amendment or supplement to this Service Agreement shall be approved by ordinance of the City Council.

Section 709. Limitation on Liability of the Authority. No provision of this Service Agreement shall be construed so as to give rise to a liability of the Authority or any of its members, officers or employees, or to give rise to a charge upon the general credit of the Authority or such members, officers or employees; any liability hereunder of the Authority shall be limited exclusively to its interest in this Service Agreement and the lien of any judgment shall be restricted thereto.

Section 710. Time of Essence. Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings and conditions to be performed hereunder by the City and the Authority.

Section 711. Construction; Conflict with Ordinance. If any provision of this Service Agreement conflicts with the provisions of the Ordinance, the Ordinance shall control.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Service Agreement, all as of the day and year first above mentioned.

PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT

By: _____
Name:
Title:

THE CITY OF PHILADELPHIA,
PENNSYLVANIA

By: _____
Name:
Title: