

**CONCESSION AND MANAGEMENT AGREEMENT**

**BY AND AMONG**

**THE CITY OF DETROIT DOWNTOWN**

**DEVELOPMENT AUTHORITY,**

**OLYMPIA DEVELOPMENT OF MICHIGAN, L.L.C.**

**AND**

**DETROIT RED WINGS, INC.**

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**CONCESSION AND MANAGEMENT AGREEMENT**

THIS CONCESSION AND MANAGEMENT AGREEMENT (the “Agreement”) dated December \_\_\_, 2013, is by and between the CITY OF DETROIT DOWNTOWN DEVELOPMENT AUTHORITY (the “DDA”), a public authority and body corporate established by the City of Detroit, Michigan pursuant to Michigan Public Act 197 of 1975, as amended, OLYMPIA DEVELOPMENT OF MICHIGAN, L.L.C., a Michigan limited liability company (“Concessionaire”), and, solely for the purposes indicated in Articles 11, 14, 15 and 24, DETROIT RED WINGS, INC., a Michigan corporation (the “Red Wings”).

**Recitals**

These Recitals are incorporated into and made a part of this Agreement. Capitalized terms not otherwise defined in the Recitals shall have the meaning attributed to them in Article 1 “Definitions”.

A. The DDA and Concessionaire recognize and acknowledge the development in the City of the Events Center Project in the area described on Exhibit A attached hereto to be owned by the DDA for the benefit of the public is in the public interest. The parties acknowledge that the Events Center Project constitutes a “Catalyst Development Project” within the meaning of MCL 125.1651(g). The Events Center Project is the only project that has been designated a Catalyst Development Project by the DDA.

B. The Events Center Property is being acquired and assembled for the public purpose of effectuating the Catalyst Development Project.

C. The Events Center Property will be located within the Catalyst Development Area.

D. The City is expected to approve amendments to the Plan, which Plan, as amended, includes, among other provisions, (i) an expansion of the DDA district, (ii) an expansion of Development Area No. 1 of the DDA and (iii) an amendment to the Plan for the purpose of creating a Catalyst Development Project within the DDA district and the Development Area No. 1 (the amendments described in clauses (i) – (iii) are referred to as the “Plan Amendment Provisions”). In connection therewith, the MSF has approved the portion of the amendments to the Plan as required by the Act.

E. It is anticipated that, in accordance with Article 2 hereof, the DDA will acquire ownership of the Events Center Property by way of (a) the City authorizing the transfer to the DDA of certain real property located within the Events Center Property and effecting such transfer, (b) the City authorizing the Economic Development Corporation of the City of Detroit (the “EDC”) to transfer to the DDA certain real property located within the Events Center Property and (c) upon or concurrent with such transfers by the City and the EDC and subject to Articles 2.1 and 2.5, Concessionaire or affiliates of Concessionaire causing to be transferred to the DDA certain real property located within the Events Center Property.

F. The parties hereto acknowledge that the land and buildings thereon and improvements thereto in the Events Center Project and located on the Events Center Property will be used only for the purposes, in the manner, by the persons, and subject to the restrictions determined by the DDA to facilitate use by, and to benefit, the public generally while using the Events Center Project, this recital not being intended to limit or affect the rights of Concessionaire or any sub-concessionaires to develop, construct, finance, manage, use or operate the Events Center Project in accordance with the terms and conditions of this Agreement.

G. It is intended that the obligations undertaken by those to whom there shall be granted by sub-concession, license or other means the right and obligation of conducting such concession operations thereon, shall be in the interests of, for the benefit of, and to make the concession areas available for use by, the general public using the Events Center Project.

H. The Events Center Property is intended to contain, in addition to the Events Center, parking areas, associated infrastructure and related facilities and sub-concessions described herein and other future publicly owned but privately operated activities, to the extent deemed necessary or appropriate to serve the general public using the Events Center Property, and for the purpose of inducing further development of and relocation of businesses within the Catalyst Development Area.

I. The arrangements made to conduct concession operations within the Events Center Property, under this Agreement and other similar agreements, are made in recognition of, and to accomplish the general public purpose for which the Catalyst Development Project was created; such concession/operators will by such concession/operation agreements, and Concessionaire does under and pursuant to the terms of this Agreement, undertake to serve the public in the manner outlined herein, subject to the restrictions imposed hereby, and pursuant to the obligations undertaken hereunder to ensure that this is properly done.

J. Should Concessionaire, pursuant to the terms of this Agreement, wish to contract with other related or unrelated entities to assist in performing any of its obligations under and subject to the restrictions of this Agreement, Concessionaire shall in all events be and remain fully responsible and liable to the DDA under the restrictions and obligations set forth herein, notwithstanding any such contracts with such entities, and any agreements, written or verbal, with such other concessionaires or sub-concessionaires shall each contain no less than the same

restrictions and obligations imposed by the terms of this Agreement on Concessionaire, and such other restrictions and obligations as may be imposed by Concessionaire which do not conflict with the restrictions and obligations established by this Agreement.

K. The Red Wings hold a franchise issued by the NHL and own the Team.

L. The Red Wings have determined that it is in the best interest of the Red Wings and their fans to play professional hockey in the Events Center and to operate or retain others to operate other concessions in the Events Center Project designed to provide the best facilities for playing and attending professional hockey. Concessionaire and the DDA have determined that the people of the City, County and State and the public at large will benefit from the construction of the Events Center Project and the operation of concessions in the Events Center Project designed to provide the best facilities for playing and attending professional hockey, concerts and other sports, recreation or entertainment events.

M. Concessionaire will cause the Construction Contractor for the Events Center Project to develop and administer equal employment opportunity and business inclusion programs for involving disadvantaged persons, City residents, Detroit headquartered businesses and Detroit based businesses in the manner described in Article 22.1 herein. Concessionaire will develop and administer a program or programs for involving such businesses and individuals in services to be performed at the Events Center, following the Commencement Date, in the manner described in Article 22.2 herein.

N. Concessionaire will develop and administer community development and youth programs at the Events Center Project after completion of the Events Center Project in the manner described in Article 23.1 herein.

O. To effectuate the above-stated purposes and facilitate the financing and completion of the Events Center Project, the DDA has determined that there is a public purpose for the acquisition of the Events Center Property and the construction of the Events Center Project and related and appurtenant facilities and certain parking and other facilities within the Events Center Project, and the DDA intends to acquire the Events Center Property for that purpose.

P. The DDA desires to retain Concessionaire to develop, manage and operate the Events Center Project, to operate concessions thereon, including the playing of professional hockey and hosting concerts and other entertainment events, and Concessionaire desires to obtain such rights from the DDA pursuant to and under the terms of this Agreement.

Q. It is anticipated that (i) the Events Center Project will cost approximately Four Hundred Fifty Million Dollars (\$450,000,000.00), including financing costs, but excluding debt service and coverage reserves, and (ii) the Costs of the Events Center Project will be funded by proceeds of the Bonds to be issued by the MSF and by funds that the DDA has obtained as a result of certain captured property taxes, as more particularly set forth below.

R. It is anticipated that the Bonds will be repaid from the following sources: (i) a pledge of certain property taxes which are tax increment revenues captured by the DDA pursuant to MCL 125.1651(cc)(vi); (ii) a pledge of certain property taxes which are considered local tax increment revenues captured by the DDA (excluding those property taxes captured pursuant to clause (i) of this Recital); and (iii) a concession payment by Concessionaire; this recital is not intended to prevent any of the foregoing funds from being used for all costs permitted by statute and as provided for herein or in the Bond Documents.

S. On June 19, 2013, the DDA, the County and ODM entered into the MOU, which outlined the general terms and conditions under which the DDA, through the use of property tax proceeds captured by the DDA, and ODM, or its affiliates, through funds made available to it, will finance and ODM or its affiliates would manage and operate the Events Center Project and the concessions for the Events Center Project. The MOU identified the anticipated site of the Events Center Project, and allocated certain responsibilities concerning land acquisition, ownership, financing and contributions and certain other matters related to the development of the Events Center Project. The parties intend this Agreement to establish the final terms of the agreement between the DDA and Concessionaire which was outlined in the MOU regarding the development, management and operation of the Events Center Project and for this Agreement to supersede all prior written and oral agreements between the parties (including the MOU) regarding all such matters.

T. In addition to the Events Center Project, the MOU provided for ODM, or its affiliates, to make, or cause private parties to commit to make, an investment of at least \$200,000,000 in projects within the Catalyst Development Area. In connection therewith and as an obligation separate and apart from this Agreement, it is anticipated that the DDA and ODM, or an affiliate, assignee or designee of ODM, will enter a master development agreement (as amended or restated from time to time, the “Master Development Agreement”) providing for, among other things, (i) the City and the EDC to transfer to the DDA certain property identified in the MOU and for the DDA to transfer such property to ODM, or its designee, pursuant to the terms and conditions of the Master Development Agreement, (ii) ODM or its affiliates to make, or cause other parties to commit to make, financial investments in projects in the Catalyst Development Area in an amount not less than \$200,000,000 and to commence (as commence is

defined in the Master Development Agreement) projects with aggregate budgeted costs in the amount of at least \$200,000,000 on or before the date which is five years after the date that the Events Center is open to the public for its first event, pursuant to the terms and conditions of the Master Development Agreement and (iii) the DDA to provide all funds generated from the Catalyst Project Revenues which are not applied to the payment of the Bonds up to a maximum of \$74,000,000 to reimburse costs associated with such development projects, pursuant to the terms and conditions of the Master Development Agreement.

## ARTICLE 1

### DEFINITIONS

Unless the context otherwise requires, the following terms shall, for purposes of this Agreement, have the meaning specified in this Article:

“Act” means Michigan Public Act 197 of 1975, as amended.

“Additional Costs” shall have the meaning set forth in Article 6.2(c).

“Additional Parcel” shall have the meaning set forth in Article 2.1.

“Affiliate” means any person, corporation, partnership, trust or other entity that directly or indirectly, through one or more intermediaries, is controlled by, controls, or is under common control with, Concessionaire, including, without limitation, if applicable, any parent or subsidiary of Concessionaire.

“Approved Assurances” shall have the meaning set forth in Article 27.

“Architect Agreement” means an agreement to be entered into between Concessionaire and the Project Architect for design of the Events Center Project, as the same may be amended or restated from time to time.

“Bonds” means one or more series of revenue bonds issued by the MSF, the proceeds of which shall be used for payment of Costs of the Events Center Project, together with any and all bonds issued in connection with any Modifications.

“Bond Documents” means one or more trust indentures, loan agreements and all other agreements, instruments and documents, as amended, pursuant to which the MSF issues or secures all or any portion of the Bonds or the DDA issues or secures the DDA Bonds or to which the MSF loans or otherwise makes available, and the DDA borrows, the proceeds of Bonds to or for the benefit of the Events Center Project, together with such agreements, instruments and documents as are entered into in connection with any Modifications.

“Bond Escrow Fund” means a fund established by Concessionaire and the DDA and jointly controlled by Concessionaire and the DDA, for the purpose of holding (a) DDA tax deposits pursuant to Article 21.2(b), which DDA tax deposits shall be used in the manner set forth in Articles 21.2(b) and 7.4 and (b) excess portions of the Bond Repayment Sources pursuant to Article 7.4(b), which excess portions shall be used in the manner set forth in Article 7.4.

“Bond Repayment Sources” shall have the meaning set forth in Article 7.2.

“Bond Trustee” means the person or entity designated as the bond trustee for the Bonds in accordance with the Bond Documents, together with its successors and/or assigns.

“Catalyst Development Area” shall have the meaning ascribed thereto in the Plan.

“Catalyst Development Project” shall have the meaning set forth in the Plan.

“Catalyst Project Funds” means all funds that the DDA has obtained as a result of the capture of property taxes described in MCL 125.1651(cc)(vi), continues to hold, and is

authorized by MCL 125.1651 et seq. or by the State to contribute to the Events Center Project Fund.

“Catalyst Project Revenues” means the property tax revenues defined in MCL 125.1651(cc)(iv) that the DDA will capture pursuant to the Act and the Plan, excluding Future Brownfield Tax Increment Captures.

“CERCLA” shall have the meaning set forth in Article 10.14.

“City” means the City of Detroit.

“Concession Fee” shall have the meaning set forth in Article 9.1.

“Concessionaire” means Olympia Development of Michigan, L.L.C., a Michigan limited liability company, its successors and/or assigns.

“Concessionaire Default” means the occurrence of one or more of the events described in Article 14.1.

“Concessionaire Non-Hockey Events” shall have the meaning set forth in Article 11.

“Condemnation” shall have the meaning set forth in Article 18.1.

“Condition Failure Notice” shall have the meaning set forth in Article 27.

“Commencement Date” means the date on which Concessionaire first uses the Events Center for its intended purposes, which shall be not later than the first Red Wings’ home NHL Game of the first NHL Season following issuance of a temporary certificate of occupancy for use of the Events Center.

“Construction Contract” means a guaranteed maximum price contract to be entered into between Concessionaire and the Construction Contractor for the Events Center Project.

“Construction Contractor” means the construction company selected and engaged by Concessionaire in accordance with Article 4.2, together with such company’s permitted successors and assigns.

“Construction Plans” means the plans and specifications and any and all other documents which may be necessary to properly plan, design and construct the Events Center Project.

“Costs of the Events Center Project” means those costs identified in Article 6.

“County” means the Charter County of Wayne.

“Damaged Property” means any equipment, facility, structure, furnishing, surface, fixture or any other component of the Events Center Project which is damaged or destroyed, including any damage or destruction resulting from the acts or omissions of third parties (including licensees or invitees of Concessionaire or the DDA).

“DDA” means the City of Detroit Downtown Development Authority, a public authority and body corporate established by the City pursuant to the Act.

“DDA Bonds” shall have the meaning set forth in Article 7.3.

“DDA Default” means the occurrence of one or more of the events described in Article 14.3.

“DDA Events” shall have the meaning set forth in Article 11.3.

“Deterioration” and “Deteriorated” means any equipment, fixture, furnishing, facility, surface, structure or any other component of the Events Center Project which has become unable to optimally perform its intended function due to ordinary wear and tear or obsolescence. For purposes of this definition, any equipment, fixture, furnishing, facility, surface, structure or any other component shall be deemed unable to optimally perform its intended function if the lack of

optimal performance by such equipment, fixture, furnishing, facility, surface, structure or any other component cannot be economically remedied through Maintenance.

“Disbursing Agent” means a financial institution selected in accordance with the Bond Documents and approved by Concessionaire and the DDA.

“Disbursement Agreement” means a disbursement agreement among the Disbursing Agent, the DDA, Concessionaire and any other persons required to be parties thereto with respect to disbursements from the Events Center Project Fund.

“EDC” shall have the meaning set forth in Recital E.

“Effective Date” means the later of (a) the date first above written, upon execution of this Agreement by the DDA and Concessionaire, or (b) the date on which all of the conditions set forth in Article 27 are satisfied (or waived), following execution of this Agreement by the DDA, the Red Wings and Concessionaire.

“EPA” shall have the meaning set forth in Article 10.14.

“Events Center” means the multipurpose events center building to be located on the Events Center Property, which will be an approximately 650,000 square foot NHL caliber arena, with approximately 18,000 seats, to be used, in accordance with the terms and conditions of this Agreement, for Hockey Events and Concessionaire Non-Hockey Events and other purposes permitted hereunder, including without limitation to host for the general public a variety of entertainment and other sporting and recreational events in addition to NHL hockey.

“Events Center Contracts” shall have the meaning set forth in Article 27.

“Events Center Management” means the planning, supervision and conduct of the day-to-day management of the Events Center Project and all activities connected with the operation of the Events Center Project on a year-round basis, including but not limited to the provision of (or

arrangements for third parties to provide) all personnel, supplies, equipment and services necessary for Repairs, Maintenance and Improvements, which are the responsibility of Concessionaire as provided in Article 12, and making arrangements for the provision of security for the Events Center Project.

“Events Center Project” means the Events Center Property and all improvements located thereon, including the Events Center, the Parking Structure, various types of entertainment, restaurant, retail, cell tower and other communications facilities, parking and similar facilities and all associated infrastructure and all sidewalks contiguous with the boundary of the Events Center Property, to be available for use by the general public.

“Events Center Project Fund” means the fund to be established by the Bond Trustee as described in Article 6.2.

“Events Center Property” means the land described in Exhibit A attached hereto, as the same may be amended pursuant to Article 2.

“Extension Term” means each of the twelve (12) additional five (5) year option periods granted to Concessionaire under Article 8.2 to extend the Term of this Agreement beyond the Initial Term.

“Force Majeure” shall have the meaning set forth in Article 30.4.

“Full Debt Repayment” means repayment in full of all principal and other sums evidenced by the initial Bonds issued to finance the Events Center Project, it being agreed, for avoidance of doubt, that (i) it is anticipated that such repayment will occur not later than 31.5 years following issuance of the initial Bonds (but subject in any event to the terms and conditions of the Bond Documents), and (ii) any repayment occurring in connection with one or more refinancings or refundings of all or a portion of the indebtedness represented by the Bonds shall

not constitute Full Debt Repayment. References in this definition to the Bonds shall mean the Bonds and the DDA Bonds.

“Full Replacement Cost” means the cost of replacing the buildings, fixtures and other Improvements included within the Events Center Project without deduction for physical depreciation.

“Future Brownfield Tax Increment Captures” means captures of tax increment revenues that would otherwise be Catalyst Project Revenues and which are generated by future brownfield redevelopment projects in DDA Development Area No. 1, subject to various statutory criteria and governmental approvals and created pursuant to Act 381 of 1996, as amended. Said funds will not be deemed to be Catalyst Project Revenues.

“GMP” shall have the meaning set forth in Section 5.3.

“Governmental Approval” means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, filing, variance, claim, order, judgment, decree, notice to, declaration of or registration with any federal, state, municipal, local, territorial or other governmental department, commission, board, bureau, agency, registry, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign.

“Hockey Events” means the playing of exhibition, pre-season, regular season, and post season NHL home games, hosting NHL All-Star games and any event associated therewith, playing of any college, junior, amateur or minor league hockey games, whether or not played in connection with any Red Wings’ home game or any other event which is connected, in Concessionaire’s or the Red Wings’ judgment, with the activities of a NHL team and activities related to the playing of NHL Games and the operation and maintenance of a NHL team which has assumed the rights and duties set forth in this Agreement.

“Improvements” or “Improvement” means any and all improvements including fixtures located on and permanently affixed to the Events Center Property, including the Events Center, the Parking Structure, various types of entertainment, restaurant, retail, cell tower and other communications facilities, parking and similar facilities and all associated infrastructure, to be available for use by the general public, and specifically including all machinery and equipment which is permanently affixed to a building and is necessary for the use and operation thereof, but excluding all office furniture, trade fixtures, decorations and moveable machinery and equipment belonging to the NHL, Concessionaire, the Red Wings or any other sub-concessionaire.

“Initial Term” means the period beginning with the Effective Date and ending ninety (90) days after the end of thirty-fifth (35th) NHL Season after the Commencement Date; for purposes of this definition, if the Commencement Date occurs after the beginning of a particular NHL Season and the Red Wings play more than one half of their home games during that season at the Events Center, then that season shall be considered the first year of the thirty-five NHL Seasons.

“Inspecting Architect” means an inspecting architect engaged by the DDA in connection with the exercise of the DDA’s rights under this Agreement.

“Local TIF Revenue” means property taxes captured by the DDA pursuant to the Act as described in Section 1(cc)(i) of the Act.

“Maintain” and “Maintenance” means all work (including all labor, supplies, materials and equipment) reasonably necessary for the cleaning and routine upkeep of any property, structures, surfaces, facilities, fixtures (including but not limited to media plug-ins and cable and all wiring attendant thereto), equipment or furnishings, or any other component of the Events Center Project in order to preserve such items in their existing condition, ordinary wear and tear excepted. By way of illustration, Maintenance shall include but not be limited to: (i) preventive

or periodic maintenance procedures for equipment, fixtures or systems; (ii) periodic testing of buildings systems, such as mechanical, card-key security, fire alarm, lighting, and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for HVAC, plumbing, mechanical, electrical and structural systems, such as periodic cleaning, lubrication, and changing of air filters and lights; (v) touch up painting; (vi) cleaning, including power washing required as a result of Hockey Events, Concessionaire Non-Hockey Events and DDA Events; and (vii) any other work of a routine, regular and generally predictable nature at intervals of not more than one year, that is reasonably necessary in order to keep the Events Center Project in good order and condition. The term “Maintenance” shall not include any work defined as a “Repair”.

“Master Development Agreement” shall have the meaning set forth in Recital T.

“Minimum Requirements” means the minimum requirements for design of the Events Center Project to be incorporated in the final design plans for the Events Center Project, which minimum requirements shall be consistent with requirements of the NHL, it being agreed that Concessionaire and the DDA intend that the Minimum Requirements will be prepared by Concessionaire, mutually approved by Concessionaire and the DDA and thereafter attached hereto as Exhibit D in accordance with Article 27.

“Modifications” shall have the meaning set forth in Article 7.5.

“MOU” means the Memorandum of Understanding dated June 19, 2013 between the DDA, the County and ODM, as amended.

“MSF” means the Michigan Strategic Fund, a public body corporate and politic of the State of Michigan.

“NHL” means the National Hockey League or its successors.

“NHL Game” means any game played pursuant to any agreement or rules of the NHL.

“NHL Season” means the period which shall commence on the day of the Team’s first scheduled home game (including pre-season play, if any, other than those pre-season home games which are not played at the Events Center) established by the NHL for a playing season and shall end on the day of the Team’s last scheduled NHL Game (including post-season play, if any) in such playing season. An NHL Season shall be deemed to occur without regard to the existence of a labor dispute which results in the scheduling of fewer games than in a typical NHL Season or no games at all.

“Non-Renewal Notice” shall have the meaning set forth in Article 8.2.

“ODM” means Olympia Development of Michigan, L.L.C., a Michigan limited liability company, its successors and/or assigns.

“Occurrence” shall mean any of the following for the purposes of Article 14.2(e): (i) Concessionaire entering into any contract without prior approval by the DDA as required under Article 4.1(b); (ii) approval by Concessionaire of any change order without prior approval by the DDA as required under Article 5.4; or (iii) any application of payments by Concessionaire under any contract or change order not approved by the DDA in accordance with Article 4.1(b) or 5.4, respectively.

“Operation and Maintenance Fund” shall have the meaning set forth in Article 12.

“Parking Structure” means a parking structure to be constructed as part of the Events Center Project, adjacent to the Events Center, pursuant to the Construction Plans, as further described in Article 3.3.

“Plan” means the DDA’s Tax Increment Financing Plan and Development Plan for Development Area No. 1, initially approved by the City on May 17, 1978 and as subsequently amended (including the Plan Amendment Provisions).

“Plan Amendment Provisions” shall have the meaning set forth in Recital D.

“Playing Surface” means the ice hockey playing surface, surrounding boards and protective glass and netting and the player benches, penalty boxes, scorer’s box and goal-judge areas.

“Private Property” shall have the meaning set forth in Article 2.1.

“Prohibited Use” shall have the meaning set forth in Article 11.1.

“Project Architect” means the entity identified in Article 4.3.

“Public Property” shall have the meaning set forth in Article 2.1.

“Public Use” means a use that is open to the public in general.

“Red Wings” means Detroit Red Wings, Inc., a Michigan corporation, which owns the NHL franchise presently known as the Detroit Red Wings.

“Removal Parcel” shall have the meaning set forth in Article 2.1.

“Repair” or “Repairs” means any work (including all labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, facility, structure, furnishing, surface, fixture or any other component of the Events Center Project (irrespective of whether such repairs are capital expenditures for tax or accounting purposes), if such work is necessitated by: (i) any material defects in design, construction or installation which, if not repaired, would create a threat to health or safety or a material interference with the ability of the Red Wings to play any NHL Game in the Events Center or of Concessionaire to otherwise utilize the Events Center; (ii) Deterioration (including replacement necessitated by the repeated

breakdown of a component despite successive efforts to repair or restore it short of such replacement); (iii) requirements initiated and imposed prospectively by the NHL, which requirements are made applicable to all NHL arenas; (iv) modifications required by federal, State County or City laws, ordinances, rules, or regulations, including without limitation, accommodations required to be made to the Events Center Property under the Americans with Disabilities Act; (v) requirements of any insurance carrier, which requirements are necessary to enable Concessionaire to obtain insurance coverage at commercially reasonable rates; (vi) manufacturers', suppliers' or installers' requirements to fulfill warranties, guarantees or other service requirement; (vii) changes in design or materials resulting in material improvement to attendee comfort or convenience, or in a reduction of operation or maintenance costs, if such changes in design are being made at comparable multipurpose events centers, provided such changes are not for the exclusive benefit of an individual ticket holder, a specific group of ticket holders, or the lessee of an individual suite or group of suites; (viii) an advance in systems technology which renders an existing arena component technically or economically obsolete, if such advance in systems technology is being made at comparable multipurpose events centers; (ix) Condemnation or (x) vandalism. The term "Repair" shall not include any work defined as "Maintenance".

"Repair Fund" shall have the meaning set forth in Article 12.

"Semi-Annual Payment Date" means semi-annual payment dates, which dates shall be, until Full Debt Repayment, in conformity with the Bond Documents.

"Specified Minimum Equity" means \$47,800,000.00.

"State" means the State of Michigan.

"Team" means the Detroit Red Wings NHL Team.

“Term” means the period beginning with the Effective Date, and continuing until the end of the Initial Term and each Extension Term for which Concessionaire has exercised its renewal options.

“Title Company” means First American Title Company (formerly Lamont Title Corporation) or such other title insurance company as is selected by Concessionaire.

“Total Equity Contribution” means the aggregate amount of (i) actual costs paid by Concessionaire and/or any of its Affiliates in connection with the acquisition of the Private Property constituting part of the Events Center Property, including but not limited to the purchase price for such Private Property, due diligence costs, attorney and other professional fees, transfer taxes, title charges, broker fees and commissions and other closing costs, (ii) actual costs paid by Concessionaire and/or any of its Affiliates in connection with design, engineering and related costs incurred prior to January 1, 2013 for the initial planning and design of the Events Center Project or, in accordance with Article 2.1, any reconfiguration thereof, and (iii) Additional Costs paid by Concessionaire, including any Additional Costs paid after the Commencement Date in order to complete the Events Center Project in accordance with the Construction Plans, including but not limited to the completion of punch-list items. In the event that any portion of the Events Center Property which was originally Private Property is removed from the Events Center Property pursuant to Articles 2.1 or 2.5, the Total Equity Contribution shall be reduced by an amount equal to the purchase price (or pro rata portion thereof) of the removed Private Property plus due diligence costs, attorney and other professional fees, transfer taxes, title charges, broker fees and commissions and other closing costs (or pro rata portion thereof) attributable to such removed Private Property. In the event that any Private Property is added to the Events Center Property in connection with any reconfiguration of the Events Center

Property pursuant to Article 2.1, the Total Equity Contribution shall be increased by an amount equal to purchase price for such Private Property plus due diligence costs, attorney and other professional fees, transfer taxes, title charges, broker fees and commissions and other closing costs attributable to such added Private Property.

“Trigger Date” means the date on which Full Debt Repayment occurs.

“Uniform Relocation Act” means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 4601 et. seq., as amended.

“U.S. Bankruptcy Code” means the Bankruptcy Reform Act of 1978, 11 U.S.C. Section 101 et. seq., as amended.

“Use” means Concessionaire’s possession, development, management, operation of the Events Center Project and all uses of the Events Center Project by Concessionaire or any sub-concessionaire permitted under this Agreement.

## ARTICLE 2

### ACQUISITION AND OWNERSHIP OF EVENTS CENTER PROPERTY

#### 2.1 Acquisition.

(a) The DDA and Concessionaire intend that the DDA will acquire fee simple title to the Events Center Property. In connection therewith, (i) the DDA shall use diligent efforts to acquire ownership of the Events Center Property by way of (1) requesting the City to transfer to the DDA the real property owned by the City and identified on Exhibit B attached hereto, and (2) requesting the EDC to transfer to the DDA the real property owned by the EDC and identified on Exhibit B attached hereto (the real property identified on Exhibit B is referred to herein as the “Public Property”) and (ii) upon or concurrent with such transfers by the City and the EDC, Concessionaire shall cause the owners of the real property identified on Exhibit C

attached hereto (the “Private Property”) to transfer the Private Property to the DDA, provided that, the transfer of the Private Property to the DDA is subject to the prior or concurrent consummation of the DDA’s acquisition of the Public Property. The DDA’s acquisition of the property described in this paragraph shall be without payment to the EDC, the City, any of the City’s instrumentalities, the DDA, Concessionaire or any of the owners of the Private Property. In the event that the Events Center Project is not constructed, the DDA shall, upon request, convey the Private Property to Concessionaire, or its designees, which conveyance shall be for an aggregate conveyance price of One Dollar (\$1.00). Concessionaire shall deliver to the DDA (i) prior to the DDA’s acquisition of the Public Property and the Private Property, copies of all environmental assessments obtained by Concessionaire or its affiliates with respect to such property, and (ii) prior to commencing any environmental remediation of any portion of the Events Center Property, copies of the applicable environmental remediation and/or due care plans. Prior to commencement of any environmental remediation by Concessionaire or its agents, the DDA shall have reviewed and approved the applicable remediation and/or due care plans, which approval shall not be unreasonably withheld, delayed or conditioned; the Concessionaire and the DDA shall work together in good faith to expedite the process in order to meet scheduling requirements; the Concessionaire shall endeavor to provide as much time as possible for DDA review, and the DDA shall use its best efforts to reply promptly for requests for approval, but in any event the DDA shall have fifteen (15) business days after receipt of the request to respond.

(b) The DDA and Concessionaire will work cooperatively in submitting one or more requests and applications to the City to (i) vacate all existing roads, rights-of-way, alleys, easements and utilities in the Events Center Property for the Events Center Project, (ii)

effect lots splits and/or lot consolidations, (iii) have dedicated any roads, rights-of-way, alleys, easements and utilities in the Events Center Property for the Events Center Project and (iv) make any and all other alterations or other work to the Events Center Property that require requests to or applications to the City. The DDA, with full cooperation of Concessionaire, shall take any action necessary to insure that the Events Center Property can be used for the purposes permitted herein, including for the Events Center Project. Concessionaire, with full cooperation of the DDA, shall obtain all permits as are necessary to complete the Events Center Project, and the DDA shall execute the applications for and all other documents required in connection with obtaining and maintaining such permits.

(c) In connection with the DDA's acquisition of the Events Center Property, the DDA will require title insurance from the Title Company, which shall insure title in the name of the DDA, subject only to such liens and encumbrances as may be acceptable to Concessionaire. The title insurance shall include such endorsements as may be required by Concessionaire including, without limitation, a contiguity endorsement and an endorsement insuring against gaps or gores. Concessionaire shall obtain one or more surveys adequate to permit the Title Company to issue the final title insurance policy without the standard survey exception. Concessionaire shall be responsible for placing the order for such title insurance, and the costs of such title insurance and such survey shall be included in the Costs of the Events Center Project and funded in the manner specified in Article 6.

(d) In the event that the DDA and the Concessionaire mutually agree, based upon the final proposed configuration of the Events Center Project, that (i) any portion of the Events Center Property is not necessary for the development of the Events Center Project (each such portion being a "Removal Parcel") and/or (ii) additional parcels of land, whether such

parcels constitute Public Property or Private Property, are necessary for the development of the Events Center Project (each such parcels being an “Additional Parcel”), then (1) the DDA shall use diligent efforts to cause the City and/or the EDC to authorize the transfer to the DDA of the Additional Parcels that constitute Public Property and to effect such transfer, (2) Concessionaire shall use diligent efforts to cause the owners of the Additional Parcels that constitute Private Property to transfer the Additional Parcels to the DDA, (3) the parties shall amend the definition of “Events Center Property” to eliminate the Removal Parcels and to add the Additional Parcels, (4) Concessionaire shall cause the Title Company to amend or endorse the title insurance policy referenced in Article 2.1(c) to reflect the elimination of the Removal Parcels and the addition of the Additional Parcels, and (5) the DDA shall convey such Removal Parcels to the Concessionaire or its designee in accordance with and subject to the terms of the Master Development Agreement and Article 2.5(c).

2.2 Ownership. Subject to other provisions of this Article 2, the Events Center Property, including all Improvements to be constructed thereon, as soon as the Improvements are made, shall be and, for the term permitted by law, remain the property of the DDA. As set forth in other sections in this Agreement, the DDA is retaining Concessionaire to perform certain functions with respect to the development of the Events Center Project which include, among other activities, site investigations, environmental evaluations, interim response activities, response activities, site planning, design of the Events Center Project, relocation activities, demolition of existing structures, and construction of improvements.

2.3 Liens. During the Term, no party to this Agreement shall permit any lien or other encumbrance against any portion of the Events Center Property without the prior written consent of the other party.

2.4 Location of Events Center Project. The Events Center Project shall be located on the Events Center Property.

2.5 Public Use.

(a) The use of the Events Center Property and all Improvements thereon shall at all times constitute a Public Use. Certain portions of the Improvements that are not generally open to the public shall nonetheless be deemed to constitute a Public Use so long as they support the Public Use or consist of facilities related to the operation of the Events Center or the operations of Concessionaire or any sub-concessionaire at the Events Center, including, without limitation, locker rooms, performer dressing rooms, player/family/media lounges, training and storage spaces, office and management facilities of Concessionaire or any sub-concessionaire.

(b) In the event that an Improvement proposed by Concessionaire for construction on the Events Center Property will not constitute a Public Use and is not otherwise permitted above in this Article, that specific Improvement and those parcels of the land on which that Improvement will be constructed shall, at the option of Concessionaire, either (i) become subject to property taxes commencing on the date of completion of the Improvements thereon and issuance of a temporary certificate of occupancy for use thereof, or (ii) shall be deemed to be Removal Parcels which shall be excluded from the Events Center Property and conveyed by the DDA, free and clear of any obligation under this Agreement, to Concessionaire or a designee of Concessionaire in accordance with and subject to the Master Development Agreement, which conveyance shall include such access rights and other easements over, across and through the Events Center Property as are necessary or appropriate for the use and enjoyment of such Improvement and the underlying land. The elimination of such property from the Events Center

Property shall not affect the remaining obligations of Concessionaire to the DDA hereunder, including without limitation the payment obligations of Concessionaire.

(c) Any Removal Parcel conveyed to Concessionaire or a designee of Concessionaire pursuant to Articles 2.1 or 2.5 shall be subject to the terms of the Master Development Agreement and this Article 2.5(c). With respect to any Removal Parcel that originally consisted of Public Property, consideration in the amount of the “fair value” of such Removal Parcel shall be paid to the DDA upon the transfer of such Removal Parcel to Concessionaire or its designee, as “fair value” is described in the Master Development Agreement. With respect to any Removal Parcel that originally consisted of Private Property, in the event that Concessionaire is able to demonstrate, in form reasonably satisfactory to the DDA, that upon the removal of such Removal Parcel from the Events Center Property, the Total Equity Contribution will exceed or be equal to the Specified Minimum Equity, Concessionaire shall pay to the DDA an amount of One Dollar (\$1.00) in consideration for the conveyance of the Removal Parcel. In the event that upon the removal of such Removal Parcel the Total Equity Contribution will be less than the Specified Minimum Equity, in consideration for the conveyance of the Removal Parcel, Concessionaire shall, (i) if the conveyance of the Removal Parcel occurs prior to the Commencement Date, pay to the DDA at the time that the first installment of the Concession Fee is due hereunder (which payment shall be in addition to and not deemed to be a part of the Concession Fee), a sum equal to the difference between the Total Equity Contribution (measured as of the time that the first installment of the Concession Fee is due hereunder) and the Specified Minimum Equity, and (ii) if the conveyance of the Removal Parcel occurs after the Commencement Date, pay to the DDA at the time of the conveyance of such Removal Parcel, a sum equal to the difference between the Total Equity Contribution

(measured as of the time of the first installment of the Concession Fee that is due twelve months after the date of conveyance of such Removal Parcel) and the Specified Minimum Equity.

2.6 Uniform Relocation Act. Concessionaire shall, for the benefit of itself, its affiliates and the DDA, comply with the Uniform Relocation Act and all related federal, State and City statutes, ordinances and code requirements relating to the relocation of persons and businesses in connection with the DDA's acquisition of title to the Events Center Property. The DDA shall cooperate with and render assistance to Concessionaire in connection with Concessionaire achieving such compliance.

### ARTICLE 3

#### DESCRIPTION OF EVENTS CENTER PROJECT

3.1 Events Center. The Events Center (a) generally will consist of an approximately 650,000 square foot NHL caliber arena, with approximately 18,000 seats, (b) will satisfy the Minimum Requirements and (c) may include such amenities and improvements as Concessionaire shall determine, all to be designed and developed in accordance with this Agreement. The Events Center will be designed to be multipurpose and to host for the general public a variety of entertainment and other sporting and recreational events in addition to Hockey Events.

3.2 Events Center Project. In addition to the Events Center, Concessionaire may include other facilities and improvements within the Events Center Project, to be located on the Events Center Property, including but not limited to parking, restaurants, shops, entertainment, office space and any other uses and amenities reasonably related to the Events Center. These additional components shall be made, subject to Article 12.5, in the time and manner determined by Concessionaire and, to the extent that proceeds of the Events Center Project Fund are not

available to pay for such components, shall be paid for in accordance with Article 12.5. Concessionaire or its affiliates or designees shall submit plans and specifications for each Improvement on the Events Center Property proposed by Concessionaire for the approval of the DDA in accordance with Article 12.5 (other than for any Improvement that is required or permitted by the Minimum Requirements), all of which Improvements shall be open to the public generally and constitute a Public Use. Notwithstanding the foregoing, in addition to the DDA's approval pursuant to Article 12.5, the design of the additional components shall be subject to the provisions of Article 4, below, except to the extent that such components are required or permitted by the Minimum Requirements.

3.3 Parking. The Events Center Project will include all parking structures and lots located on the Events Center Property. Concessionaire shall have the exclusive right to manage, operate and receive all revenues from parking on the Events Center Property for the Term of this Agreement. The location and design of all parking facilities shall be subject to approval by the DDA pursuant to Article 4.1(a) of this Agreement. Parking facilities which are part of the Events Center Project shall include the Parking Structure and any other parking to be constructed within the Events Center Property either as part of the Construction Plans or as Improvements by Concessionaire.

#### ARTICLE 4

##### EVENTS CENTER PROJECT DESIGN

#### 4.1 Responsibility for Design.

(a) Concessionaire and the DDA will agree upon the Minimum Requirements. Concessionaire and the DDA intend that the Minimum Requirements will be prepared by Concessionaire, mutually approved by Concessionaire and the DDA and thereafter attached

hereto as Exhibit D in accordance with Article 27. The Minimum Requirements may be amended or otherwise modified from time to time subject to written agreement by Concessionaire and the DDA. Material additions to or deviations from the Minimum Requirements shall not be made by Concessionaire without the prior written consent of the DDA, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that Concessionaire and the DDA mutually approve amendments or other modifications to the Minimum Requirements or in the event of material additions to or deviations from the Minimum Requirements consented to by the DDA in accordance with the immediately preceding sentence, such amendments, modifications, additions, changes and deviations shall become part of the Minimum Requirements. Concessionaire and the DDA mutually agree Concessionaire shall have control over the design and construction of the Events Center Project, provided that, the parties' firm intention is that the design and construction process shall be a cooperative mutual endeavor in which the DDA and Concessionaire will work together and each will participate actively. On and after the date of execution of this Agreement by all parties, the DDA shall have the right to participate actively in all material phases of the design and construction process, which participation shall consist of the right to prior approval in material decisions with respect to architectural programs, schematic designs, site, preliminary and final plans and specifications, interior design programs, and construction stages, which approval (i) is limited to ensuring compliance with the Minimum Requirements and (ii) shall not be unreasonably withheld, delayed or conditioned. At Concessionaire's election, any sub-concessionaire selected by Concessionaire may also participate actively in the design and construction of any concession facility, including the right to prior approval of certain decisions with respect to architectural programs, schematic designs, interior design programs and construction stages of the Events

Center Project to the extent that these would materially affect the concession facilities to be designed, constructed or operated by the sub-concessionaire.

(b) With respect to all instances where participation and decisions of the DDA are required in this Agreement, the DDA shall provide such participation and decisions promptly so as not to cause any delay in the design and construction of the Events Center Project. Without limiting the foregoing, the DDA shall provide its participation and decisions, in any event, within fifteen (15) business days after the request has been submitted to the DDA (the “Deadline”) provided that the request must specify the nature of the participation or decision required and the requisite Deadline. The DDA also recognizes that it may be necessary to make certain decisions on an accelerated basis in order to avoid material delays and/or increases in the Costs of the Events Center Project, and therefore agrees to use its best efforts to expedite the approval process, including scheduling special meetings for such purpose. In addition, the DDA acknowledges that contingencies shall be permitted and that change orders pursuant to a contract which has been approved by the DDA and which includes a contingency may be approved by the Concessionaire without the prior approval of the DDA, up to the amount of the applicable contingency; upon subsequent review and ratification of any such change order by the DDA, the right of the Concessionaire to approve change orders without the prior approval of the DDA shall be restored to the full amount of the contingency. No such contingency shall exceed \$500,000.00 or ten percent (10%) of the full amount of the applicable contract or subcontract, whichever is greater.

(c) The DDA shall be entitled to approve the Construction Contract, which approval shall not be unreasonably withheld, delayed or conditioned. Concessionaire covenants that the Construction Contract shall require construction of the Events Center Project in a manner

that satisfies the Minimum Requirements. The DDA shall be entitled to approve any subcontract for the construction of the Events Center Project in excess of Five Hundred Thousand Dollars (\$500,000.00) before such contracts are entered into by the Contractor, which approval shall not be unreasonably withheld or conditioned and which approval rights shall be exercised by the DDA within the time period required in section 4.1(b) above. Concessionaire shall consult with the DDA regarding subcontracts for construction of the Events Center Project and provide information reasonably requested by the DDA with respect to such subcontracts. Concessionaire has the right to approve, in writing, any contract proposed to be entered into by the DDA which is payable from funds on deposit in the Events Center Project Fund; provided, however, that the DDA shall not be required to obtain such written approval for any contract or subcontract (i) if, with respect to contracts or subcontracts that are included within the budget as items to be entered into by the DDA, the maximum amount payable under the contract or subcontract does not exceed the amount set forth in a budget approved in writing by Concessionaire for such contract or subcontract, (ii) that is payable by the DDA from its annual administrative fee, (iii) that is payable at the closing of the Bonds from Bond proceeds, including but not limited to fees payable to bond counsel, financial advisors and other professionals retained by DDA in connection with the issuance of the Bonds or negotiation and execution of this Agreement or (iv) that is for the purpose of the DDA engaging attorneys or the Inspecting Architect in connection with the exercise of the DDA's rights under this Agreement.

(d) Concessionaire shall act as developer of the Events Center Project. All the rights of approval granted to the DDA with respect to the development of preliminary plans or the Construction Plans shall be exercised in a manner so as assure compliance with the Minimum Requirements. Upon approval of preliminary plans and the Construction Plans, the DDA agrees

that it will not withhold approval for changes by Concessionaire to such preliminary plans or the Construction Plans if such changes are consistent with the quality and appearance standards of the Minimum Requirements, which approval rights shall be exercised within the time periods described in, and in accordance with, Article 4.1(b).

4.2 Construction Contractor. The Construction Contractor for the Events Center Project shall be a construction company selected by Concessionaire and approved by the DDA, which approval shall not be unreasonably withheld, delayed or conditioned. The Construction Contractor shall be engaged by Concessionaire on terms which will meet the needs of Concessionaire and promote the financial objectives and limitations of the Events Center Project as expressed in this Agreement, and the Construction Contractor's work shall be directed in all aspects only by Concessionaire or its designee.

4.3 Project Architect. The architect for the Events Center Project shall be a licensed, professional architect selected by Concessionaire. The Construction Contractor or Project Architect has engaged or may engage a number of sub-consultants to play specialty roles in the Events Center Project. The Project Architect's work shall be directed in all aspects by Concessionaire or its designee.

4.4 Right to Modify. Subject to the DDA's rights of approval set forth in Article 4.1, Concessionaire shall have the right to modify or amend the Construction Plans at any time; provided that such modifications are consistent in all material respects with preliminary plans that have been approved by the DDA, and such modifications do not materially alter the appearance or function of the Events Center Project.

4.5 Payment of Design Costs. The costs of design, including preliminary plans and the Construction Plans, shall be included within the Costs of the Events Center Project to be paid as set forth in Article 6 hereof.

4.6 DDA's Failure to Consent. The DDA shall reimburse Concessionaire for any increase in the Costs of the Events Center Project or any reduction in revenues available from the Events Center Project associated with the failure of the DDA to exercise any right of consent or approval granted to the DDA by this Agreement, including any increased costs associated with the failure of the DDA to consent to proposed modifications of the final design of the Events Center Project or portion thereof, provided, however, such obligation to reimburse shall arise only if a court of competent jurisdiction determines in a final non-appealable order that the failure of the DDA to give its consent or approval, as the case may be, was not reasonable.

4.7 Architectural Drawings. Subject to Concessionaire's obligations under Article 29, Concessionaire shall own the architectural drawings and all construction documents for the Events Center Project and any other Improvements on the Events Center Property.

## ARTICLE 5

### CONSTRUCTION

5.1 Responsibility for Construction. Concessionaire shall have full rights and responsibilities to construct and, subject to any rights of approval granted under this Agreement to the DDA, to supervise the construction of the Events Center Project.

5.2 Commencement of Construction. Subject to the terms and conditions of this Agreement, Concessionaire shall use diligent efforts to cause construction of the Events Center Project to commence by June 30, 2014.

5.3 Construction Contract.

(a) The Construction Contract shall incorporate, among other things designed to further the benefits and obligations of the parties as expressed in this Agreement, provisions for (i) the establishment of a guaranteed maximum price for the Events Center, the scope and terms of which shall, in all respects, accommodate the project budget, and the provision of payment and performance bonds, (ii) compliance with Michigan statutory requirements relating to construction projects involving public funding and/or public ownership, (iii) compliance with the Minimum Requirements, and (iv) compliance with the Events Center Business Workforce Participation and Outreach Plan set forth on Exhibit I attached hereto.

(b) The DDA shall have the right to approve the Guaranteed Maximum Price amendment(s) (the “GMP”) to the Construction Contract, as may be agreed to by Concessionaire and the Construction Contractor, such approval being subject to Article 4.1(b). The DDA shall in addition have the right to approve any reductions to the GMP if such reductions are the result of material changes or deviations from the Minimum Requirements for the design of the Events Center Project and/or preliminary plans or construction plans approved by the DDA as provided in Article 4.1.

5.4 Change Orders. All costs of change orders to the Construction Contract required by law shall be paid for using funds on deposit in the Events Center Project Fund. The DDA shall not be entitled to initiate or require, without the prior written approval of Concessionaire, any change order to the Construction Contract. Subject to Article 4.1, any change order authorizing work in excess of Five Hundred Thousand Dollars (\$500,000.00), shall require the approval of the DDA, which approval shall not be unreasonably withheld or conditioned and which approval rights shall be exercised within the time periods described in, and in accordance with, Article 4.1(b).

5.5 Construction Disbursement Procedures. The Events Center Project Fund shall be held by the Disbursing Agent or such other party as is specified in the Bond Documents. Subject to the terms and conditions of the Bond Documents, disbursements from the Events Center Project Fund to pay Costs of the Events Center Project by the Disbursing Agent (or such other party as is specified in the Bond Documents) may be made upon satisfaction of the following conditions:

(a) There shall not then exist a material Concessionaire Default under Article 14.1 beyond the expiration of any applicable cure or grace period.

(b) Presentation by Concessionaire of a requisition certificate that (i) specifies the Costs of the Events Center Project for which payment is being requested, (ii) affirms that the work for which payment is being requested is in place and such work has been completed in accordance with the Construction Plans approved pursuant to Article 4.1, (iii) certifies that the moneys which remain on deposit in the Events Center Project Fund or which are irrevocably committed to be paid by Concessionaire will be sufficient to pay the remaining Costs of the Events Center Project, and (iv) certifies that Concessionaire has not previously submitted a requisition certificate for the Costs of the Events Center Project for which payment is being requested.

(c) Presentation by Concessionaire of sworn statements signed by the Construction Contractor for the Costs of the Events Center Project for which payment is being requested.

(d) Approval, as appropriate, of the requisition certificate by the Construction Contractor, Project Architect, the DDA and if required by the DDA, the Inspecting Architect.

In connection with the Bond Documents and the issuance of the Bonds, the DDA and Concessionaire shall enter into a Disbursement Agreement with the Disbursing Agent and any other persons required under the Bond Documents to be a party thereto, which Disbursement Agreement shall contain terms and provisions for the disbursement of monies from the Events Center Project Fund. In connection therewith, the parties shall jointly develop procedures to implement their obligations under appropriate documents. True and complete copies of all requisition certificates and sworn statements shall be delivered to the DDA.

## ARTICLE 6

### PAYMENT OF COSTS

6.1 Description of Costs. Costs of the Events Center Project shall include all of the following:

(a) site development costs, including demolition, environmental evaluations, interim response activities, response and remediation activities, infrastructure, public parking facilities, utilities and public road and street improvements;

(b) costs for development of specifications and designs, including preliminary plans and the Construction Plans;

(c) costs of construction, permits, equipment, furniture and furnishings for the Events Center Project, including, without limitation, the Parking Structure, in order to make it useable for the purposes intended;

(d) financing costs of the Events Center Project, including underwriting costs, fees and expenses, and the fees and expenses of attorneys, market analysis, consultants, and the costs of credit enhancement, if any;

(e) capitalized interest during construction, and reserve fund requirements (capital repairs, replacements and improvements, and deferred maintenance) attendant to financing for the Events Center Project;

(f) DDA administrative costs associated with monitoring the development and construction of the Events Center Project, including internal personnel and third party consultants pursuant to a budget approved by Concessionaire;

(g) fees and out-of-pocket costs of the MSF, the DDA or Concessionaire for attorneys, appraisers, environmental and other consultants, the inspecting architects and a Disbursing Agent paid out or incurred in connection with the creation, negotiation, documentation, and delivery of the MOU, the Bond Documents, this Agreement, the Master Development Agreement or other related documents or the acquisition and construction of any part of the Events Center Project, including, without limitation, title and survey costs and fees and expenses of attorneys representing Concessionaire or the DDA;

(h) all costs associated with the issuance of the Bonds and any other bonds issued in connection with the Events Center Project;

(i) all costs of the Team, its personnel and staff to relocate from the Joe Louis Arena to the Events Center;

(j) the compensation of an Events Center Project executive of the DDA and one staff person of the DDA prior to and during the construction of the Events Center Project in an aggregate amount consistent with a budget therefor approved by Concessionaire;

(k) all costs associated with relocation and replacement of existing roads, utilities and infrastructure in or adjacent to the Events Center Property necessitated by the Events Center Project;

(l) to the extent agreed upon by the parties, the costs associated with the removal or relocation of the billboard on Woodward Avenue adjacent to the Events Center Property pursuant to a removal or relocation plan reasonably acceptable to the DDA and Concessionaire; and

(m) such other costs and expenses relating to the Events Center Project as are incurred or approved by Concessionaire or the DDA and approved by the non-requesting party, which approval shall not be unreasonably withheld, unreasonably delayed or unreasonably conditioned.

Notwithstanding anything to the contrary contained herein, Costs of the Events Center Project shall include any costs described above whether incurred prior to or after the date of this Agreement; provided, however, Costs of the Events Center Project shall specifically exclude any costs of Concessionaire that are included in the definition and computation of the Total Equity Contribution.

6.2 Sources of Funds: Events Center Project. It is anticipated that the Costs of the Events Center Project shall be approximately Four Hundred Fifty Million Dollars (\$450,000,000.00), including financing costs but excluding debt service and coverage reserves. The Costs of the Events Center Project shall be paid from money deposited into the Events Center Project Fund or as otherwise described herein. Money from the Events Center Project Fund shall only be used for payment of the Costs of the Events Center Project. The Costs of the Events Center Project shall be funded as follows:

(a) Upon the closing of the Bonds, the proceeds of the Bonds, excluding any reserves required under the Bond Documents, shall be deposited in one or more installments into the Events Center Project Fund and shall be used solely to pay Costs of the Events Center

Project. No part of the proceeds of the Bonds will be used to pay any costs prohibited by the Bond Documents.

(b) The DDA shall deposit the Catalyst Project Funds into the Events Center Project Fund upon the closing of the Bonds. The Catalyst Project Funds shall be used solely to pay Costs of the Events Center Project.

(c) In the event that the Costs of the Events Center Project exceed the funds deposited in the Events Center Project Fund from the proceeds of the Bonds and the Catalyst Project Funds, Concessionaire shall pay such excess costs. The moneys paid by Concessionaire pursuant to this paragraph are referred to herein collectively as the “Additional Costs”. All rights of approval granted to the DDA on the Minimum Requirements or in the development of preliminary plans or the Construction Plans shall be exercised in a manner so as to minimize the necessity for Concessionaire to make any Additional Costs.

(d) All interest earnings on the Events Center Project Fund shall remain in the Events Center Project Fund and become a part thereof.

(e) The funds deposited in the Events Center Project Fund shall be invested so as to make funds available when necessary for the Events Center Project, subject to any limitations placed on funds deposited in the Events Center Project Fund which are imposed by applicable law or regulations, the Bond Documents or other financing restrictions.

6.3 Disbursements and Transfers From Events Center Project Fund. Subject to the restrictions imposed by this Agreement or the Bonds Documents upon purposes for which funds may be disbursed, the DDA expressly approves the disbursement of funds from the Events Center Project Fund to the Concessionaire to pay Costs of the Events Center Project.

ARTICLE 7

BONDS

7.1 The Bonds. The Bonds may consist of one or more series of bonds and shall be secured and repaid as described in this Agreement and the Bond Documents.

7.2 Pledge of Repayment Sources. Until Full Debt Repayment, the DDA shall pledge the following to secure repayment of the Bonds:

(a) Local TIF Revenue and Catalyst Project Revenues to be captured by the DDA pursuant to the Act from and after the date upon which the Plan Amendment Provisions are approved by the City. The pledge of Local TIF Revenue shall be subordinate in full to the DDA's pledges (which are outstanding on the date of this Agreement) of all or part of the Local TIF Revenue pursuant to prior bond issuances and prior contractual obligations of the DDA as described in the Bond Documents (the "Prior Local TIF Obligations") and shall be expressly limited as follows: from Local TIF Revenue available after payments under the Prior Local TIF Obligations, the DDA expects to make the payments in the amounts and on the dates specified on Exhibit E attached. Payments in excess of such amounts shall not be required, except as specifically provided for in the Bond Documents due to the insufficiency of Local TIF Revenue received by the DDA after payments under the Prior Local TIF Obligations. In the event that any payment as set forth on Exhibit E is not made in full on the date required, due to the insufficiency of Local TIF Revenue received by the DDA after payments under the Prior Local TIF Obligations, then subsequent payments shall be adjusted in accordance with the Bond Documents to cure such insufficiency. The pledge of Catalyst Project Revenues shall be expressly limited to the payment by the DDA of all Catalyst Project Revenues up to the maximum amount of Fifteen Million Dollars (\$15,000,000) annually, except as provided in the

following sentence. In the event that the DDA fails to make annual payments from Catalyst Project Revenues in the amount of at least Twelve Million Eight Hundred Thousand Dollars (\$12,800,000) due to the receipt of insufficient Catalyst Project Revenues by the DDA, then subsequent payments shall be increased to the extent of such insufficiency in any year or years in which the DDA receives Catalyst Project Revenues in excess of Fifteen Million Dollars (\$15,000,000) as further described in the Bond Documents, until the amount of such insufficiency has been paid.

(b) The Concession Fee payable by Concessionaire to the DDA pursuant to Article 9 hereof.

The Local TIF Revenue, the Catalyst Project Revenue and the Concession Fee, each as described and subject to the limitations and priorities of payment set forth in this Article 7.2, are referred to herein collectively as the “Bond Repayment Sources”.

7.3 DDA Bonds. If requested by the issuer of any of the Bonds, the DDA shall issue to such issuer one or more bonds (the “DDA Bonds”) in the amount of the then existing amount of the Bonds, which DDA Bonds, if so requested, shall be secured by a pledge of all or a portion of the revenue sources described in Article 7.2, and which shall otherwise be without recourse to the DDA.

7.4 Application of Bond Repayment Sources.

(a) Until Full Debt Repayment, the Bond Repayment Sources shall be first applied (i) to pay amounts then due in repayment of the Bonds and to pay other amounts then due under the Bond Documents (including, without limitation, to establish or replenish any reserves required under the Bond Documents) and (ii) commencing in 2017, a portion of the Bond Repayment Sources equal to Five Hundred Thousand Dollars (\$500,000) per year,

escalating at the rate of 4% per year (cumulative), will be transferred to the Repair Fund by the Bond Trustee. Funds deposited into the Repair Fund shall be used as permitted in this Agreement.

(b) In the event that the funds payable from Bond Repayment Sources exceed the amount required to make the payments described in Article 7.4(a), such excess shall be applied, subject to Article 7.4(c), as follows: (i) first, to the prepayment of the Bonds, so long as any such prepayment would not cause any prepayment fee or other prepayment premium to become due or payable under any of the Bond Documents, (ii) second, if any prepayment under the immediately preceding clause (i) would cause any prepayment fee or other prepayment premium to become due or payable under any of the Bond Documents, then such excess shall be deposited into the Bond Escrow Fund and held therein until such time as the Bonds (or any series of the Bonds) may be prepaid without incurring any prepayment fee or other prepayment premium, at which time such excess shall be applied to prepay the Bonds that may then be prepaid without incurring any prepayment fee or other prepayment premium, (iii) third, as otherwise required under the Bond Documents (and with respect to the Local TIF Revenue and the Catalyst Project Revenues, as permitted by the Act), (iv) fourth, as otherwise permitted under the Bond Documents (and with respect to the Local TIF Revenue and the Catalyst Project Revenues, as permitted by the Act), with the consent of the DDA, which consent will not be unreasonably withheld, delayed or conditioned, and (v) fifth, as otherwise determined by Concessionaire and the DDA (and with respect to the Local TIF Revenue and the Catalyst Project Revenues, as permitted by the Act), including but not limited to the payment of Costs of the Events Center Project. Notwithstanding the foregoing, in the event that the Bond Documents require that such excess be applied in a manner other than as set forth in this Article 7.4(b), then

such excess shall be first applied in the manner required by the Bond Documents and thereafter in the manner and order otherwise provided in this paragraph. Subject to the foregoing permissions, the application of such excess funds shall be pursuant to the direction of Concessionaire, but subject to prior notice to the DDA.

(c) In the event that there are more than one series of Bonds at the time of any prepayment of the Bonds made pursuant to Article 7.4(b), then such prepayment will be applied as follows, unless otherwise agreed in writing by Concessionaire and the DDA or as otherwise provided in the Bond Documents: (i) if each series of the Bonds do not bear interest at the same rate as the other series of Bonds, then such prepayment shall be applied to the series of the Bonds that then bears the highest rate of interest, and (ii) if each series of the Bonds bears interest at the same rate as the other series of Bonds, then such prepayment shall be applied in equal amounts to each series of the Bonds.

(d) The obligations of the DDA with respect to the Bonds and the DDA Bonds shall not exceed the Local TIF Revenue and the Catalyst Project Revenues and the pledge of the Concession Fee payable by Concessionaire, as described above in Articles 7.2 and 7.3. Recourse to the parties in connection with the obligations under the Bonds and the DDA Bonds shall be limited to the payment obligations expressly described herein.

7.5 Bond Modifications. Either party shall have the right, at any time during the Term prior to the occurrence of Full Debt Repayment, to request (i) that all or a portion of the Bonds to be refinanced, restructured, refunded or amended or (ii) to convert the modes for the determination of the interest rate on the Bonds or the interest payment periods or to modify the principal amortization schedule of the Bonds as permitted under the Bond Documents (collectively, "Modifications") as and in the manner determined by such party but subject to the

prior written approval of the other party, provided however, that (a) Concessionaire shall have the sole right to arrange any such Modifications (but shall consult with the DDA in connection therewith) and (b) in no event shall the aggregate term of the Bonds (including, without limitation, the term during which Modifications are in effect) extend beyond the Trigger Date. Concessionaire and the DDA shall cooperate in such Modifications and will execute and deliver such agreements and other documents as are necessary or appropriate in connection with such Modifications. Without limiting the foregoing, until the occurrence of Full Debt Repayment, all of the agreements and obligations of the DDA hereunder shall remain in full force and effect including, without limitation, the obligation of the DDA to pay and pledge the Local TIF Revenue, the Catalyst Project Revenues and the Concession Fee as provided for in this Agreement.

7.6 Pledged Special Revenues. The DDA intends, without warranty, that the Local TIF Revenue and the Catalyst Project Revenue constitute “special revenues” within the meaning of Section 902(2)(C) of the U.S. Bankruptcy Code and constitute “pledged special revenues” for payment of indebtedness secured by such revenues in accordance with Section 922 of the U.S. Bankruptcy Code, the terms and conditions of which pledge are as set forth in the DDA’s resolution authorizing the issuance of the bonds pursuant to Section 7.3 and the Bond Documents.

7.7 Rights of Bond Holders. The DDA shall assign such rights of the DDA as security for the Bonds as the MSF (or other issuer of the Bonds) requests in connection with structuring and consummating the issuance of the Bonds. Upon receipt by Concessionaire of written notice from the Bond Trustee directing Concessionaire to pay installments of the Concession Fee to the Bond Trustee or its designee, Concessionaire shall thereafter comply with

such direction, the DDA shall be deemed to have consented to such direction and such payment shall constitute satisfaction by Concessionaire to pay the Concession Fee hereunder, provided that the Concessionaire has provided the DDA with written notice of payment. In the event and to the extent that the Bond Trustee or the holders of the Bonds (or their designee) succeed to the rights and interests of the DDA under this Agreement, then so long as there shall then exist no Concessionaire Default under this Agreement, this Agreement shall continue in full force and effect and Concessionaire's Use and Concessionaire's other rights hereunder shall not be disturbed, in which case Concessionaire shall be bound to the Bond Trustee or the holders of the Bonds (or their designee) in accordance with the provisions of this Agreement for the balance of the Term.

7.8 Conflict with the Bond Documents. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the Bond Documents, (a) the terms and conditions of the Bond Documents shall prevail, and (b) at the request of any party to this Agreement, the parties shall enter into an amendment, restatement or supplement to this Agreement which is mutually agreeable to all parties for the purpose of making this Agreement consistent with the terms and conditions of the Bond Documents.

## ARTICLE 8

### TERM

8.1 Commencement Date and Term. This Agreement shall become effective as of the Effective Date. Subject to the provisions of Article 8.2, Concessionaire's Use, Concessionaire's right to hold all concessions for the Events Center Project, and its rights under this Agreement shall end at the end of the Initial Term, unless extended pursuant to Article 8.2. Upon

determination of the Commencement Date, the parties shall execute an appropriate supplement to this Agreement or memorandum setting forth the Commencement Date.

8.2 Extension Options.

(a) Provided there shall not then exist a material Concessionaire Default under Article 14.1 beyond the expiration of any applicable cure or grace period, Concessionaire has the option to extend this Agreement for twelve (12) additional five (5) year terms. Each Extension Term shall commence the day after the last day of the prior period, subject to the provisions of Article 8.2(b).

(b) Unless Concessionaire provides the DDA with written notice (a “Non-Renewal Notice”) that Concessionaire does not intend to exercise its option to extend at least twelve (12) months prior to the last day of the then existing Term, Concessionaire shall be deemed to have exercised such option, in which case the Term of this Agreement shall be automatically extended for the duration of the then applicable Extension Term.

ARTICLE 9

PAYMENTS TO THE DDA

9.1 Payments to the DDA.

(a) Beginning on the Commencement Date or such earlier date as may be required by the Bond Documents (the “First Payment Date”) and ending on the Trigger Date, Concessionaire will pay to the DDA a concession fee (the “Concession Fee”) in the sum of Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00) per year. The Concession Fee shall be paid semi-annually on each Semi-Annual Payment Date. The amount due on each Semi-Annual Payment Date shall be Five Million Seven Hundred Fifty Thousand Dollars (\$5,750,000.00). The portion of the Concession Fee due on each Semi-Annual Payment Date

shall be prorated for any partial year that occurs during the period between the First Payment Date and the Trigger Date.

(b) In each year of any Extension Term, within ten (10) days after the first day of the first year of the particular Extension Term and within ten (10) days after the first day of each year thereafter during such Extension Term, the Concessionaire shall pay the sum of Two Million Dollars (\$2,000,000.00) into a separate account maintained by the Concessionaire to be known as the Capital Improvements and Repairs Fund, with the funds deposited into such account to be applied to the cost of repairs and improvements to concession areas or other areas within the Events Center, with the prior consent of the DDA, which consent shall not be unreasonably withheld, delayed or conditioned. The Concessionaire may accumulate funds in the Capital Improvements and Repairs Fund and is not required to use any or all funds in the Capital Improvements and Repairs Fund within any particular year, but may accumulate such funds for the purpose of paying the cost of capital repairs or improvements with a cost larger than the amount placed in such fund in any particular year. Nothing herein shall limit the rights of the DDA set forth in other provisions in this Agreement. Upon the DDA's request, Concessionaire shall provide the DDA with a detailed accounting of the Capital Improvements and Repairs Fund and expenditures made therefrom. At the end of the Term or upon termination of this Agreement, all sums then in the Capital Improvements and Repairs Fund shall be paid to the DDA and may be used by the DDA for any purpose.

## ARTICLE 10

### CONCESSIONS

10.1 Grant of Concession Rights. Except as otherwise expressly provided in this Agreement (including Article 11.3), Concessionaire is hereby granted, and shall have during the

Term, the exclusive right to operate all concessions which are operated in the Events Center Property, including but not limited to the Events Center Project, the Parking Structure, and such food and/or beverage, novelty and/or souvenir, parking, retail, cell, data and other communications services, entertainment or other operations offering goods or services to the public, whether in free standing structures or whether it is within or outside of the Events Center itself, as may serve the public using the Events Center Property, or any part thereof.

10.2 Selection of Sub-Concessionaires. Except as otherwise provided in this Agreement (including Article 11.3), the exclusive right and privilege granted Concessionaire herein to operate any and all concessions to be operated within the Events Center Property shall include the right to select one or more sub-concessionaires (which may be Concessionaire or related entities) and to negotiate and enter into sub-concession agreements consistent with the terms and requirements of this Agreement for a period no longer than the Term. The Concessionaire specifically acknowledges that it will enter into a sub-concession agreement with the Red Wings pursuant to which the Red Wings will agree to play Hockey Events at the Events Center in accordance with the terms of such sub-concession agreement and including such obligations as the Red Wings have agreed to hereunder.

10.3 Construction Standards for Concession Facilities. In keeping with the grant herein to Concessionaire of the exclusive right and privilege to operate any and all concessions, directly or with sub-concessionaires, which are operated in the Events Center Property, Concessionaire may, directly or indirectly and subject to Article 3.2, construct or cause to be constructed such Improvements to the Events Center Property and/or structures thereon as are reasonably necessary and appropriate to the establishment, operation and maintenance of such concessions, with title to all such real property Improvements to immediately vest in the DDA.

The DDA shall be notified in advance of all such construction plans as require the issuance of a building permit, no later than ten (10) days following the issuance of each such building permit, enabling the DDA to assure itself through contacts with the appropriate offices and/or departments of the City that such Improvements are constructed consistent with the City's enforcement policies of the applicable codes, ordinances and laws.

10.4 Construction of Concession Facilities. In exchange for the exclusive privilege and right to operate all concessions to be operated within the Events Center Property, directly or through sub-concessionaires, during the Term and subject to Article 3.2, Concessionaire agrees to construct Improvements to house, to equip, and to operate, directly or through sub-concessionaires, such concessions to serve the public frequenting the Events Center Property, including but not limited to the Events Center, as Concessionaire, in its discretion, concludes are appropriate to serving the public using various parts of the Events Center Property, the cost of which Improvements shall be paid for from proceeds of the Events Center Project Fund in accordance with Article 6 except for those Improvements described in Article 12.5 hereof, the cost of which shall be paid for pursuant to the terms of Article 12.5.

10.5 Equipping of Concession Facilities. Concessionaire shall furnish, at its expense, or at the expense of any sub-concessionaire under agreement with Concessionaire, all service equipment of every sort which may be required for use in each of the concessions operated hereunder, title to which equipment shall remain in Concessionaire or the sub-concessionaire.

10.6 Title to Replacements or Additions to Concession Facilities. Title to all real property of every sort which may be installed by Concessionaire, or a sub-concessionaire, as a replacement for or as an addition to any Improvements affixed to the Events Center Property, including but not limited to the Events Center, shall immediately vest in the DDA, specifically

including all machinery and equipment which is permanently affixed to a building and is necessary for the use and operation thereof, but excluding office furniture, trade fixtures, decorations and moveable machinery and equipment belonging to the NHL, Concessionaire, the Red Wings or any other sub-concessionaire.

10.7 Concession Operating Hours. Concessions authorized by this Agreement operated by Concessionaire, or its sub-concessionaires, will be open to the public at all reasonable, suitable and convenient hours (normally beginning from 1.5 to 2 hours before the beginning of the scheduled event and during the event), including but not limited to DDA Events, to serve the public attending events at the Events Center. On and after the Commencement Date, the DDA has the right, upon not less than 180 days prior written notice to Concessionaire, to require minimum hours of operation of the Events Center on days of scheduled events, provided such minimum hours (a) are generally consistent with such hours of operation as are normally and customarily in effect at comparable multipurpose events centers, (b) are consistent with applicable law and (c) with respect to NHL Games, are not inconsistent with applicable NHL rules and regulations. Notwithstanding the obligations undertaken hereunder, Concessionaire is not required to open and operate concessions not appropriate to a DDA Event (such as Red Wings souvenir concessions) and Concessionaire is permitted to operate less than all concession operations so long as an adequate number of such operations are open and in operation to reasonably serve the numbers of persons attending any particular event.

10.8 Standards for Concession Operation. Concessionaire will at all times provide, or arrange for the provision of personnel, directly or through agreements with sub-concessionaires, sufficient to (a) operate the concession facilities on a standard consistent with that maintained at comparable multipurpose events centers for comparable events, and (b) satisfy, in any event, the

standards required by the DDA to be set forth on Exhibit F to be attached hereto. Concession employees serving the public at such concession operations shall be neat and clean in their appearance and shall conduct themselves in a manner which is not detrimental to the interests of the public being served by such concessions. Concessionaire and the DDA intend that the standards required by the DDA for concession operations be prepared, mutually approved by such parties and thereafter attached hereto as Exhibit F in accordance with Article 27.

10.9 Maintenance of Concession Facilities. Concessionaire directly, or through sub-concession agreements, will (a) maintain in good condition and appearance all concession areas and (b) satisfy, in any event, the maintenance standards required by the DDA to be set forth on Exhibit F to be attached hereto. Concessionaire and the DDA intend that the maintenance standards required by the DDA for concession facilities be prepared, mutually approved by such parties and thereafter attached hereto as Exhibit F in accordance with Article 27.

10.10 Types of Concession Products or Services. Concessionaire directly, or through sub-concession agreements, will operate such concessions, and offer such products and/or services through such concessions, as are normally and customarily found at comparable multipurpose events centers. On and after the Commencement Date, the DDA has the right, upon not less than 180 days prior written notice to Concessionaire, to require that Concessionaire or its sub-concessionaires offer specific food, beverage and menu items and specific categories and brands of merchandise, provided that (a) such food, beverage and menu items and specific categories and brands of merchandise are generally consistent with such concessions as are normally and customarily offered at comparable multipurpose events centers, and (b) sufficient supplies of such items are available for purchase by Concessionaire or its sub-concessionaires at reasonable prices.

10.11 Concession Prices. Concessionaire will directly, or through sub-concessions, charge prices for all food, beverages and other merchandise or services sold through such concessions, which are competitive with the prices charged for similar food, beverages, other merchandise or services of like quality and quantity at comparable multipurpose events centers. The DDA may make suggestions to Concessionaire regarding prices for food, beverages and other merchandise or services sold through such concessions, provided that Concessionaire shall have the right, subject to this Article, to determine the prices for food, beverages and other merchandise or services sold through such concessions.

10.12 Sub-Concession Terms and Conditions. All sub-concession agreements entered into by Concessionaire, including the sub-concession agreement to be entered into with the Red Wings, in addition to such terms and conditions as Concessionaire at its sole and complete discretion may impose, shall obligate the sub-concessionaire to the terms and conditions imposed by this Agreement on and with respect to concession operations.

10.13 Concession Insurance and Indemnity. Each sub-concession agreement entered into by Concessionaire, including the sub-concession agreement to be entered into with the Red Wings, will require that the sub-concessionaire (a) maintain insurance in accordance with the requirements to be set forth on the Sub-Concessionaire Insurance Exhibit to be attached hereto as Exhibit G, (b) name, at minimum, the DDA, the Bond Trustee and Concessionaire as additional insureds, as appropriate, in all insurance policies required to be held by such sub-concessionaire pursuant to the sub-concession agreement and this Agreement, (c) indemnify, hold harmless and defend the DDA and such other persons as are determined by Concessionaire from all liability, including reasonable actual attorney fees, resulting from, or arising in connection with, the sub-concessions constructed and operated by such sub-concessionaire and (d) shall make the DDA a

third-party beneficiary of such sub-concession agreement with respect to the indemnification described in clause (c) of this Article. Concessionaire and the DDA intend that such Sub-Concessionaire Insurance Exhibit be prepared, mutually approved by such parties and thereafter attached hereto as Exhibit G in accordance with Article 27.

10.14 Indemnification in Connection With Construction and Operation. Concessionaire will indemnify, hold harmless and defend the City and the DDA from all liability, including reasonable actual attorney fees, resulting from, or arising in connection with, the construction and operation of the Events Center Project and each concession, including but not limited to the failure of the Concessionaire to perform its obligations pursuant to this Agreement, irrespective of whether or not the DDA consented to or approved actions giving rise to such liability (but excluding any such liability to the extent said liability is incurred by reason of the gross negligence or willful misconduct of the DDA). The foregoing indemnity of each sub-concessionaire shall be limited to that portion of the Events Center Property on which it is conducting its concession activities or to any activities undertaken by the sub-concessionaire on the Events Center Property. Subject to the limitations of this Article 10.14, this indemnification shall extend to any future liability associated with the failure of Concessionaire to comply with the requirements of applicable environmental laws, but does not cover any liability associated with the failure of the DDA to comply with such environmental laws. This indemnification shall also extend to liability that may arise under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), or the Michigan Natural Resources and Environmental Protection Act (“EPA”), for releases of contaminants caused or first introduced by Concessionaire to the Events Center Property, as well as liability for any costs specifically attributable to exacerbation of contamination caused by Concessionaire. It does not extend to

any contamination which currently is present at, on, under, or from those portions of the Events Center Property originally constituting Public Property unless it has been exacerbated by Concessionaire, but expressly extends to any contamination which currently is present at, on, under, or from those portions of the Events Center Property originally constituting Private Property. The obligations imposed by this Article 10.14 shall survive the termination of this Agreement.

10.15 Cooperation with the DDA. Concessionaire agrees, and by each sub-concession agreement, each sub-concessionaire will agree, to reasonably cooperate and assist the DDA in verifying that each of the concessions and sub-concessions is designed, constructed, equipped and operated consistent with the requirements imposed under all applicable laws, ordinances and codes and with the obligations and requirements of this Agreement.

10.16 DDA's Oversight and Control.

(a) On and after the Commencement Date, (i) the DDA hereby requires that Concessionaire operate the Events Center substantially in accordance with the standards to be set forth on Exhibit F to be attached hereto, and (ii) in addition, the DDA has the right, upon not less than one hundred eighty (180) days prior written notice to Concessionaire, to impose on Concessionaire additional or alternative specific standards for the operation of concessions at and Maintenance of the Events Center which are generally consistent with concession obligations and standards normally and customarily offered at comparable multipurpose events centers (which obligations and standards shall, with respect to the matters addressed in Articles 10.7, 10.10 and 10.11, be subject to the limitations set forth in Articles 10.7, 10.10 and 10.11). Concessionaire and the DDA intend that the Events Center operation standards required by the

DDA be prepared, mutually approved by such parties and thereafter attached hereto as Exhibit F in accordance with Article 27.

(b) Upon reasonable prior written notice, the DDA or its designated agents shall have the right during regular business hours to access and inspect the Events Center, in the presence of Concessionaire or its agents, for the purpose of assessing Concessionaire's compliance with the standards set forth on Exhibit F attached hereto and other standards required by this Agreement with respect to Concessionaire's obligations for Repair, Maintenance and Events Center Management.

(c) The parties intend, without warranty, for the covenants and obligations of Concessionaire set forth in this Agreement relating to design, construction, management, maintenance, repair, use and operation of the Events Center Project to give the DDA substantial control and regulation over the Events Center Property and the Improvements thereon, to impose on Concessionaire specific obligations and responsibility to maintain particular services and to provide for the Events Center Property and the Improvements thereon to be open and available for use by the general public in accordance with such covenants and obligations.

## ARTICLE 11

### USE OF AND RIGHTS TO RECEIVE REVENUE

#### FROM THE EVENTS CENTER PROPERTY

##### 11.1 Concessionaire's Use.

(a) Beginning on the Effective Date, the DDA grants to Concessionaire the exclusive right (i) to Use of the Events Center Property (including, without limitation, use of the Events Center Property for the development and construction of the Events Center Project and

for activities related to the development and construction of the Events Center Project), and (ii) to operate one or more concessions thereon, including parking.

(b) Beginning on the Commencement Date and continuing for the balance of the Term, the DDA grants to Concessionaire the exclusive right to use and operate the Events Center Property as one or more concessions and Concessionaire shall, subject to all limits and conditions imposed upon Concessionaire in this Agreement, be entitled to manage, operate and use the Events Center Project on a year-round basis for the purposes of providing for Hockey Events, Concessionaire Non-Hockey Events and for other purposes permitted under this Agreement. Concessionaire shall cause the Events Center Property to be used and operated in compliance with applicable federal, state and local laws, rules, regulations and ordinances. Beginning on the Commencement Date and continuing for the balance of the Term, neither Concessionaire nor the Red Wings shall allow any of the Red Wings' regular-season NHL Games scheduled as home games for the Red Wings to be played in any facility other than the Events Center without first obtaining the written approval of the DDA (which may be withheld in its sole discretion), except (i) where the Events Center is claimed by Concessionaire or the Red Wings to be unfit for Concessionaire's or the Red Wings' use, in which case the withholding of approval by the DDA must be reasonable, (ii) in connection with any NHL "Winter Classic" event or any similar or other instance where the NHL designates the Red Wings as the home team at a NHL Game played at a location outside of the Events Center Project, or (iii) as otherwise expressly permitted in this Agreement. Notwithstanding the foregoing, the Concessionaire and the Red Wings will not permit the NHL to permanently designate another location as the location at which the Red Wings are designated the home team for a NHL Game. This Article 11.1(b) shall not require the Red Wings to play any NHL

Game in the Events Center if any governmental agency with jurisdiction over the Events Center and its use prohibits such use on the basis of health or safety risks attendant to such use.

(c) DDA expressly prohibits Concessionaire and the Red Wings from using the Events Center Project for any of the uses to be set forth on Exhibit H to be attached hereto (the “Prohibited Uses”). Concessionaire and the Red Wings each agrees that it will not use, and Concessionaire will not permit any sub-concessionaire to use, the Events Center Project for any Prohibited Uses. Concessionaire and the DDA intend that the Prohibited Uses Exhibit be prepared, mutually approved by such parties and thereafter attached hereto as Exhibit H in accordance with Article 27.

(d) Subject to Articles 10.16 and 11.1(c) and the other provisions of this Agreement relating to Concessionaire’s use of the Events Center Property and DDA’s oversight and limitations thereon, including without limitation, the foregoing limitation upon the use and operation of the Events Center Property in compliance with applicable federal, state and local laws, rules, regulations and ordinances and as otherwise required by this Agreement, Concessionaire shall have the right during the Term to determine how the Events Center Property shall be used (including its use for hosting concerts, shows, exhibits and other entertainment and sports events open to the public other than Hockey Events, “Concessionaire Non-Hockey Events”) and who may be present therein, to select and employ sub-concessionaires or licensees with respect to any Events Center Property operations, including, but not limited to parking, food and beverage (including alcoholic and non-alcoholic beverages) operations, club and restaurant operations, suite catering and advertising within the Events Center Property and to use the Events Center Property and exploit the benefits thereof in any lawful manner.

(e) Concessionaire (or its Affiliates) or its sub-concessionaires shall have the right to obtain and shall exclusively own all permits, approvals and licenses relating to use and operation of the Events Center permitted herein, including, without limitation, liquor licenses; provided, however, that upon termination of this Agreement, the Concessionaire shall assign to the DDA its rights in all assignable permits, approvals and licenses (except for its rights to any liquor license which may be transferred to another location, the rights to which may be retained by Concessionaire, provided that the retention of such licenses by the Concessionaire does not prohibit the DDA from obtaining a liquor license for the Events Center).

11.2 Exclusive Rights to All Revenue. Subject to Article 11.3(c), Concessionaire (or one or more of its sub-concessionaires) shall have the right to all revenues and other income and proceeds derived from the Events Center Project and all revenues and other income and proceeds from the conduct of any and all of the activities (whether now in existence or created or conducted in the future) at any time during the Term conducted by Concessionaire, the Red Wings or other sub-concessionaires.

(a) Without limiting the foregoing, Concessionaire (or one or more of its sub-concessionaires) shall have the right to all revenues and other income and proceeds derived from radio, television, cable, satellite, telephone, digital, internet and other communications media, broadcast and technology fees and revenues, publication fees, parking fees, admission fees, suite or luxury box licensee fees, ticket sales, ticket fees and surcharges, signage and advertising sales, concession and vending machine rents or payments, sales of souvenirs, novelty items, sale of food and beverage (including alcoholic and non-alcoholic beverages), events sponsored or branded by the NHL or the Team, and club membership fees related to any or all of the foregoing upon terms and conditions acceptable to Concessionaire;

(b) Without limiting the foregoing, Concessionaire (or one or more of its sub-concessionaires) shall have the right to all revenues and other income and proceeds relating to the production and distribution of the Red Wings' NHL Games and any other Hockey Events for television (by over-the-air, cable or otherwise), including direct sales of advertising by Concessionaire, radio, television, cable, satellite, telephone, digital, internet, and other communications media, broadcast and technology fees and any other media fees and revenues, and any income attributable to such media and broadcasts (whether in or out of the local market) ("Broadcast Fees"), which Broadcast Fees shall be retained and exclusively controlled by Concessionaire (or one or more of its sub-concessionaires) or as Concessionaire may agree with any other party. Broadcast Fees for Concessionaire Non-Hockey Events and any and all other events occurring within the Events Center Property shall be retained and exclusively controlled by Concessionaire.

(c) Without limiting the foregoing, Concessionaire shall own and have all intellectual property and other proprietary rights with respect to the use of the Events Center and the name of the Events Center Project, including the right to sell, market, copyright, secure a trademark for or otherwise exploit the same. Concessionaire shall have the sole right to sell the name of the Events Center, all or any part of the Events Center Project and all or any part of the Events Center Property for the Term of this Agreement. Concessionaire shall consult with the DDA with respect to the name of the Events Center and the Events Center Project, provided that, Concessionaire shall have the sole right determine the name, to sell the same and to receive and retain all proceeds thereof.

(d) Without limiting the foregoing, Concessionaire shall have the exclusive right to all revenue and income described in Article 19.

11.3 DDA's Rights. During the Term, the DDA will have the following rights regarding the use of the Events Center:

(a) The DDA reserves for itself, and Concessionaire will provide to the DDA, without payment of fees or any other consideration therefor, (i) the use of one (1) suite and tickets for all seats in such suite for all Hockey Events and Concessionaire Non-Hockey Events at the Events Center to the same extent as such tickets are provided to all suite holders at the Events Center, and (ii) twelve (12) tickets (of which four (4) shall be "lower bowl" tickets) to all Hockey Events and Concessionaire Non-Hockey Events at the Events Center. The suite location will be at Concessionaire's discretion and may change from year to year.

(b) Subject to the unavailability of the Events Center due to any use reserved to Concessionaire by this Agreement, the DDA shall have the right to use certain areas approved by Concessionaire within the Events Center for events held during the Term. Such events are limited to those of a civic, charitable or cultural purpose which do not compete with any business of Concessionaire or the Red Wings or a related person ("DDA Events"), which, for avoidance of doubt, shall not include homecoming, graduation and other school events. During any such DDA use for a DDA Event, the DDA will be required to ensure the integrity of the Playing Surface in the Events Center to the complete satisfaction of Concessionaire and the Red Wings and Concessionaire or the Red Wings may deny use of the Playing Surface to the DDA for a DDA Event at any time and for any event when in Concessionaire's or the Red Wings' judgment the Playing Surface may be adversely affected. The DDA shall notify Concessionaire at least ninety (90) days in advance of any DDA Event, which notice will allow Concessionaire to reach a good faith estimate of managerial and operational costs that may be incurred as a result of such DDA Event, and coordinate with Concessionaire and the Red Wings in the scheduling of all such

events so as not to interfere with Concessionaire's rights and duties under this Agreement. Within thirty (30) days after receipt of such notice Concessionaire may preempt the right of the DDA to use the Events Center Project for a DDA Event upon advising the DDA that it reasonably believes that the proposed DDA Event will adversely affect the integrity of the Playing Surface, or that the proposed DDA Event cannot be held due to a conflict with a previously scheduled or to be scheduled use of the Events Center for a Hockey Event, an Concessionaire Non-Hockey Event or another DDA Event or with the preparation or cleanup of the Events Center for such events, or that the event is for a purpose not permitted by this Agreement. The failure by Concessionaire to so notify the DDA shall be deemed an affirmative statement by Concessionaire that it reasonably believes that the proposed DDA Event will not harm the integrity of the Playing Surface, that no such scheduling or other conflict exists, and that the event is for a purpose permitted by this Agreement. If Concessionaire does not so notify the DDA, within forty five (45) days after receipt of the notice from the DDA provided for in this Article 11.3, Concessionaire shall provide the DDA with a good faith estimate of managerial, operational, maintenance, utility and any other costs which will be incurred by Concessionaire or its sub-concessionaires as a result of any DDA Event.

(c) The DDA shall have the right to retain the net revenues (which means all revenues realized from ticket sales or the equivalent, less the costs of preparation, operation, staffing, security, clean up, playing field protection, utilities and restoration, if required) for each DDA Event held by the DDA at the Events Center and that percentage agreed to by Concessionaire and the DDA of the revenues from the parking related to the DDA Event and from sales of food and beverages at the Events Center in other than any "stadium club" or restaurant.

(d) The rights conferred by this Article 11.3 shall be conditioned upon execution of an agreement between Concessionaire and the DDA which would require the DDA to either prepay, subject to a final accounting and reconciliation, or, within thirty (30) days after receipt of an itemized statement of such actual costs from Concessionaire, reimburse all reasonable costs anticipated to be incurred as a result of a proposed DDA Event. To the extent not covered by proceeds of insurance received by Concessionaire, the DDA shall be obligated to pay the costs to repair all damages caused by the DDA or its invitees in connection with a DDA Event.

11.4 MEDC Tickets. Concessionaire will provide to the Michigan Economic Development Corporation (the "MEDC"), without payment of fees or any other consideration therefor, (i) the use of one (1) suite and tickets for all seats in such suite for all Hockey Events and Concessionaire Non-Hockey Events at the Events Center to the same extent as such tickets are provided to all suite holders at the Events Center, and (ii) the twelve (12) tickets (of which four (4) shall be "lower bowl" tickets) to all Hockey Events and Concessionaire Non-Hockey Events at the Events Center. The suite location will be at Concessionaire's discretion and may change from year to year. The MEDC (and any successor thereto) is hereby made an express third party beneficiary of this Article 11.4.

## ARTICLE 12

### OPERATING COSTS, MAINTENANCE, REPAIRS, AND MANAGEMENT

12.1 Assumption of Responsibility. Concessionaire assumes responsibility for Maintenance, Repairs and Events Center Management throughout the Term. Concessionaire shall be responsible for the Maintenance of the Events Center Project in good repair and good operating condition (ordinary wear and tear excepted) in a manner generally consistent with

maintenance standards generally achieved at comparable multipurpose events centers, in compliance with City, County, State and federal laws, ordinances, rules and regulations, and as otherwise required in this Agreement. The parties acknowledge that Concessionaire (a) in accordance with and subject to Article 12.6, may use funds on deposit in Repair Fund to satisfy obligations of Concessionaire hereunder and (b) in accordance with and subject to Article 12.7, funds on deposit in the Operation and Maintenance Fund to satisfy obligations of Concessionaire hereunder. No depletion or exhaustion of funds on deposit in the Repair Fund shall reduce Concessionaire's responsibility for Maintenance, Repairs and Events Center Management as otherwise set forth in this Agreement.

12.2 Concessionaire's Obligations.

(a) Concessionaire is hereby designated operator and manager of the Events Center Property and all Improvements thereon and shall be responsible for all Events Center Management. Concessionaire shall obtain or provide, at its expense, all labor, services, materials, supplies and equipment needed to perform all Events Center Management, Maintenance and Repairs. Concessionaire shall not reduce, diminish or eliminate any equipment or services it is required to provide under this Agreement without the prior written consent of the DDA. The DDA shall provide Concessionaire with a copy of all plans, specifications and other documents in the control of the DDA necessary to assist Concessionaire in fulfilling its obligations pursuant to this Article 12.2.

(b) Concessionaire shall cause all Maintenance and Repairs required to be performed by Concessionaire under this Article 12 to be performed promptly and diligently, and in a good and workmanlike manner. Concessionaire shall plan, schedule and conduct such Maintenance and Repairs so as to minimize (i) inconvenience to any patrons, (ii) any material

reduction in seating capacity at the Events Center, (iii) any material reduction in the number of parking spaces available in the Events Center Project, and (iv) interference with the DDA's or Concessionaire's use and enjoyment of the Events Center Project.

(c) On the dates of each and every Hockey Event, Concessionaire Non-Hockey Events and DDA Events which is open to the public and uses the playing surface or stands, beginning with the time of day by which an admission ticket to any such event is required in order for the public to enter the Events Center, Concessionaire shall be responsible for: (i) providing and supervising all personnel including ushers; (ii) providing and supervising crowd control and management within the Events Center Property; (iii) providing and supervising first-aid personnel to operate the first-aid facilities in the Events Center; and (iv) providing all other services and materials necessary to fulfill its obligations under this Agreement.

(d) With respect to security in connection with the operation of the Events Center, the Concessionaire agrees to pay reasonable costs that are related to and germane to security both inside and outside of the Events Center. The details of the security plan will be negotiated between the City and the Concessionaire on or before April 1, 2014. A negotiated agreement is a Condition to Effectiveness as defined in section 27.1 hereof.

(e) Concessionaire shall promptly notify the DDA (orally first, then by written notice if written notice alone is not practicable) whenever Concessionaire knows of or discovers any material defects in, damage to, or destruction of any part of the Events Center Project or any dangers or hazards in or on the Events Center Property.

(f) Concessionaire shall provide insurance, pursuant to the provisions of Article 13, to cover the Repair, restoration or replacement of any Damaged Property. Concessionaire shall be responsible for the payment of all deductibles attendant to such

insurance. To the extent that such insurance is insufficient to cover the costs of any Repair, restoration or replacement of any Damaged Property, Concessionaire shall be solely responsible for such costs (including but shall not be limited to the costs of all labor, supplies, materials and equipment). No money in the Repair Fund shall be used for the Repair, restoration or replacement of any Damaged Property if the damage is the result of the gross negligence or willful misconduct of Concessionaire or the Red Wings.

(g) Should Concessionaire, pursuant to the terms of this Agreement, wish to contract with other related or unrelated entities to assist in performing any of its obligations under, and subject to the restrictions of, this Agreement, Concessionaire shall in all events be and remain fully responsible and liable to the DDA under the restrictions and obligations set forth herein, notwithstanding any such contracts with such entities, and any agreements, written or verbal, with such other concessionaires or sub-concessionaires shall each contain no less than the same restrictions and obligations imposed by the terms of this Agreement on Concessionaire, and such other restrictions and obligations as may be imposed by Concessionaire which do not conflict with the restrictions and obligations established by this Agreement.

12.3 Maintenance and Repairs. Concessionaire shall be responsible for performing and completing any day-to-day Maintenance of and any Repairs to the Events Center, including but not limited to any Maintenance of and any Repairs to the Playing Surface required in connection with any Hockey Events, Concessionaire Non-Hockey Events, and DDA Events, including any necessary preparation and conditioning of the Playing Surface before or during such events, and Maintenance as may be required in Concessionaire's reasonable judgment after such events in order to restore the Playing Surface to first-class NHL condition. Such restoration shall be completed by the beginning of the next NHL Season after such Concessionaire Non-

Hockey Events or DDA Events occurring other than in the NHL Season. For DDA Events, the DDA shall promptly reimburse Concessionaire (or cause a promoter or other third party to reimburse Concessionaire) for Concessionaire's or its sub-concessionaire's personnel and material costs in providing such maintenance and for reasonable costs associated with the Repair or restoration of any portion of the Playing Surface or a portion of the Events Center Project which becomes Damaged Property as a result of a DDA Event. Concessionaire shall supply the DDA and any promoters or third parties designated by the DDA with itemized invoices for such personnel and material costs, including supporting invoices for costs incurred in acquiring materials. If the DDA believes that Concessionaire is failing to perform its obligations under this Article 12.3, the DDA shall promptly notify Concessionaire, and Concessionaire shall then be obligated to cause its maintenance crew and/or Repair contractors, as applicable, to perform Concessionaire's obligations.

12.4 Utilities. Throughout the Term of this Agreement, Concessionaire shall bear the cost of all utilities consumed or used in or on the Events Center Projects or in connection therewith (such as, by way of example and without limitation, gas, steam, electricity, water, sewer, telephone, cable, trash collection, etc.), except such costs associated with any DDA Event, which shall be paid by the DDA or other user of the Events Center pursuant to Article 11.3.

12.5 Improvements and Alterations by Concessionaire.

(a) Following the Commencement Date, except for alterations and Improvements to Concessionaire and sub-concessionaire offices, locker rooms, performer dressing rooms, player/family/media lounges, training and storage spaces which may be made in Concessionaire's discretion, Concessionaire may make Improvements to the Events Center Project and/or demolish, alter, and rebuild all or any portion of the Events Center Project subject

to the prior consent of the DDA, which consent shall not be unreasonably withheld, delayed or conditioned. Any such Improvement, demolition, alteration, and/or rebuilding (irrespective of whether the DDA has the right to consent thereto pursuant to the immediately preceding sentence) shall be performed in a first class workmanlike manner and otherwise in accordance with the terms and conditions of this Agreement. If plans and specifications are necessary or customarily prepared in the making of the Improvement, demolition, alteration, and/or rebuilding to the Events Center Property, Concessionaire shall cause such plans and specifications to be prepared and will furnish copies thereof to the DDA prior to the commencement of such the Improvement, demolition, alteration, and/or rebuilding. Concessionaire further agrees that before the commencement of any Improvement, demolition, alteration, and/or rebuilding of all or any part of the Events Center Project, Concessionaire shall cause to be obtained all required approvals. The originals of all such approvals, authorizations, permits and consents of governmental authorities shall be delivered to and retained by Concessionaire, its Affiliates, designees or permitted assigns. Any such consents by the DDA shall not operate or be construed as a consent by the DDA for the purpose of filing any lien or making any charge of any kind whatsoever against the DDA. All Improvements, demolition, alteration, and/or rebuilding shall be done subject to and in accordance with all applicable laws, rules, regulations, ordinances and other requirements of all governmental authorities having jurisdiction thereof. Concessionaire shall cause to be procured and maintained such insurance bonds and other forms of indemnification, if any, as the DDA may reasonably require in connection with the Improvement, demolition, alteration, and/or rebuilding of the Events Center. Upon reasonable prior notice, the DDA and its agents shall have the right to inspect all such Improvement, demolition, alteration, and/or rebuilding periodically during the construction and upon

completion thereof, but subject to any construction area safety rules imposed by the contractor therefor or by law.

(b) The cost of all Improvements to the Events Center Project made by Concessionaire pursuant to this Section 12.5 may be paid from (i) the Operation and Maintenance Fund, or (ii) funds of Concessionaire, its Affiliates, designees or permitted assigns or (iii) such other third party sources as Concessionaire and the DDA mutually agree in writing prior to the commencement of construction of such Improvements. The DDA is under no obligation to furnish funds to pay for said Improvements, demolition, alteration, and/or rebuilding unless such Improvement, demolition, alteration and/or rebuilding constitutes a Repair payable from the Repair Fund in accordance with and subject to Article 12.6.

#### 12.6 Repair Fund.

(a) The Repair Fund shall be created as set forth in Article 7.4, above and maintained by Concessionaire, and during the Term shall be the property of and held by Concessionaire, subject to the terms of this Agreement. Said Repair Fund shall be deposited in a bank account separate and apart from the other revenue or funding sources of the Events Center and shall only be used in the manner set forth in this Agreement. The Repair Fund may be used by Concessionaire to pay any costs associated with the Repair of the Events Center and any portion thereof and the Repair of Damaged Property. All interest earned on the Repair Fund shall remain in such fund and become a part thereof. Except with respect to Repairs (i) that are authorized pursuant to Article 12.8, or (ii) the cost of which is less than Fifty Thousand and 00/100 Dollars (\$50,000.00), or (iii) that are included in a periodic pre-approval by the DDA of specific Repairs, Concessionaire's withdrawal and application of funds from the Repair Fund shall require the prior consent of the DDA, with such consent shall not be unreasonably

withheld, delayed or conditioned. At the end of the Term or upon termination of this Agreement, all sums then in the Repair Fund shall be evenly split between the DDA (or its designee) and Concessionaire (or its designee) and may be used by such parties for any purpose.

(b) Upon reasonable prior notice, the DDA and its agents shall have the right to inspect all work paid for using proceeds of the Repair Fund and all major Repairs periodically during the repair work and upon completion thereof, but subject to any construction area safety rules imposed by the contractor therefor or by law.

(c) On or prior to February 28 of each year from and after the establishment of the Repair Fund, the Concessionaire shall provide the DDA an annual accounting of the use of the funds deposited in the Repair Fund, including but not limited to Repairs performed pursuant to Section 12.8, during the calendar year ending December 31 of the immediately preceding year.

(d) No depletion or exhaustion of funds on deposit in the Repair Fund shall reduce Concessionaire's responsibility for Maintenance, Repairs and Events Center Management as otherwise set forth in this Agreement.

#### 12.7 Operation and Maintenance Fund.

(a) The Concessionaire may establish an Operation and Maintenance Fund, which shall be the property of and held by Concessionaire, subject to the terms of this Agreement. The Operation and Maintenance Fund may be used by Concessionaire to pay any costs associated with the Use, Maintenance and Repair of the Events Center Property and the Events Center Project or any portion thereof, and for any other purpose as desired by Concessionaire. All interest earned on the Operation and Maintenance Fund shall remain in such fund and become a part thereof. Funds in the Operation and Maintenance Fund may be

withdrawn by Concessionaire and applied to the costs incurred at its discretion. At the end of the Term, or upon termination of this Agreement, all sums in the Operation and Maintenance Fund shall remain the property of Concessionaire and may be used by Concessionaire for any purpose.

(b) Neither the election of the Concessionaire not to establish an Operation and Maintenance Fund, or the depletion or exhaustion of funds on deposit in the Operation and Maintenance Fund shall reduce Concessionaire's responsibility for operating the Events Center, Maintenance, Repairs and Events Center Management as otherwise set forth in this Agreement.

12.8 Emergency Repairs. If Concessionaire reasonably determines that the health or safety of persons will be jeopardized or that the Events Center Project or any part thereof may be unavailable for use when needed pursuant to this Agreement absent the immediate commencement of a Repair, Concessionaire may commence such Repair without prior approval of the DDA, when such consent may otherwise be required. The DDA agrees that it will authorize the release of funds from the Repair Fund to pay any cost of a Repair made pursuant to this Article 12.8 upon written certification from Concessionaire that the health or safety of persons will be jeopardized or that the Events Center Project will deteriorate or be unavailable for use when needed pursuant to this Agreement absent the immediate commencement of such Repair.

### ARTICLE 13

#### INSURANCE AND SUBROGATION

13.1 Type of Insurance.

(a) Concessionaire shall obtain and maintain, throughout the term of this Agreement, both liability and property insurance coverage as set forth in this Article 13. The Concessionaire, the DDA, the City and the Bond Trustee shall be included as additional insureds,

as their interests may appear, for such insurance coverage. Such insurance shall be in the amounts set forth herein.

(b) Throughout the Term, Concessionaire shall obtain and maintain insurance on the Events Center Project against loss or damage by fire and such other hazards, casualties, risks and contingencies as are normally and usually covered by all risk policies in effect in the City of Detroit, Michigan, in an amount at least equal to the Full Replacement Cost of the Events Center Project. During the construction period, the property insurance shall be in the form of “all risk builder’s risk” coverage. Such insurance shall provide that loss proceeds will be first payable to Concessionaire, the DDA, the City and the Bond Trustee, as their interests may appear, and such other persons as either party may determine necessary. In addition, so long as the Events Center Project shall be equipped with any boiler or boilers or so long as the maintenance of such insurance shall be required by law, coverage shall include Boiler and Machinery insurance covering loss and liability resulting from property damage, personal injury or death caused by explosion of boilers, heating apparatus or other pressure vessels on the Events Center Project.

(c) Concessionaire shall also maintain throughout the Term, commercial general liability insurance, against claims of any and all persons, firms and corporations for personal injury, death or property damage occurring upon, in or about the Events Center Property. Such commercial general liability insurance coverage shall be in the amount of not less than Fifty Million Dollars (\$50,000,000.00) per occurrence and in the aggregate not less than Fifty Million Dollars (\$50,000,000.00) as to liability for personal injury, or such other amount as may be reasonably agreed upon by Concessionaire and the DDA from time to time. All such policies shall include, at minimum, the DDA, the City and the Bond Trustee as additional

insureds in respect of this Agreement. Required limits may be satisfied through a combination of primary and umbrella/excess policies.

(d) Concessionaire shall also maintain throughout the Term commercial automobile liability insurance. Such coverage shall be in the amount of not less than \$5,000,000 per occurrence and cover all Concessionaire owned, non-owned and hired automobiles. Such policy shall include, at minimum, the DDA and the Bond Trustee as additional insureds in respect of this Agreement. Required limits may be satisfied through a combination of primary and umbrella/excess policies.

(e) Concessionaire shall also maintain throughout the Term workers compensation insurance with statutory limits in compliance with applicable state laws. Coverage shall include employers liability coverage with the minimum limits of \$1,000,000 per occurrence for bodily injury. The insurance required under this paragraph may be satisfied through attainment of a qualified self-insured authority with the State of Michigan.

(f) The insurance policies required by this Article shall be provided by such insurers having an A.M. Best rating of A or better, and are qualified to write the respective insurance in the State of Michigan. Except as otherwise permitted herein, all required insurance shall be written on an occurrence policy form and include such provisions (including without limitation and where applicable, a waiver of subrogation clause) as are generally considered standard provisions for the type of insurance involved, shall prohibit cancellation or substantial modification by the insurer without at least 30 days written notice to the DDA and any other person designated by the DDA and Concessionaire. All of the forgoing insurance, other than in respect of workers compensation, shall name the Bond Trustee and the DDA and such other persons as either party may determine necessary as additional insureds thereunder as their

respective interests may appear. The insurance policies shall be held by Concessionaire but certificates evidencing that Concessionaire has obtained the insurance required hereunder shall be delivered to the DDA prior to inception and at each renewal. All costs and expenses of obtaining and maintaining insurance as required by this Article shall be paid by Concessionaire.

(g) The DDA hereby waives any claim of liability against Concessionaire, the Red Wings and their respective its officers, directors, agents or employees, for any loss or damage to the Events Center Property whether or not such loss or damage may have been caused by or resulted from the negligence of Concessionaire, the Red Wings, any sub-concessionaire or any of their respective officers, directors, agents or employees, to the extent that the amount of such loss or damage is covered by insurance. Concessionaire hereby waives any claim of liability against the DDA and their respective officers, directors, agents or employees, for any loss or damage to property, fixtures and equipment owned, maintained, erected or installed by Concessionaire in and about the Events Center Property whether or not such loss or damage may have been caused by or resulted from the negligence of the DDA or their respective officers, directors, agents or employees to the extent that the amount of such loss or damage is covered by insurance. Any insurance policy carried by the DDA shall contain a provision that any right of subrogation which the insurance company may have against the Concessionaire, the Red Wings, any sub-concessionaire or their respective officers, directors, agents or employees, is waived.

(h) Upon the DDA's written request to Concessionaire, the DDA and the Concessionaire shall meet annually to review the levels of coverage provided for in this Article 13 and to make mutually-agreed to adjustments to the levels and forms of coverage that the parties determine are reasonably necessary to ensure that insurance coverages required under this Agreement are generally consistent with insurance coverages normally in effect for comparable

multipurpose events centers in comparable markets at comparable costs. No such adjustments shall become effective until ninety (90) days after the parties mutually agree in writing thereto. Any modifications to required levels or forms of insurance agreed upon by the parties shall be paid for by the Concessionaire, unless otherwise agreed in writing.

13.2 Damage to Events Center Project.

(a) In the event of any loss or damage to the Events Center Project, the proceeds of all insurance (other than business interruption/income loss insurance) shall be deposited into a joint account of the DDA and Concessionaire at a bank in Detroit acceptable to both the DDA and Concessionaire. Concessionaire shall arrange for any temporary Repairs as well as the permanent Repair and restoration of the Events Center Project, and funds shall be disbursed from such joint account as the work progresses in accordance with the same procedures established under Articles 4 and 5 for initial costs of the Events Center Project. The proceeds of any business interruption and income loss insurance policies maintained by Concessionaire shall be paid directly to and retained by Concessionaire. Nothing in this Article 13.2(a) shall reduce, limit or otherwise affect the obligation of the Concessionaire to pay the Concession Fee or cause a reduction in such payment.

(b) In the event that any insurance proceeds remain after completion of such repairs, restoration and reconstruction, such excess funds shall be returned to Concessionaire.

(c) In the event that the insurance proceeds are insufficient to pay the cost of all permanent repairs, restoration and reconstruction, Concessionaire may propose certain modifications to the Events Center Project for the purpose of reducing the cost of such repairs, which may only be made subject to the approval of the DDA, which shall not be unreasonably withheld, delayed or conditioned. In any event, Concessionaire agrees to provide any additional

funds which are required in order to repair and restore the Events Center Project to substantially the same condition as it existed immediately prior to the loss or damage.

(d) In the event that the loss or damage occurs during the last five (5) years of the Term (or any extension thereof), Concessionaire shall have no obligation to repair, rebuild or restore the Events Center Project. In the event that Concessionaire does not elect to repair and restore, the insurance proceed shall be applied in the following manner (i) Full Bond Repayment has not yet then occurred, first to repay the Bonds until Full Bond Repayment occurs, (ii) second, to pay the costs to demolish the Events Center and (iii) third, the balance shall be shared equally by the DDA and the Concessionaire or its designee, following which this Agreement shall terminate.

13.3 Disbursement by Bond Trustee. Notwithstanding any provision to the contrary in Article 13 of this Agreement, the DDA and Concessionaire agree that any and all loss proceeds of any insurance (other than business interruption and income loss insurance) maintained by Concessionaire pursuant to this Agreement shall be paid directly to the Bond Trustee and applied and disbursed subject to the terms and conditions set forth in the Bond Documents. Following the repayment in full of the Bonds, all loss proceeds of any insurance maintained by Concessionaire pursuant to this Agreement shall be paid, applied and disbursed as set forth in Article 13.2(a).

## ARTICLE 14

### DEFAULT AND REMEDIES

14.1 Default by Concessionaire or the Red Wings. The occurrence of any one or more of the following events constitutes a default by Concessionaire or the Red Wings (a “Concessionaire Default”) under this Agreement:

(a) Except for defaults described in Articles 14.1(c) and 14.1(d), failure by Concessionaire or the Red Wings to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of 45 days after written notice specifying such failure and requesting that it be remedied, given to Concessionaire by the DDA; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute a default or Concessionaire Default if corrective action is instituted by Concessionaire or the Red Wings, as applicable, within such period and diligently pursued until the default is corrected.

(b) The dissolution or liquidation of Concessionaire or the Red Wings or the filing by Concessionaire or the Red Wings of a voluntary petition in bankruptcy or failure by Concessionaire promptly to lift any execution, garnishment or attachment of such consequence as will affect Concessionaire's or the Red Wings' ability to carry on its operations at the Events Center Project or the commission by Concessionaire or the Red Wings of any act of bankruptcy or adjudication of Concessionaire or the Red Wings as bankrupt, or assignment by Concessionaire or the Red Wings for the benefit of its creditors, or the entry by Concessionaire or the Red Wings into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to Concessionaire or the Red Wings in any proceeding for its reorganization instituted under the provisions of the U.S. Bankruptcy Code, as amended, or under any similar law which may hereafter be enacted. Nothing in this paragraph shall be construed to include the cessation of the corporate existence of Concessionaire or the Red Wings resulting either from a sale, transfer, merger or consolidation of Concessionaire or the Red Wings into or with another corporation or dissolution or liquidation of Concessionaire or the Red Wings following a sale or transfer of all or substantially all of its assets to another entity

under the conditions permitting such actions with respect to the NHL contained elsewhere in this Agreement.

(c) The failure to make a payment, when due, under Article 9 of this Agreement, if such payment is not made within a period of 10 business days after written notice specifying such failure and requesting that it be remedied is given to Concessionaire by the DDA.

(d) The failure to maintain the insurance required pursuant to Article 13, for a period of ten (10) business days after written notice specifying such failure and requesting that it be remedied is given to Concessionaire by the DDA.

14.2 DDA Remedies. If a Concessionaire Default occurs and is continuing, the DDA may take any one or more of the following remedial steps:

(a) Require Concessionaire to pay the amount that is then past due, if any.

(b) Where appropriate, enjoin any action by Concessionaire or the Red Wings in violation of this Agreement or any part thereof or compel performance by Concessionaire or the Red Wings of their respective duties under this Agreement by specific performance or mandatory injunction.

(c) If the DDA determines that Concessionaire is in material default in performing its Events Center Management function as a result of Concessionaire failing to satisfy management standards generally achieved in the management of comparable multipurpose events centers, the DDA shall deliver written notice to Concessionaire detailing with reasonable specificity the ways in which the DDA claims that Concessionaire is failing to satisfy management standards generally achieved in the management of comparable multipurpose events centers. If Concessionaire fails to begin to satisfy management standards

generally achieved in the management of comparable multipurpose events centers within forty five (45) days of Concessionaire's receipt of such written notice from the DDA, then subject to the written approval of the holders of the Bonds the DDA may commence an action or proceeding to terminate all or part of Concessionaire's management authorities and responsibilities under this Agreement. Termination of Concessionaire's management authority and responsibilities pursuant to this paragraph shall not (i) impair or disturb the rights of any sub-concessionaire of Concessionaire, including, but not limited to the Red Wings, or (ii) relieve Concessionaire of any of its other rights and obligations under this Agreement, including but not limited to its rights to use in any manner authorized by Articles 10 or 11 and preempt the use, pursuant to Articles 10 or 11, of the Events Center Project for Hockey Events and Concessionaire Non-Hockey Events, Concessionaire's rights to revenues from the use of the Events Center Project, Concessionaire's rights to assign its rights to use the Events Center Property and to receive payments related to such assignment, and its obligation to bear the costs of all Repairs, Improvements, Maintenance, and operations of the Events Center Project. In addition, the DDA shall be entitled to use moneys in the Repair Fund and/or the Operation and Maintenance Fund to pay for, or to recover damages equal to, the DDA's costs and expenses incurred in obtaining, and retaining until the expiration or termination of this Agreement, replacement management services for the Events Center Project. In the event that all or part of Concessionaire's management authorities and responsibilities are terminated pursuant to this paragraph, the DDA shall engage a replacement manager to perform such authorities and responsibilities, which replacement manager shall (i) be paid a fee for its services but have no right to revenues from the Events Center Property, which such fee shall be paid by Concessionaire in addition to the Concession Fee, (ii) be a professional manager with experience

in the management of multipurpose events centers professional sports arenas or stadiums and (iii) manage the Events Center Project in accordance with management standards generally achieved in the management of comparable multipurpose events centers.

(d) Take whatever action at law or in equity as may appear necessary or desirable to collect any fees or payments then due and thereafter to become due or to enforce performance and observance of any provision of Concessionaire under this Agreement.

(e) If the Concessionaire Default is a failure to observe requirements of Articles 4.1(b) or 5.4, require Concessionaire to pay for each and every Occurrence of such a Concessionaire Default to the DDA the lesser of Twenty Five Thousand Dollars (\$25,000.00) or, if a lesser amount has been disbursed, then the amount disbursed without compliance with these requirements as liquidated damages (and not as a penalty), it being acknowledged and agreed that actual damages for any such failure by Concessionaire would be extremely difficult, if not impossible, to calculate. The determination of whether an Occurrence has taken place, and when disbursements are made, shall be made by the DDA, and notice thereof delivered to Concessionaire.

The remedy authorized under this Article 14.2(e) shall represent the total of all damages due any or all parties for, and shall be the exclusive damages remedy to the DDA with respect to a failure by Concessionaire to observe the requirements of Articles 4.1(b) or 5.4. No failure by Concessionaire to observe the requirements of Articles 4.1(b) or 5.4 shall entitle the DDA to terminate, cancel, suspend, enjoin or commence an action or proceeding to terminate, cancel, suspend or enjoin all or part of Concessionaire's rights or management authorities or responsibilities under this Agreement, but the DDA, in addition to seeking any damages

authorized under this Article 14.2(e), may seek to compel performance by Concessionaire by an action for specific performance or declaratory relief.

A failure by Concessionaire to observe the requirements of Articles 4.1(b) or 5.4, including with respect to a payment on a contract or change order either of which had not been approved by the DDA, shall be subject to the damages under this Article 14.2(e) only after such failure would be considered a Concessionaire Default under Article 14.1(a) after application of the notice and cure periods and rights to institute corrective action.

(f) If the Concessionaire Default is a failure to observe requirements of Article 22.1 as a result of failing, beyond the expiration of the notice and cure periods described in Article 14.1(a), to follow the business and workforce participation and outreach plan set forth on Exhibit I attached hereto, the DDA's sole and exclusive remedy shall be to submit such matter to the dispute resolution process described on Exhibit J attached hereto, and any remedy shall also be limited as described herein. All payments made by Concessionaire (or its Affiliates) to any person or entity as a result of failure to comply with the plan set forth on Exhibit I (such payments are referred to as "Executive Order Non-Compliance Payments") shall be credited to and reduce any liability of Concessionaire to pay the DDA in respect of Concessionaire failing to follow the plan set forth on Exhibit I attached hereto, it being agreed, for avoidance of doubt, that Executive Order Non-Compliance Payments, if any, made by Concessionaire (or its Affiliates) (i) shall be a credit to and reduce Concessionaire's liability to pay the DDA in respect of its failure to follow the plan set forth on Exhibit I and (ii) shall not be a credit to or reduce the Concession Fee or other obligations of Concessionaire under this Agreement except as described in clause (i) of this sentence. Funds received by the DDA pursuant to this Article 14.2(f) shall be used by the DDA to further the objectives of the programs for equal opportunity employment

and business inclusion as described under Article 22.1 of this Agreement. Notwithstanding the foregoing, the Concessionaire will be obligated to reimburse the DDA for any out-of-pocket costs incurred by the DDA as a result of such Concessionaire Default relating to the plan set forth on Exhibit I, including but not limited to reasonable actual attorney fees.

No failure by Concessionaire to observe the requirements of Article 22 shall entitle the DDA to terminate, cancel, suspend, enjoin or commence an action or proceeding to terminate, cancel, suspend or enjoin all or part of Concessionaire's rights or management authorities or responsibilities under this Agreement. The DDA may seek specific performance of Concessionaire's obligations pursuant to Article 22 or, with respect to Section 22.1, the right to seek to enforce the non-compliance remedies described in section xi in Exhibit I, as its sole remedies.

(g) If the Concessionaire's default is under Article 23, the DDA's sole and exclusive remedy shall be to seek specific performance of the Concessionaire's obligations thereunder.

14.3 Default by the DDA. The occurrence of any one or more of the following events constitutes a default by the DDA under this Agreement:

(a) Except for defaults described in Article 14.3(c) and (d), failure by the DDA to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of 45 days after written notice specifying such failure and requesting that it be remedied, given to the DDA by Concessionaire; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the DDA within such period and diligently pursued until the default is corrected.

(b) The dissolution or liquidation of the DDA or the filing by the DDA of a voluntary petition in bankruptcy or failure by the DDA promptly to lift any execution, garnishment or attachment of such consequence as will affect the DDA's ability to perform its obligations under any covenant, condition or agreement contained herein or the commission by the DDA of any act of bankruptcy or adjudication of the DDA as bankrupt, or assignment by the DDA for the benefit of its creditors, or the entry by the DDA into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the DDA in any proceeding for its reorganization instituted under the provisions of the U.S. Bankruptcy Code, as amended, or under any similar law which may hereafter be enacted. Following Full Debt Repayment, the dissolution of the DDA pursuant to the Act shall not be a default, provided the DDA has assigned its obligations under this Agreement to another public entity pursuant to Article 17.3.

(c) The failure to make a payment, when due, under Articles 6, 7, 12 and 21, if such payment is not made (i) with respect to the payments described in Article 7, within the period of time specified in Article 7, including, without limitation, the cure period of time specified in Article 7 for the purpose of catching up on insufficient payments, and (ii) with respect to all other payments, within a period of 10 business days after written notice specifying such failure and requesting that it be remedied is given to the DDA by Concessionaire.

(d) Any failure of the DDA to reimburse Concessionaire for the costs of repairs (to the extent such costs are not covered by proceeds of insurance required hereunder) necessitated by damage caused by any act or omission of the DDA or its agents acting in such capacity within a period of 10 business days after written notice specifying such failure and requesting that it be remedied is given to the DDA by Concessionaire.

14.4 Concessionaire's Remedies. If a DDA Default occurs and is continuing, Concessionaire may take any one or more of the following remedial steps:

(a) Require the DDA to pay the then balance owing, if any.

(b) Where appropriate, enjoin any action by the DDA or any other person described in Article 14.3(e) in violation of this Agreement or any part thereof or compel performance by the DDA of its duties under this Agreement by specific performance or mandatory injunction.

(c) Take whatever action at law or in equity as may appear necessary or desirable to collect any fees or payments then due and thereafter to become due or to enforce performance and observance of any provision of the DDA under this Agreement.

(d) In the event of the occurrence of a DDA Default under Article 14.3(b) during the period prior to the Commencement Date, subject to the terms and conditions of the Bond Documents Concessionaire shall have the right to cause the appointment of an independent third party construction administration agent reasonably acceptable to the Bond Trustee to perform the DDA's obligations under Articles 4, 5 and 6 of this Agreement and other provisions of this Agreement relating to the design, construction and cost disbursement process for the Events Center Project.

14.5 Bond Trustee Cure Rights. The DDA agrees that the DDA shall grant to the Bond Trustee under the Bond Documents the right to cure any DDA Default hereunder relating to the collection and application of any funds comprising Bond Repayment Sources at the times and in the amounts required hereunder and under the Bond Documents, and, in connection therewith, the right to take all actions on behalf of the DDA and to perform any and all obligations of the DDA under this Agreement and the Bond Documents relating to the Bond Repayment Sources in

order to make the payments to the Bond Trustee that the DDA has agreed herein and under the Bond Documents to pay with respect to the Bonds, provided that, (a) the Bond Trustee may appoint an agent to act on behalf of the Bond Trustee in the exercise of the Bond Trustee's rights set forth in this paragraph, and (b) the Bond Trustee shall have no obligation to cure any such DDA Default. If the Bond Trustee causes any DDA Default relating to the Bonds and the Bond Documents to be cured, then such DDA Default shall be deemed cured for purposes of this Agreement.

14.6 General Provisions.

(a) No right or remedy herein conferred upon, or reserved to the DDA, or Concessionaire is intended to be exclusive of any other right or remedy, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law, or in equity or by statute. No waiver by either party of any breach of obligations, agreements or covenants herein shall be a waiver of any subsequent breach of any obligation, agreement or covenant, nor shall any forbearance by either party to seek a remedy for any breach by the other party be a waiver by such party of any rights or remedies with respect to such or any subsequent breach, nor shall any express waiver by either party be deemed to apply to any other existing or subsequent right to remedy any default by the other party, nor shall any waiver by either party of any default or breach by the other party in the performance of any of the covenants or obligations of such other party under this Agreement be deemed to have been made by the party against which the waiver is sought to be charged unless contained in a writing executed by such party.

(b) In the event that, in connection with bankruptcy or other insolvency proceeding in which the DDA is the debtor, this Agreement is deemed to be an executory

contract enabling the DDA or a third party acting on its behalf to terminate this Agreement, then Concessionaire shall have the right to exercise all rights and remedies available under Section 365(h)(1)(A) of the U.S. Bankruptcy Code (or comparable provisions under similar laws which may hereafter be enacted), including, without limitation, the right to retain and continue to the Initial Term and Extensions Terms of this Agreement.

(c) In the event that either party fails to pay any payment required hereunder when due which constitutes a default under this Article 14, then, without limiting any other rights of the non-defaulting party, the defaulting party shall be liable for interest thereon from the date that such installment was due until the date paid in full at a rate determined as of the business day immediately preceding the date of the event of default, and thereafter on the business day immediately preceding each ninetieth day thereafter, equal to the rate quoted in a nationally recognized publication of financial information for United States Treasury Bills coming due in the thirteenth week following the date of determination.

## ARTICLE 15

### RELOCATION OF TEAM

From and after the Commencement Date and until the expiration of the Term (or earlier termination of this Agreement), and subject to the terms and conditions of this Agreement and except as otherwise expressly set forth in this Agreement, the Red Wings shall play all its regular season home games and post-season home games for each NHL Season at the Events Center, provided that, if the Commencement Date occurs after the first NHL Game of the Red Wings to occur after the NHL all-star game in the then on-going NHL Season, then the Red Wings shall not be required to play its regular season and post-season home games at the Events Center until the start of the next following NHL Season.

Concessionaire and the Red Wings acknowledge that the DDA will be irreparably harmed by the relocation of the Team to a location other than the Events Center Project during the Term of this Agreement. Accordingly, Concessionaire and the Red Wings each agrees that:

(a) The DDA does not have an adequate remedy at law for breach of this Article 15;

(b) Except (i) during any period during which the Events Center is unfit for playing a NHL Game, (ii) during any temporary taking, (ii) prior to the Commencement Date, or (iv) except as permitted under the provisions of Articles 11.1, 15 or 16, the Red Wings shall not play any regular or post-season NHL Game scheduled to be played by the Red Wings at home at any time during the Term anywhere other than in the Events Center;

(c) The Red Wings shall not enter into any contract or agreement of any kind to transfer the Red Wings' franchise which is effective during the Term if such transfer would result in the Red Wings relocating to a location other than the Events Center Property without the prior written consent of the DDA, which consent shall be subject to the DDA's sole and exclusive discretion;

(d) The Red Wings shall not make a formal application to the NHL for approval to transfer the Red Wings' franchise which is effective during the Term to a location other than the Events Center Property without the prior written consent of the DDA, which consent shall be subject to the DDA's sole and exclusive discretion; and

(e) Concessionaire and the Red Wings grant the DDA a right of specific performance to enforce the agreements of Concessionaire and the Red Wings under this Article 15.

ARTICLE 16

FITNESS FOR CONCESSIONAIRE'S USE

16.1 Alternate Site. If the Events Center Project is rendered unfit in whole or in any material part (as that term is defined in Article 18.1) for use by Concessionaire, then for the period of such unfitness, Concessionaire shall be entitled to make arrangements for an alternate site for Hockey Events and Concessionaire Non-Hockey Events. Notwithstanding any provision herein to the contrary, any such period of unfitness shall not give Concessionaire any right to terminate this Agreement, unless the Events Center Project is rendered unfit in whole or in any material part within the last five years of the Term.

16.2 Continuing Obligations. Except as provided in Section 16.1, any period of unfitness shall not relieve Concessionaire of any of its necessary Events Center Management obligations hereunder; in addition, Concessionaire and the DDA shall continue to make such payments and contributions as would have been made if the Events Center Project continued to be fit for Concessionaire's Use in accordance with the terms and conditions of this Agreement.

ARTICLE 17

ASSIGNMENT

17.1 Rights of Assignment by Concessionaire.

(a) Concessionaire shall have the right to assign, without the consent of the DDA, any of Concessionaire's rights and/or obligations hereunder to an Affiliate, following notice to the DDA that contains suitable evidence that the assignee is an Affiliate and delivery to the DDA of an executed copy of the applicable assignment agreement. Provided that the Approved Assurances remain in effect upon giving effect to any such assignment, upon the

effective date of any such assignment Concessionaire shall be relieved of its obligations under this Agreement.

(b) In addition, Concessionaire shall have the right to assign any of its rights and/or obligations hereunder to any assignee who is not an Affiliate, subject to the prior consent of the DDA, which consent (i) shall not be unreasonably withheld, delayed or conditioned and (ii) may be conditioned upon the following conditions: (1) at the time of assignment, the assignee (together with, if applicable, its parent) shall have demonstrable assets reasonably sufficient to satisfy the obligations of the Concessionaire under this Agreement, (2) not less than thirty (30) days prior to the proposed assignment, the DDA shall have received true and complete financial statements of the assignee (and if applicable, its parent) evidencing such assets and (3) the DDA shall have received an executed copy of the applicable assignment agreement. Subject to satisfaction of the conditions set forth in this paragraph, upon the effective date of any such assignment Concessionaire shall be relieved of its obligations under this Agreement.

(c) Notwithstanding Articles 17.1(a) and (b), it is agreed that the DDA will consent in writing to an assignment of this Agreement to any person, firm, corporation or entity which acquires the Red Wings' franchise in accordance with applicable NHL rules and regulations and subject to the prior compliance with all the provisions of this Agreement, provided that (i) Concessionaire or the Red Wings shall provide the DDA with at least thirty (30) days prior written notice of such assignment, (ii) such assignee assumes unconditionally in writing in advance all of Concessionaire's past, present and future obligations hereunder and agrees to be bound hereby, (iii) such assignee shall have demonstrable assets reasonably sufficient to satisfy the obligations of Concessionaire under this Agreement, and (iv) not less than thirty (30) days prior to the proposed assignment, the DDA shall have received true and

complete financial statements of the assignee evidencing such assets. Upon the effective date of any assignment of this Agreement pursuant to this Article 17.1(c), provided the DDA has received from the assignee the written assumption of obligations referred to in the previous sentence in form and substance satisfactory to the DDA, any assignee pursuant to Article 17.1(c) of rights under this Agreement shall continue to hold such rights subject to the terms of the assignment and Concessionaire, the Red Wings and their respective affiliates shall have no further liability hereunder.

(d) Subject to the DDA's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned), Concessionaire may encumber, collaterally assign (in whole or in part) or otherwise grant a security interest in some or all of its rights and interests under this Agreement.

17.2 Rights of Assignment by the DDA. Following Full Debt Repayment, the DDA shall be permitted, upon not less than sixty (60) days' prior written notice to Concessionaire, to transfer ownership of the Events Center Property and the improvements located thereon to another public entity, including, without limitation, the City, provided that the assignee shall assume in writing, in a manner reasonably satisfactory to Concessionaire, all of the DDA's rights and obligations under this Agreement and the DDA shall remain liable for performance of all of its obligations for the period prior to such assignment.

## ARTICLE 18

### EMINENT DOMAIN

18.1 Termination for Condemnation. In the event that any material part of the Events Center Project or the Events Center Property shall, at any time during the Term, be taken by exercise of the power of eminent domain ("Condemnation"), whether by formal condemnation

proceedings or by purchase under threat of exercise of the power of eminent domain proceedings, this Agreement shall terminate on the date on which possession is required to be delivered to the condemning authority. As used herein, a “material part” shall mean (i) any loss of fan seating components whose sale during the previous regular season, whether actually sold or not, would have represented 10% or more of the total amount which would have been realized from sale of all fan seating components, (ii) loss of 10% or more of the space or equipment being used to provide food and beverage service in the Events Center, or (iii) loss of any material portion of the concourse area.

Notwithstanding the foregoing, Concessionaire may elect in its sole discretion to treat any loss, other than a total taking, as not a “material part” of the Events Center Project or the Events Center Property, and this Agreement will not terminate upon such Condemnation. Concessionaire must make any such election within thirty (30) days after an award of immediate possession of the condemned portion of the Events Center Project or the Events Center Property to the condemning authority and expiration of the time allowed for legal process, including appeals, and must provide written notice of such election to the DDA within that same thirty (30) days. If this Agreement terminates pursuant to the provisions of this Article 18.1, all rights, obligations and liabilities of the parties hereto shall end as of the effective date of such termination, without prejudice to any rights which have accrued prior to such termination.

18.2 Performance of Work. If there shall be a Condemnation and this Agreement shall not terminate as a result thereof in accordance with the provisions of Article 18.1, Concessionaire shall endeavor to perform any and all work necessary to restore the Events Center Project and the Events Center Property to a complete architectural unit suitable for Concessionaire’s use in as expeditious a manner as possible, with the costs of such restoration

being paid for using the Condemnation award proceeds, which the DDA agrees to make available to Concessionaire for restoration purposes, and with any portion of such costs of restoration in excess of the Condemnation Award Proceeds to be borne as agreed to by the DDA and Concessionaire, provided, however, that the DDA shall have no obligation to perform such restoration unless and until an agreement regarding costs is reached. All proceeds of any Condemnation award or settlement related to the Events Center Project or the Events Center Property which is received by the DDA or Concessionaire shall be used to pay for costs of restoration, including, but not limited to, the purchase of any necessary additional real property. All such work shall be performed in a manner consistent with development and construction of the Events Center Project, pursuant to Articles 4 and 5.

18.3 Temporary Taking. In the event of any temporary taking of the Events Center Project or the Events Center Property, or any portion thereof, for public use, this Agreement shall not terminate by reason thereof, and the rights and obligations of the parties shall continue in full force and effect as provided herein except that during any period of a temporary taking of the Events Center Project or the Events Center Property, or a material part thereof (as defined in Article 18.1), Concessionaire shall be entitled to make arrangements for an alternative site for Hockey Event dates and Concessionaire Non-Hockey Event dates, and Concessionaire shall be relieved of its Events Center Management responsibilities during the period of such temporary taking to the extent such management responsibilities are inconsistent with the terms of the taking. Except as provided in the immediately preceding sentence, the parties shall continue to make such payments and contributions as would have been made if the Events Center Project or Events Center Property had not suffered a temporary taking. All proceeds of any temporary taking award or settlement related to the Events Center Project or the Events Center Property

which is received by the DDA or Concessionaire shall be exclusively paid to and retained by Concessionaire and may be used by Concessionaire to cover costs or losses it incurs as a result of the temporary taking or otherwise. Concessionaire shall have right to fully participate in, appear in, defend and prosecute all temporary taking proceedings, and in no event shall the DDA consent or acquiesce to, or fail to respond to, any temporary taking without the prior written consent of Concessionaire.

Concessionaire shall be entitled to make a separate claim against the condemning body for an award of any damages sustained by it as a result of such temporary taking.

18.4 Claims. Concessionaire shall have right to fully participate in, appear in, defend and prosecute all Condemnation proceedings, and in no event shall the DDA consent or acquiesce to, or fail to respond to, any Condemnation without the prior written consent of Concessionaire.

18.5 Parking Facilities. If more than ten percent (10%) of the parking spaces located in the Events Center Property at the time of any Condemnation are taken by such Condemnation, the DDA shall either, at the option of Concessionaire, remit the proceeds to the Repair Fund or use the proceeds received as a result of the Condemnation to (a) construct parking facilities in the remaining Events Center Property, or (b) acquire on adjacent land, substantially similar parking facilities, or (c) any combination of the foregoing, and in any event only to the extent possible with such proceeds. The Concessionaire shall receive and retain all revenues generated by such additional parking facilities

18.6 Rights of Bondholders. Notwithstanding any provision to the contrary in Article 18 of this Agreement or any related documents, each of the DDA and Concessionaire agrees that any and all proceeds of any condemnation award or settlement related to any portion of the

Events Center Property shall be paid as required in the Bond Documents and subject to the terms and conditions set forth in the Bond Documents or in any applicable agreement among the Bond Trustee (or the bondholders), the DDA and Concessionaire.

ARTICLE 19

ADVERTISING AND SIGNS

19.1 Events Center Signs. Concessionaire is hereby granted, and shall have during the Term, the exclusive right to engage in, sell, manage and otherwise conduct all advertising and marketing in any medium whatsoever at and for the Events Center Project and to retain all revenue, proceeds and other income therefrom. Concessionaire shall provide the supports and power outlets for all advertising signs, an outdoor message board, and signs of purely informational nature (such as exit signs and directional signs) in the designated locations specified in the Construction Plans as part of the Events Center Project. Concessionaire and its sub-concessionaires and licensees shall have the exclusive right to: (a) sell and at its sole expense create, install and maintain advertising panels and maintain signs, electronic advertising and other advertising on scoreboards, the ice-surface boards and throughout the Events Center Project and to receive and retain all revenues therefrom; (b) sell and at its expense, create, install and maintain additional signs and other promotional materials as part of the Events Center Project for advertising Project and to receive and retain all revenues therefrom; (c) determine the size, location, form and content of such advertising; and (d) sell and at its expense, create and erect additional informational, directional, advertising and other signs as part of the Events Center Project.

19.2 Other Advertising. Concessionaire may conduct, or permit to be conducted, as part of the Events Center Project, any and all other forms of advertising, including any

advertising to be worn or carried by Concessionaire or any of its employees, sub-concessionaires' employees, personnel, promotional event advertising sponsored by Concessionaire or others, logos or other forms of advertising to be affixed to or included with cups, hats, t-shirts, and other concession items or giveaways, real time and any other signage on telecasts and broadcasts, advertising affixed to any component of the Events Center Project and any and all other forms of advertising or promotion.

19.3 Compliance with Law. All such signage, advertising and other promotional materials installed or used at the Events Center Project shall be in compliance with applicable laws and ordinances.

## ARTICLE 20

### COVENANT OF QUIET ENJOYMENT

The DDA covenants that if, and so long as, Concessionaire materially performs each and every covenant, agreement, term, provision and condition of this Agreement on the part and on behalf of Concessionaire to be kept and performed, Concessionaire shall quietly enjoy its rights under this Agreement without hindrance or interference by the DDA or by any other person lawfully claiming the same by, through, or under the DDA, subject to the covenants, agreements, terms, provisions and conditions of this Agreement.

## ARTICLE 21

### TAXES

21.1 Taxes. Concessionaire shall be responsible for paying any ad valorem real and personal property taxes and other specific taxes, if any, levied upon Concessionaire in lieu of ad valorem taxes that become payable with respect to the Events Center Property.

21.2 DDA Tax Deposits.

(a) The DDA will deposit, on or before July 31 of the year following any year that taxes are levied, into the Operation and Maintenance Fund all ad valorem taxes and other specific taxes levied in lieu of ad valorem taxes that are attributable solely to Local TIF Revenue from real property assessments which are assessed against and paid by Concessionaire, the Red Wings or the Team on, or in connection with the use of, the Events Center Property during any year or any prior year paid and captured and remitted to the DDA, which funds shall be held and disbursed for permitted uses of the Operation and Maintenance Fund. To the extent that any such funds are not remitted to the DDA by the tax collection authority, the DDA shall diligently pursue such remittance.

(b) To the extent permitted by law, the DDA will deposit, on or before July 31 of the year following any year that taxes are levied, into the Bond Escrow Fund all ad valorem taxes and other specific taxes levied in lieu of ad valorem taxes that are attributable solely to State, local school district and intermediate school district levies from real property assessments which are assessed against and paid by Concessionaire, the Red Wings or the Team on, or in connection with the use of, the Events Center Property and captured and remitted to the DDA during any year or any prior year paid, which funds shall be deemed to constitute Bond Repayment Sources and used for the purposes and in the manner described in Article 7.4, it being agreed that for any year for which DDA tax deposits under this Article 21.2(b) are deposited into the Bond Escrow Fund, such funds shall be applied to pay outstanding principal under the Bonds pursuant to the terms of the Bond Documents. To the extent that any such funds are not remitted to the DDA by the tax collection authority, the DDA shall diligently pursue such remittance.

ARTICLE 22

EVENTS CENTER BUSINESS AND WORKFORCE

PARTICIPATION AND OUTREACH PLAN

22.1 Construction Contract. The Construction Contract will incorporate provisions requiring the Construction Contractor to implement and administer business and workforce participation and outreach plan for involving Detroit-headquartered and Detroit-based businesses, and bona-fide City residents in the work to be performed and materials to be supplied in connection with the construction of the Events Center Project, which plan is set forth on Exhibit I attached hereto.

22.2 Post-Construction Inclusion Plan. It is the desire and intent of the Concessionaire and the DDA to maximize opportunities for the hiring and promotion of Detroit residents and the purchase of goods, supplies and services from business located in Detroit or owned by Detroit residents in connection with the ongoing operations of the Events Center. In furtherance of such goal, the Concessionaire agrees to use commercially reasonable efforts to recruit qualified Detroit residents to fill employment vacancies at the Events Center, provide internal or external development and training opportunities to prepare Detroit resident employees to qualify for promotional opportunities at the Events Center, and ensure that Detroit-based businesses and Detroit resident-owned businesses are given ample opportunities to bid on contract awards for goods, supplies and services at the Events Center. Such commercially reasonable efforts shall include, but not be limited to, utilizing existing training and workforce programs developed by appropriate governmental agencies, civic organizations and community agencies, without limitation, the MEDC, Michigan Works! Associates, and Detroit Employment Solutions Corporation. At the request of the DDA, but not more often than once each calendar year, the

Concessionaire will meet with the DDA to discuss its efforts and results under this Section and the possibility of developing or identifying additional resources or programs to advance the expressed goals. Notwithstanding the above commitments, this agreement does not limit Concessionaire's rights to hire as required to meet its business needs.

ARTICLE 23

COMMUNITY DEVELOPMENT AND YOUTH PROGRAMS

23.1 Community Development and Youth Programs. Following the Commencement Date, Concessionaire and/or one or more of its sub-concessionaires will engage in community development and youth programs and outreach efforts within the City of Detroit designed to introduce Detroit youth to the game of hockey and/or the sports and entertainment business or otherwise foster positive social change throughout the community. By way of example only, such programs may include school assembly programs, youth job shadowing programs, mentorship programs, ticket donation programs, or similar programs. Upon request of the DDA, not more than one (1) time per calendar year following the Commencement Date, Concessionaire shall provide to the DDA a report summarizing such programs undertaken in the previous calendar year and a description of the programs anticipated to be undertaken in the current calendar year.

ARTICLE 24

REPRESENTATIONS BY CONCESSIONAIRE AND RED WINGS

24.1 Representations by Concessionaire. Concessionaire represents and warrants as follows, from and after the date hereof until the expiration or termination of this Agreement, except with respect to representations and warranties expressly made as of a specific date:

(a) Valid Existence. Concessionaire is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Michigan. Concessionaire has full power to own its property and conduct its business as presently conducted.

(b) Power; No Limitation on Ability to Perform. The Concessionaire has the full power and authority to execute and deliver this Agreement and to carry out and perform its respective obligations under of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by Concessionaire. Neither the Concessionaire's articles of organization or operating agreement, nor any other agreement, law or other rule in any way prohibits, limits or otherwise affects the right or power of Concessionaire to enter into and perform its respective obligations under this Agreement and all transactions contemplated hereby. The Concessionaire is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Concessionaire of this Agreement or any of the transactions contemplated hereby.

(c) Valid Execution. The execution and delivery of this Agreement by Concessionaire has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Concessionaire, enforceable against Concessionaire in accordance with its terms. Concessionaire shall provide to the DDA written evidence of its authorization to execute this Agreement.

(d) Defaults. The execution, delivery and performance of this Agreement (a) does not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (i) any agreement, document or instrument to which Concessionaire is a party or by which Concessionaire's assets may be bound or affected, (ii) any law, statute, ordinance or regulation applicable to Concessionaire, or (iii) the articles of organization or operating agreement of Concessionaire, and (b) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Concessionaire, except as contemplated by this Agreement.

(e) Power of Concessionaire. Concessionaire has full corporate power and authority to execute and deliver this Agreement and to carry out the terms and provisions of this Agreement, and all transactions contemplated hereby.

(f) Compliance With Laws. Concessionaire complies and shall comply, at all times, with all laws and regulations applicable to its use of the Events Center Property in accordance with the terms of this Agreement, and shall obtain all licenses and permits necessary in connection therewith at its sole cost and expense.

24.2 Representations of Red Wings. The Red Wings represent and warrant as follows, from and after the date hereof until the expiration or termination of this Agreement, except with respect to representations and warranties expressly made as of a specific date:

(a) Valid Existence. The Red Wings is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan. The Red Wings has full power to own its property and conduct its business as presently conducted.

(b) Power; No Limitation on Ability to Perform. The Red Wings has the full power and authority to execute and deliver this Agreement and to carry out and perform its

obligations under of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by the Red Wings. Neither the Red Wings' articles of incorporation or bylaws (as applicable), nor any rule, policy, constitution, by-law or agreement of the NHL, nor any other agreement, law or other rule in any way prohibits, limits or otherwise affects the right or power of the Red Wings to enter into and perform its obligations under this Agreement and all transactions contemplated thereby. The Red Wings are not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of (except the approval(s) of the NHL), or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by the Red Wings of this Agreement or any of the transactions contemplated hereby.

(c) Valid Execution. The execution and delivery of this Agreement by the Red Wings has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the Red Wings, enforceable against the Red Wings in accordance with its terms. The Red Wings shall provide to the DDA written evidence of its authorization to execute this Agreement.

(d) Defaults. The execution, delivery and performance of this Agreement (a) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (i) any agreement, document or instrument to which the Red Wings is a party or by which the Red Wings' assets may be bound or affected, (ii) any law, statute, ordinance or regulation applicable to the Red Wings, or (iii) the articles of incorporation or bylaws of the Red

Wings, and (b) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the Red Wings, except as contemplated by this Agreement.

(e) Power of the Red Wings. The Red Wings have full corporate power and authority to execute and deliver this Agreement and to carry out the terms and provisions of this Agreement, and all transactions contemplated hereby.

(f) Team Ownership. The Red Wings owns the Team as of the date hereof.

(g) Maintenance of Good Standing in NHL. The Red Wings are the owner of the franchise, through which the Team is authorized to play hockey in the NHL, and the Red Wings (subject to the assignment provided for in Article 17) shall maintain the franchise in good standing with the NHL.

## ARTICLE 25

### REPRESENTATIONS BY DDA

The DDA represents, warrants and covenants as follows, as of the date hereof and at all times from and after the date hereof until the expiration or termination of this Agreement:

25.1 Valid Existence. The DDA is a public body corporate established pursuant to the Act.

25.2 Power: No Limitation Ability to Perform. Pursuant to the Act, the DDA, through its Board of Directors, has the power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and provisions of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by the DDA. The DDA is not bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same.

25.3 Valid Execution. The execution and delivery of this Agreement by the DDA has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the DDA, enforceable against the DDA in accordance with its terms. The DDA will provide to Concessionaire a written resolution of the DDA authorizing the execution and delivery of the Agreement.

25.4 Defaults. The execution, delivery and performance of this Agreement does not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under: (i) any agreement, document or instrument to which the DDA is a party or by which the DDA's assets may be bound or affected, or (ii) any law, statute, ordinance or regulation applicable to the DDA, and (b) does not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the DDA.

25.5 Compliance with Laws. The DDA shall comply at all times with all laws and regulations applicable to its ownership and use of the Events Center Project in accordance with the terms of this Agreement.

25.6 Additional Obligations.

(a) Following the effective date of the Plan Amendment Provisions, the DDA shall not issue or incur obligations (the "Additional Obligations") related to the use of its tax increment revenues from its Development Area No. 1 which are superior to the obligations of the DDA pursuant to this Agreement.

(b) The DDA shall not take any action, or fail to take any action, the result or failure of which would adversely affect Concessionaire under this Agreement or reduce any payment obligation of the DDA under this Agreement or under the Bond Documents, including,

but not limited to, any action or inaction which would lower the amount of payments by the DDA under Articles 6, 7, 12 and 21 if such action or failure to take such action had not occurred.

ARTICLE 26

DELAY OF PERFORMANCE

26.1 Events of Delay of Performance. Except for the obligations of the parties with regard to payment of Bond Repayment Sources, the DDA and Concessionaire may delay the performance of its obligations hereunder in the event of a failure or breach by the other party with respect to the following (except that in the case of clause (d) below the neither party may delay the performance of its obligations hereunder if any such failure was due to the failure of the said party to provide any approval or consent within the time period required under this Agreement or due to any other unwarranted action or inaction on the part of the either party or to apply for the requested action in a timely manner):

(a) Failure by the other party to perform its obligations under this Agreement on or before the date specified therein for the performance thereof;

(b) A material breach of any of the terms and conditions of this Agreement by the other party shall have occurred and be continuing;

(c) There shall be pending any legal challenge which, if determined adversely, would materially adversely affect the transactions contemplated by this Agreement; or

(d) All notices to, and declarations, filings and registrations with, and consents, authorizations, approvals and waivers from, all governmental and regulatory bodies and all third-party consents or waivers required to consummate the transactions contemplated by this Agreement shall have failed to have been made or obtained on or before the date required hereby, including, but not limited to, the issuance of any and all federal, state and local orders,

licenses and permits then available which are needed to complete the construction of the Events Center Project.

26.2 Notice of Delay; Withdrawal.

(a) Any party hereto shall be permitted to begin delaying its performance under this Agreement on the date such party provides written notice to the other parties of the occurrence of any of the events listed in Article 26.1. Any delay in performance by any party permitted by this Article shall continue only for so long as the event giving rise to the right to delay shall continue and not be cured or waived in writing by all parties hereto. Each party shall use its best efforts to promptly cure any conditions attributable to it which may give rise to the right of another party to delay the performance of its obligations.

(b) No party to this Agreement shall have the right to delay its performance or withdraw from this Agreement based upon the occurrence or failure to have occurred of any of the actions set forth in this Article if the reasons for such occurrence or failure is due to the breach of this Agreement by such party.

ARTICLE 27

CONDITIONS TO EFFECTIVENESS

27.1 Conditions to Effectiveness. The effectiveness of this Agreement is subject to the satisfaction of the following conditions:

(a) The DDA and Concessionaire, or an affiliate of Concessionaire, shall have entered into the Master Development Agreement in form and substance satisfactory to the DDA and Concessionaire.

(b) The City shall have approved and effected the Plan (which shall include, without limitation, the Plan Amendment Provisions) in form and substance satisfactory to the DDA and Concessionaire.

(c) The City and the EDC shall have authorized the transfer of the Public Property to the DDA and shall have conveyed fee simple title of the Public Property to the DDA, which conveyances shall be in form and substance satisfactory to the DDA and Concessionaire.

(d) Fee simple title to the Private Property shall have been conveyed to the DDA, which conveyances shall be in form and substance reasonably satisfactory to the DDA and Concessionaire.

(e) Concessionaire and the DDA shall have mutually approved the Minimum Requirements, as provided for in Article 4.1, which Minimum Requirements, upon being mutually approved by such parties, shall be attached to this Agreement as Exhibit D. Concessionaire shall prepare and deliver to the DDA proposed Minimum Requirements for the DDA's review in connection with this condition.

(f) The MSF shall have approved, in form and substance satisfactory to the DDA and Concessionaire, the part of the amendments to the Plan made to incorporate the Catalyst Development Project.

(g) The Bonds shall have been issued in form and substance satisfactory to the DDA and Concessionaire.

(h) The State shall have approved, in form and substance satisfactory to the DDA and Concessionaire, the DDA's use of the Catalyst Project Funds to pay Costs of the Events Center Project.

(i) Concessionaire and the DDA shall have mutually approved insurance requirements to be maintained by sub-concessionaires pursuant to their respective sub-concession agreements, which requirements, upon being mutually approved by the parties, shall be attached to this Agreement as Exhibit G. Concessionaire shall prepare and deliver to the DDA proposed sub-concessionaire insurance requirements for the DDA's review in connection with this condition.

(j) Concessionaire and the DDA shall have mutually approved the standards for Events Center operations, the standards for concession operations and the maintenance standards for concession facilities, which standards, upon being mutually approved by the parties, shall be attached to this Agreement as Exhibit F. In connection with this condition, the DDA may prepare and deliver to Concessionaire a proposed set of such standards for review by Concessionaire, or the DDA may request that Concessionaire prepare a proposed set of such standards for review by the DDA.

(k) Concessionaire and the DDA shall have mutually approved the Prohibited Uses, which Prohibited Uses, upon being mutually approved by the parties, shall be attached to this Agreement as Exhibit H. In connection with this condition, the DDA or Concessionaire may prepare and deliver to the other party proposed Prohibited Uses for review by the other party.

(l) In connection with the DDA having requested certain assurances of the ability of Concessionaire to satisfy Concessionaire's payment and performance obligations under this Agreement, (1) Concessionaire shall have submitted to the DDA a proposal for providing assurances acceptable to the DDA, (2) the DDA and Concessionaire shall have mutually approved the terms and conditions of such assurances (the "Approved Assurances") and (3)

Concessionaire shall have delivered to the DDA such agreements or other documentation as are necessary to effect the Approved Assurances.

(m) The Red Wings (and/or its affiliates) and the City shall have resolved all issues relating to the use of the Joe Louis Arena (“JLA”), including, without limitation, (i) an agreement relating to the satisfaction of all obligations under the prior lease of the JLA, including payment of any amounts owing under the prior lease, (ii) a new lease of the JLA acceptable in form and substance to both the Red Wings and the City, (iii) a new parking management agreement acceptable to all parties, (iv) an agreement that provides that, upon the vacation of the JLA by the Red Wings, the JLA will be promptly demolished, and the State will finance the demolition of the JLA upon terms and conditions mutually agreeable to the City and the State.

(n) The parties shall have reached an agreement regarding a plan for the removal or relocation of the billboard on Woodward Avenue adjacent to the Events Center Property, including the source of payment of costs associated with the removal or relocation of the billboard; such plan shall include an allocation of the revenue generated by the billboard prior to its removal or relocation.

(o) The Concessionaire will obtain, or cause the Red Wings to obtain, any approvals for the transaction as may be required by the NHL, and provide satisfactory evidence thereof to the DDA; if no approvals are required, evidence thereof shall also be provided to the DDA.

(p) The Concessionaire (or one or more of its affiliates or designees) will negotiate and enter into an agreement detailing the security plan outlined in Section 12.2 hereof.

27.2 Effect of Non-Satisfaction of Conditions. In the event that any of the conditions set forth in Article 27.1 are not satisfied (or waived in writing by the parties) by April 1, 2014, then either party to this Agreement shall have the right to terminate this Agreement upon delivery of sixty (60) days' prior written notice (a "Condition Failure Notice") to the other party, it being agreed that, (1) if all such conditions become satisfied (or waived in writing by the parties) during such sixty-day period, this Agreement shall not terminate but instead shall become effective and be in full force and effect, and (2) if all such conditions do not become satisfied (or are not waived in writing by the parties) during such sixty-day period, then this Agreement shall terminate on the date that is sixty (60) days following its receipt of the applicable Condition Failure Notice, at which time the parties are released from all obligations in this Agreement.

## ARTICLE 28

### COLLATERAL ASSIGNMENT OF EVENTS CENTER CONTRACTS

28.1 Assignment. Subject to Article 28.2 and the other provisions of this Article, Concessionaire hereby assigns to the DDA, as collateral security for the performance by Concessionaire of all of Concessionaire's obligations, agreements, duties and covenants under this Agreement, all of the rights and interests of Concessionaire under the following contracts and subcontracts:

- (a) The Construction Contract and the Architect Agreement.
- (b) Any other contracts and subcontracts which have been let or will be let for the performing or furnishing of portions of the work, labor or services or materials or supplies in connection with the Construction Contract or the Architect Agreement (said contracts and

subcontracts together with the Construction Contract and the Architect Agreement are hereinafter collectively referred to as the “Events Center Contracts”).

This collateral assignment is subject to the rights of the Bond Trustee and the holders of the Bonds as set forth in the Bond Documents.

28.2 Concessionaire’s Rights Under Events Center Contracts. So long as no Concessionaire Default is in existence, Concessionaire shall have the exclusive right to exercise any and all rights and privileges accorded it as developer under the Events Center Contracts. Upon the occurrence and during the continuance of a Concessionaire Default, the DDA is hereby expressly authorized to assume the obligations of Concessionaire under the Events Center Contracts and so notify the Construction Contractor and the Project Architect, respectively, and promptly thereafter may, but without any obligation to do so, exercise any and all rights and privileges as developer under the Events Center Contracts, including, without limitation, directing the activities of the Construction Contractor and the Project Architect under the Construction Contract and the Architect Agreement, respectively, with respect to the performance of their services in accordance with the terms and conditions of the Construction Contract and the Architect Agreement and generally, to execute and perform any other act, deed, matter or thing whatsoever that ought or needs to be done with respect to the completion of services and work provided for under the Events Center Contracts with respect to the completion of construction of the Events Center Project.

28.3 Directions to Construction Contractor and Project Architect. Concessionaire hereby irrevocably directs the Construction Contractor and the Project Architect, upon demand and notice (a “Direction Notice”) from the DDA advising of the existence of a Concessionaire Default under this Agreement, but subject to the last sentence of this paragraph, to recognize the

DDA as developer under the Events Center Contracts, including without limitation, the Construction Contractor and the Architect Agreement, respectively, and to render performance of their services and work in accordance with the terms of the Construction Contract and the Architect Agreement as may be directed by the DDA. The DDA shall deliver a copy of each Direction Notice to Concessionaire concurrent with the DDA's delivery of the same to the Construction Contractor and the Project Architect. Notwithstanding the foregoing, in the event that Concessionaire delivers, within ten (10) days following Concessionaire's receipt of the Direction Notice, to the DDA, the Construction Contractor and the Architect Agreement a written objection to the Direction Notice disputing the existence of a Concessionaire Default, then (a) the dispute shall be resolved in accordance with Article 30.16 and (b) the Construction Contractor and the Architect Agreement each shall not obey the Direction Notice unless it subsequently receives a written direction signed by the DDA and Concessionaire to obey the Direction Notice.

28.4 No Obligation For DDA to Perform Under the Events Center Contracts. The DDA shall not be obligated to perform or discharge nor does either hereby undertake to perform or discharge, any obligation, duty or liability on the part of Concessionaire under the Events Center Contracts by reason of the collateral assignment hereunder, provided, that in the event that the DDA elects to perform or discharge any obligation, duty or liability as developer under the Events Center Contracts or any of them, the DDA shall thereby be deemed to have assumed all of the obligations as developer under the Events Center Contracts assumed by the DDA from and after the date of such assumption, or any of them, provided, further, that prior to making such election, the DDA shall be entitled to confirm that Concessionaire has faithfully abided by, performed and discharged each and every obligation, contingent obligation and agreement on its

part to be performed under the Events Center Contracts and that there exists no material event of default under any Events Center Contract on the part of Concessionaire.

28.5 Warranties of Concessionaire. In connection with this collateral assignment of the Events Center Contracts, Concessionaire warrants to the DDA that there have been no prior assignments of the Events Center Contracts and that there will be no subsequent assignments of the Events Center Contracts, except to the MSF, the Bond Trustee, project lenders or bond holders in connection with financing to be provided by MSF, the project lender or bond holders for the Events Center Project, and that to the best of its knowledge: (i) the Events Center Contracts are valid and enforceable, (ii) no party to the Events Center Contracts or any one of them, is in default thereunder as of the date hereof and (iii) all covenants, conditions and agreements on the part of the parties to the Events Center Contracts have been performed as required therein, except those not due to be performed until after the date of this collateral assignment. This Article 28.5 shall not apply in the event the MSF, the Bond Trustee or any project lender or bond holder or any of their respective designees (i) exercises its rights or remedies under its security documents, or (ii) sells, assigns, transfers or otherwise disposes of its rights, title or interest in any Events Center Contract.

28.6 Acceptance of Assignment. The acceptance by the DDA of this collateral assignment of the Events Center Contracts from Concessionaire is without prejudice to or waiver or relinquishment of, or an estoppel to assert, any of the DDA's rights or remedies against Concessionaire under this Agreement or applicable law.

28.7 Concessionaire's Agreement to Perform Events Center Contracts. To protect the security of this collateral assignment, Concessionaire agrees to faithfully abide by, perform and

discharge each and every obligation, covenant and agreement on the part of Concessionaire to be performed under this Agreement and the Events Center Contracts.

28.8 Subordination of Rights. Notwithstanding anything contained in this Agreement to the contrary, the rights of the DDA as set forth under Articles 28.1, 28.2, 28.3 and 28.4 hereof are and shall remain expressly subject to the rights of the Bond Trustee and the holders of the Bonds as set forth in the Bond Documents.

## ARTICLE 29

### OBLIGATIONS AT THE END OF THE TERM

29.1 Obligations at the End of the Term. At the end of the Term, or upon termination of this Agreement, the parties shall have the following obligations (each of which shall survive the end of the Term and the termination of this Agreement):

(a) Concessionaire shall surrender the Events Center Project to the DDA in broom-clean condition. Concessionaire shall remove all decorations, trade fixtures, moveable machinery and other equipment of Concessionaire or its sub-concessionaires upon such surrender. The Concessionaire shall repair any damage to the Events Center Property resulting from the removals described in the previous sentence. In no event shall Concessionaire, the Red Wings or any of their respective affiliates have any obligation relating to any demolition of the Events Center Project or the costs thereof.

(b) Concessionaire shall surrender to the DDA all keys to or for the Events Center Project and inform the DDA of all combinations of locks and vaults, if any, in the Events Center Project.

(c) At the end of the Term, Concessionaire shall deliver to the DDA a perpetual license (the "License") to the DDA or its designee to use all architectural drawings and

constructions documents for the Events Center Project, which are owned by Concessionaire, for the repair, operation and maintenance of the Events Center, together with copies of architectural drawings and constructions documents in Concessionaire's possession, all at no cost to the DDA. Notwithstanding the foregoing, (i) in no event shall Concessionaire, the Red Wings or any of their respective affiliates have any obligation to convey any intellectual property rights or other proprietary rights other than granting the License, and (ii) nothing in this Agreement shall be construed as granting any intellectual property rights or other proprietary rights to the DDA, other than set forth in the License.

(d) Concessionaire shall (i) terminate all contracts, in effect at the end of the Term, pursuant to which Concessionaire or any Affiliate of Concessionaire performs maintenance or other services at the Events Center Project, (ii) cause to be assigned to the DDA all contracts, in effect at the end of the Term, pursuant to which any person other than Concessionaire or any Affiliate of Concessionaire performs maintenance or other services at the Events Center Project to the extent such contracts are assignable, provided that the DDA shall have the right to notify Concessionaire in writing of contracts ("Rejected Contracts") that the DDA does not desire to be assigned to it, (iii) cause to be terminated all Rejected Contracts, and (iv) cause to be assigned to the DDA all warranties, owned by Concessionaire or its Affiliates, then in effect in respect of the Events Center Project to the extent such warranties are assignable and assign other rights as set forth in Section 11.1(f) above.

29.2 Survival of Obligations. At the end of the Term, or upon termination of this Agreement, subject to the obligations of Concessionaire set forth in Article 29.1, the parties shall be relieved of any and all obligations under this Agreement, other than in respect of any obligations that expressly survive the end of the Term or termination of this Agreement.

ARTICLE 30

MISCELLANEOUS

30.1 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no promises, agreements, conditions, undertakings or warranties or representations, oral or written, express or implied, between them other than as herein set forth or as specifically referred to herein. This Agreement is intended to be an integration of all prior or contemporaneous promises or agreements, conditions or undertakings between the parties hereto, including without limitation the MOU. The DDA and Concessionaire have jointly participated in the drafting of this Agreement and any ambiguity contained in this Agreement shall not be construed against the DDA or Concessionaire solely by virtue of the fact that either the DDA or Concessionaire should be considered the drafter of this Agreement.

30.2 Attorneys' Fees. Should any party hereto be required to enforce any of the provisions of this Agreement as between itself and the other party hereto, through legal proceedings in a court of law or otherwise, the prevailing party shall be entitled to receive all of its costs and expenses of enforcement including reasonable actual attorneys' fees.

30.3 Notices. All notices, consents, approvals, demands and submissions (hereinafter collectively referred to as a "Notice") shall be in writing and shall be served as provided in this Article 30 (except as otherwise provided in this Agreement). Any notice to the DDA shall be deemed properly given via first class, registered or certified mail, postage prepaid, via nationally recognized overnight courier, or if delivered personally (or by bonded courier) to the DDA at 500 Griswold Street, Suite 2200, Detroit, Michigan 48226 (or other address designated by notice so given), to the attention of Authorized Agent..

Any notice to Concessionaire shall be deemed properly given via first class, certified or registered mail, postage prepaid, or if delivered personally (or by bonded courier) to Concessionaire at 2211 Woodward Avenue, Detroit, MI 48201, or its business offices in the Events Center (or other address designated by Notice so given), addressed to the attention of the Vice President of Olympia Development of Michigan (with a copy to the same address to the attention of the Vice President of Ilitch Holdings) of Concessionaire or to any other employee of Concessionaire whom Concessionaire has designated in a Notice to the DDA as an individual authorized to receive Notices hereunder.

Any Notice shall be deemed to have been given three days after postmarked if mailed, the next day, if sent via nationally recognized overnight carrier, and upon delivery, if personally delivered.

30.4 Force Majeure. Should any fire or other casualty, act of God, earthquake, flood, epidemic, landslide, war, riot, civil commotion, terrorism, general unavailability of certain materials, strike, slowdown, walk-out, lockout, shortages of labor or labor dispute (any of the foregoing hereinafter referred to as "Force Majeure") prevent or delay performance of this Agreement in accordance with its provisions, performance of this Agreement by either party shall be suspended or excused to the extent commensurate with such interfering occurrence, except that Concessionaire and the DDA shall still be obligated for payments pursuant to Articles 6, 7, 12 and 21.

30.5 Successor Bound. The covenants, terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the DDA and Concessionaire and their respective successors and, to the extent permitted herein, assigns. Following execution of this Agreement, either the DDA or Concessionaire shall be entitled to record a memorandum of

this Agreement, in reasonable form, for the purpose of placing notice of this Agreement on public record.

30.6 Governing Law. This Agreement is made, and shall be construed, under the laws of the State of Michigan.

30.7 Captions and Headings. The captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify amplify or add to the interpretations, construction or meaning of any provisions of this Agreement or the scope or intent thereof, nor in any way affect this Agreement.

30.8 Plural/Singular. Wherever appropriate herein, the singular includes the plural and the plural includes the singular.

30.9 Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

30.10 Further Assurances. Concessionaire and the DDA shall execute, acknowledge and deliver, after the date hereof, without additional consideration, such further assurances, instruments and documents and shall take such further actions, as Concessionaire or the DDA shall reasonably request of the other in order to fulfill the intent of this Agreement and the transactions contemplated thereby.

30.11 Amendment; Waivers; Approvals.

(a) No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties hereto with the same formality as this Agreement. The failure of Concessionaire or the DDA to insist in any one or more instances

upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by Concessionaire or the DDA of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of Concessionaire or the DDA. The payment by either party of sums due and payable hereunder, with knowledge of the breach of any covenant, agreement, term, provisions or condition herein contained, shall not be deemed a waiver of such breach.

(b) The DDA designates and authorizes any two Officers, or any one of the Officers and any one of the Authorized Agents, or any two Authorized Agents of the DDA, or any person other designated by it, to approve, and execute any written notice evidencing such approval, any matter which is subject to the approval, consent of, waiver, or discretion of the DDA under this Agreement.

30.12 Severability. If an article, section, subsection, term or provision of this Agreement of the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

30.13 No Joint Venture. Nothing in this Agreement shall be construed as creating a joint venture, partnership, or any other association between the DDA and Concessionaire. To the

extent that Concessionaire performs Events Center Management and concession activities hereunder, Concessionaire shall be an independent contractor of the DDA.

30.14 Words of Limitation. Whenever the words “including but not limited to” or “by way of example but not limitation” or any other similar prefatory words are used throughout this Agreement, such words shall be deemed to preface an example or list of examples, which examples) are set forth for informational purposed only and not for purposes of limitation.

30.15 No Third-Party Beneficiary. The parties understand and agree that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the DDA and Concessionaire, or their successors or assigns, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person or entity whatsoever on such Agreement, except as provided in Article 11.4. It is the express intention of the DDA and Concessionaire that any person or entity other than the DDA or Concessionaire, or their successors or assigns, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only, except as provided in Article 11.4.

30.16 Disputes. Any dispute, controversy or claim between the DDA and Concessionaire of any kind or nature whatsoever, arising under, in connection with or in relation to this Agreement, whether arising in contract, tort or otherwise, shall be resolved according to the process and procedures attached hereto as Exhibit J, which process and procedures were developed by the parties for purposes of this Agreement, and the parties agree to be bound thereby.

[signatures follow]

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties have executed this Concession and Management Agreement as of the date first above written.

OLYMPIA DEVELOPMENT OF MICHIGAN, L.L.C.,  
a Michigan limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF DETROIT DOWNTOWN  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

The undersigned hereby acknowledges the provisions of Articles 11, 14, 15 and 24 and agrees to be bound thereby:

DETROIT RED WINGS, INC.  
a Michigan corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**Events Center Property**

LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF DETROIT, WAYNE COUNTY, MICHIGAN AND IS DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 10, INCLUSIVE; LOTS 14 THROUGH 37, INCLUSIVE; LOTS 40 THROUGH 63, INCLUSIVE; LOTS 94 THROUGH 109, INCLUSIVE; LOTS 118 THROUGH 133, INCLUSIVE OF THE SUBDIVISION OF PART OF PART LOTS 77, 78, 79 AND PART OF LOT 76, AS RECORDED IN LIBER 43, PAGE 260 OF DEEDS, WAYNE COUNTY RECORDS.

ALSO, LOTS 5 THROUGH 28, INCLUSIVE, BLOCK 75, OF PLAT OF PARK LOTS 72 TO 76, AS RECORDED IN LIBER 53, PAGE 196, WAYNE COUNTY RECORDS.

ALSO, LOTS 1 THROUGH 24, INCLUSIVE, BLOCK 76, OF PLAT OF PARK LOTS 72 TO 76, AS RECORDED IN LIBER 53 OF DEEDS, PAGE 196, WAYNE COUNTY RECORDS.

ALSO, LOTS 1 THROUGH 5, INCLUSIVE, OF THE SUBDIVISION OF LOTS 1 THROUGH 4 OF PARK LOT 75, AS RECORDED IN LIBER 22 OF PLATS, PAGE 14, WAYNE COUNTY RECORDS.

ALSO, LOTS 25 THROUGH 27 AND PART OF LOT 28 OF E. S. SIBLEY'S SUBDIVISION, AS RECORDED IN LIBER 1, PAGE 296 AND 297 OF PLATS, WAYNE COUNTY RECORDS.

ALSO, LOTS 38 THROUGH 46, INCLUSIVE, OF DUFFIELD'S SUBDIVISION, AS RECORDED IN LIBER 49, PAGE 573 OF DEEDS, WAYNE COUNTY RECORDS.

ALSO, LOTS 47 THROUGH 54, INCLUSIVE, OF DUFFIELDS PART OF PARK LOTS 80 AND 81, AS RECORDED IN LIBER 1 PAGE 249 OF PLATS, WAYNE COUNTY RECORDS.

ALSO, A PART OF LOT 80 OF THE PLAT OF PARK LOTS, AS RECORDED IN LIBER 34 OF DEEDS, PAGE 542, WAYNE COUNTY RECORDS.

INCLUDING THE RIGHTS OF THE PUBLIC IN SPROAT STREET (50 FEET WIDE), SIBLEY STREET (50 FEET WIDE), HENRY STREET (50 FEET WIDE) AND PARK AVENUE (60 FEET WIDE) AND THE REVERSIONARY INTEREST IN ALL STREETS AND ALLEYS INCLUDED WITHIN THE FOLLOWING DESCRIBED BOUNDARY, ALL BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 OF SAID SUBDIVISION OF LOTS 1 THROUGH 4 OF PARK LOT 75, ALSO BEING THE INTERSECTION OF THE

SOUTH LINE OF TEMPLE AVENUE (50 FEET WIDE) AND THE WEST LINE OF WOODWARD AVENUE AS WIDENED (120 FEET WIDE); THENCE THE FOLLOWING TWO (2) COURSES ALONG SAID WEST LINE OF WOODWARD AVENUE (120 FEET WIDE), (1) S27°17'53"E, 1026.11 FEET TO A POINT ON THE EXTENDED RIGHT OF WAY LINE AND, (2) S27°40'27"E, 199.46 FEET TO A POINT ON THE NORTH LINE OF THE FISHER FREEWAY SERVICE DRIVE; THENCE ALONG SAID NORTH LINE S58°57'05"W, 791.27 FEET TO A POINT AT THE SOUTHWEST CORNER OF LOT 39 OF SAID DUFFIELD'S SUBDIVISION; THENCE N31°02'04"W, 170.86 FEET ALONG THE WEST LINE OF LOTS 39 AND 36 OF SAID DUFFIELD'S SUBDIVISION TO A POINT ON THE SOUTH LINE OF HENRY STREET (50 FEET WIDE); THENCE ALONG SAID SOUTH LINE N58°57'05"E, 5.10 FEET TO A POINT; THENCE N31°02'04"W, 633.92 FEET ALONG THE WEST LINE OF LOTS 133, 118, 109 AND 94, AND THEIR EXTENSION THEREOF OF SAID PLAT OF PARK LOTS 77, 78, 79 AND PART OF LOT 76 TO A POINT ON THE SOUTH LINE OF SPROAT STREET (50 FEET WIDE); THENCE N58°57'05"E, 14.95 FEET ALONG SAID SOUTH LINE TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 15 FEET OF LOT 28 OF SAID E. S. SIBLEY'S SUBDIVISION; THENCE N31°02'04"W, 246.63 FEET ALONG SAID WEST LINE TO A POINT ON THE NORTH LINE OF A 20 FEET WIDE PUBLIC ALLEY; THENCE S58°57'05"W, 14.94 FEET TO A POINT ON THE EAST LINE OF A 15 FEET WIDE PUBLIC ALLEY, SAID POINT BEING THE SOUTHWEST CORNER OF LOT 28, BLOCK 75, OF SAID SUBDIVISION OF PARK LOTS 72 TO 76; THENCE N31°02'04"W, 171.62 FEET ALONG SAID EAST LINE TO A POINT ON THE SOUTH LINE OF TEMPLE AVENUE (50 FEET WIDE), SAID POINT BEING THE NORTHWEST CORNER OF LOT 28, BLOCK 75, OF SAID SUBDIVISION OF PARK LOTS 72 TO 76; THENCE N58°57'05"E, 864.71 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING AND CONTAINING 23.10 ACRES INCLUDING ALL PUBLIC RIGHT OF WAYS AND ALLEYS WITHIN THE DESCRIBED BOUNDARY.

**EXHIBIT B****Schedule of City/EDC Owned Property to be Conveyed to the DDA**

1	48 Henry	Ward 02 Item 000585.002L	Economic Development Corporation of the City of Detroit
2	2515 Woodward	Ward 02 Item 001849	Economic Development Corporation of the City of Detroit
3	2521 Woodward	Ward 02 Item 001848	Economic Development Corporation of the City of Detroit
4	2529 Woodward	Ward 02 Item 001847	Economic Development Corporation of the City of Detroit
5	2533 Woodward	Ward 02 Item 001846	Economic Development Corporation of the City of Detroit
6	2539 Woodward	Ward 02 Item 001845	Economic Development Corporation of the City of Detroit
7	21 Sibley	Ward 02 Item 000589	Economic Development Corporation of the City of Detroit
8	29 Sibley	Ward 02 Item 000590	Economic Development Corporation of the City of Detroit
9	43 Sibley	Ward 02 Item 000591	Economic Development Corporation of the City of Detroit
10	73 Sibley	Ward 02 Item 000593	Economic Development Corporation of the City of Detroit
11	2550 Park	Ward 02 Item 000594.002L	Economic Development Corporation of the City of Detroit
12	76 Henry	Ward 02 Item 000582-4	Economic Development Corporation of the City of Detroit
13	44 Sibley	Ward 02 Item 000615	City of Detroit
14	40 Sibley	Ward 02 Item 000616	City of Detroit
15	34 Sibley	Ward 02 Item 000617	City of Detroit

16	2603 Woodward	Ward 02 Item 001844	City of Detroit
17	2631 Woodward	Ward 02 Item 001843	City of Detroit
18	2645 Woodward	Ward 02 Item 001842	City of Detroit
19	25 Sproat	Ward 02 Item 000625	City of Detroit
20	51 Sproat	Ward 02 Item 000627-9	City of Detroit
21	61 Sproat	Ward 02 Item 000630	City of Detroit
22	67 Sproat	Ward 02 Item 000631-2	City of Detroit
23	2743 Woodward	Ward 02 Item 001838-9	City of Detroit
24	2771 Woodward	Ward 02 Item 001835-7	City of Detroit
25	2720 Park	Ward 02 Item 001928	City of Detroit
26	84 Sproat	Ward 02 Item 001927	City of Detroit
27	2715 Woodward	Ward 02 Item 001840-1	City of Detroit
28	54 W. Fisher	Ward 02 Item 000543	Economic Development Corporation of the City of Detroit
29	83 Henry	Ward 02 Item 000550-1	Economic Development Corporation of the City of Detroit
30	2473 Woodward	Ward 02 Item 001851	Economic Development Corporation of the City of Detroit
31	128 Henry	Ward 02 Item 000575	City of Detroit
32	122 Henry	Ward 02 Item 000576	City of Detroit

33	106 Henry	Ward 02 Item 000579-80	City of Detroit
34	2531 Park	Ward 02 Item 001976	City of Detroit
35	129 Sibley	Ward 02 Item 000595	City of Detroit
36	135 Sibley	Ward 02 Item 000596	City of Detroit
37	2723 Park	Ward 02 Item 001967	City of Detroit
38	140 Henry	Ward 02 Item 000573	City of Detroit
39	134 Henry	Ward 02 Item 000574	City of Detroit
40	155 Sibley	Ward 02 Item 000599	City of Detroit
41	154 Sibley	Ward 02 Item 000605	City of Detroit
42	202 Sibley	Ward 02 Item 000603	City of Detroit

**EXHIBIT C****Schedule of Private Property to be Conveyed to the DDA**

	<b>Address</b>	<b>Parcel Identification Number</b>
1	2530 Park	Ward 02 Item 001926
2	2500 Park	Ward 02 Item 000581
3	34 Henry	Ward 02 Item 000587
4	42 Henry	Ward 02 Item 000586
5	28 Henry	Ward 02 Item 000588
6	2501 Woodward	Ward 02 Item 001850
7	59 Sibley	Ward 02 Item 000592
8	2540 Park	Ward 02 Item 000594.001
9	52 Henry	Ward 02 Item 000585.001
10	66 Sibley	Ward 02 Item 000609-14
11	31 Sproat	Ward 02 Item 000626
12	2734 Park	Ward 02 Item 001930
13	2728 Park	Ward 02 Item 001929
14	48 Sproat	Ward 02 Item 000640-3
15	33 Temple	Ward 02 Item 000644-5
16	2776 Park	Ward 02 Item 001931
17	63 Temple	Ward 02 Item 000646
18	84 W. Fisher	Ward 02 Item 000539
19	76. W. Fisher	Ward 02 Item 000540
20	68 W. Fisher	Ward 02 Item 000541
21	60 W. Fisher	Ward 02 Item 000542
22	48 W. Fisher	Ward 02 Item 000544
23	42 W. Fisher	Ward 02 Item 000545
24	41 Henry	Ward 02 Item 000546
25	47 Henry	Ward 02 Item 000547
26	59 Henry	Ward 02 Item 000548.001
27	67 Henry	Ward 02 Item 000548.002L
28	71 Henry	Ward 02 Item 000549
29	2457 Woodward	Ward 02 Item 001853-6
30	2465 Woodward	Ward 02 Item 001852
31	150 W. Fisher	Ward 02 Item 000535
32	138 W. Fisher	Ward 02 Item 000536
33	132 W. Fisher	Ward 02 Item 000537
34	128 W. Fisher	Ward 02 Item 000538
35	2453 Park	Ward 02 Item 001977-9
36	127 Henry	Ward 02 Item 000552.001
37	131 Henry	Ward 02 Item 000552-3
38	143 Henry	Ward 02 Item 000554
39	136 Henry	Ward 02 Item 000577
40	124 Henry	Ward 02 Item 000578
41	2571 Park	Ward 02 Item 001975
42	141 Sibley	Ward 02 Item 000597-8
43	2601/2605 Park	Ward 02 Item 001974

	<b>Address</b>	<b>Parcel Identification Number</b>
44	2607/2611 Park	Ward 02 Item 0001973
45	2617/2621 Park	Ward 02 Item 01971-2
46	2643 Park (Partial)	Ward 02 Item 00633-8
47	124 Sibley	Ward 02 Item 00608
48	140 Sibley	Ward 02 Item 00607
49	110 Sproat	Ward 02 Item 001969-70
50	2727 Park	Ward 02 Item 001968
51	2733 Park	Ward 02 Item 001964-6
52	2753 Park	Ward 02 Item 001963
53	2763 Park	Ward 02 Item 001961-2
54	131 Temple	Ward 02 Item 000647
55	145 Temple	Ward 02 Item 000648
56	124 Sproat	Ward 02 Item 000639

**EXHIBIT D**

**Minimum Requirements**

This Exhibit will be prepared and attached to this Agreement pursuant to Article 27.

**EXHIBIT E**

**DDA Proposed Schedule of Payment of Local TIF Revenue to the Events Center Project**

<b>DDA</b>		
1	6/30/2014	
2	6/30/2015	
3	6/30/2016	
4	6/30/2017	
5	6/30/2018	
6	6/30/2019	2,000,000
7	6/30/2020	2,000,000
8	6/30/2021	2,000,000
9	6/30/2022	2,000,000
10	6/30/2023	2,000,000
11	6/30/2024	2,250,000
12	6/30/2025	2,500,000
13	6/30/2026	3,250,000
14	6/30/2027	3,500,000
15	6/30/2028	3,500,000
16	6/30/2029	3,500,000
17	6/30/2030	4,000,000
18	6/30/2031	4,000,000
19	6/30/2032	2,000,000
20	6/30/2033	2,000,000
21	6/30/2034	2,000,000
22	6/30/2035	2,000,000
23	6/30/2036	2,000,000
24	6/30/2037	2,000,000
25	6/30/2038	2,000,000
26	6/30/2039	2,000,000
27	6/30/2040	2,000,000
28	6/30/2041	2,000,000
29	6/30/2042	2,000,000
30	6/30/2043	2,000,000
31	6/30/2044	2,000,000
32	6/30/2045	2,000,000
		64,500,000

**EXHIBIT F**

**Operational and Maintenance Standard Required by the DDA for the Events Center**

This Exhibit will be prepared and attached to this Agreement pursuant to Article 27.

**EXHIBIT G**

**Sub-Concessionaire Insurance Requirements**

This Exhibit will be prepared and attached to this Agreement pursuant to Article 27.

**EXHIBIT H**

**Uses of the Events Center Project Prohibited by the DDA**

This Exhibit will be prepared and attached to this Agreement pursuant to Article 27.

**EXHIBIT I**

**Events Center Business & Workforce Participation and Outreach Plan**

**[SEE ATTACHED]**

## **EVENTS CENTER CONSTRUCTION BUSINESS & WORKFORCE PARTICIPATION AND OUTREACH PLAN**

### **Equal Employment Opportunity Plan**

This Events Center Construction Business & Workforce Participation and Outreach Plan (this “Plan”) outlines measures proposed by Olympia Development of Michigan, L.L.C. (“Concessionaire”) to comply with certain obligations of Concessionaire under the Concession and Management Agreement (the “CMA”), to which this document is attached as an Exhibit, by and between Concessionaire and the City of Detroit Downtown Development Authority (“DDA”). Compliance with these measures shall be a condition of all contracts issued in connection with the construction of the Events Center. \_\_\_\_\_ (hereafter referred to as the “Construction Contractor”); and all Suppliers, of materials, labor, equipment, and any other construction services, regardless of the procurement/delivery method, or tiers of contracts entered into, whether for management, consulting, professional services, general contracting, subcontracting, or sub-subcontracting, shall hereafter collectively be referred to as “Contractor(s)” and shall comply with applicable laws, regulations and special requirements set forth in their Contract Documents, regarding equal employment opportunity and business inclusion programs, including, City of Detroit Executive Orders No. 2003-4, No. 2007-1, and relevant portions of applicable City of Detroit and Wayne County Ordinances, including, but not limited to, City of Detroit Ordinance No. 01-04, Chapter 18, Article V, Prevailing Wage and Fringe Benefits Rates Required for City Project. Concessionaire, their Construction Contractor and Heritage Development Services, LLC (hereafter referred to as the “Business & Workforce Participation Advisor” and/or “Advisor”) will ensure that minimum goals for business utilization and employment of Detroit residents (hereafter referred to as “Targeted Person(s)”) are met during performance of work on the Events Center (hereafter referred to as the “Project”) including applicable work performed under these Executive Orders and ordinances by Detroit based and/or Detroit Headquartered Businesses (hereafter referred to as “Targeted Firm(s)”) (Targeted Firm and Targeted Persons are hereafter collectively referred to as “Targeted Firms and Persons”).

### **I. Program Overview**

It is the intent of the DDA, Concessionaire, and Construction Contractor to utilize Contractors and individual workers reflective of their commitment to non-discrimination, equal employment opportunity, fairness and the goals and values of the Project. Therefore the DDA, Concessionaire, and Construction Contractor, shall notify all Contractors that no one will be discriminated against in the awarding of any contract for the Project, or subsequent projects or participation, on the basis of sex, race, color, national origin, age or disability.

The provisions of this Plan will assist Targeted Firms and Persons in pursuit of opportunities for meaningful participation in the construction of the Project and thereby, through this public-private financing and development structure, produce results in this community that would be difficult to achieve by public entities alone. The DDA, Concessionaire, and Construction Contractor’s policy will be to enforce full compliance with the goals of City Executive Order

2003-4, the requirements of City Executive Order 2007-1, and applicable City of Detroit and Wayne County Ordinances (including but not limited to City of Detroit Ordinance No. 01-04, Chapter 18, Article V, Prevailing Wage and Fringe Benefits Rates Required for City Project) through bid documents, bids and a monitoring program in the field. This Plan has been designed to promote and encourage full and open competition on the Project, comply with the budget discipline contained in the funding agreements, foster economic vitality within the Greater Metropolitan Detroit Area, and to enhance opportunities for Targeted Firms and Persons to successfully compete for Project opportunities. As a result, the DDA, Concessionaire, and Construction Contractor intend to enable such Targeted Firms and Persons to enjoy not only immediate benefits of participation on the Project, but to enhance their expertise and increase their capacity for future construction opportunities.

**II. Participation Levels**

The DDA, Concessionaire, and Construction Contractor, consistent with statutory and contractual obligations, have established the following provisions for economic participation of Targeted Firms, and employment participation of Targeted Persons on the Project (collectively the “Participation Levels”). In implementing these Participation Levels, the DDA, Concessionaire, and Construction Contractor seek to increase substantive participation of Targeted Firms and Persons, by assisting in their development and working to eliminate barriers that deny them opportunity to participate on the Project.

**A. Participation Goals and Requirements**

As a condition of receiving a contract for Construction Services on the Project, each Contractor shall agree to not discriminate against any person or business on the basis of sex, race, color, national origin, religious belief, age or disability. Further, Contractors shall agree to take positive action to ensure that Targeted Firms and Persons have the opportunity to participate on the Project. Accordingly, each Contractor commits to achieve at least the following percentages as described below for participation by Targeted Firms and Persons consistent with City of Detroit Executive Orders No. 2003-4, No. 2007-1 and the following categories of Participation Levels:

<u>Targeted Firms</u>	<u>Utilization of Targeted Persons</u>
Detroit Based, Detroit Headquartered Businesses <b>30%</b>	Detroit Residents <b>51%</b>

**B. EEO Participation**

The Construction Contractor commits that it will meet statutory EEO hiring obligations identified within **Executive Order No. 2007-1 – Utilization of Detroit Residents on Publicly Funded Construction Projects**, during the Project. See **Attachment A. (COD-EO-REPORTING FORM)**.

### **III. Calculation of Participation Goals and Requirements.**

#### **1. Compliance Options for Targeted Firms**

The Targeted Firm's Participation Levels commitment may be obtained by:

- a.** 100% of the aggregate dollar value of the contract amount for construction services where the Contractor is a Targeted Firm;
- b.** 100% of the aggregate dollar value of a contract for construction services where a Joint Venture is the Contractor, and substantive Targeted Firm participation in such a partnership equals or exceeds 51% of the work or services to be performed under such a contract. Joint Ventures in which the Targeted Firm possesses a majority will be subject to close scrutiny. The DDA, Certifying Body, Concessionaire, Construction Contractor and Business & Workforce Participation Advisor, reserve the right to challenge, deny or limit the credit to the Contractor where the Joint Venture partner of the Targeted Firm is found to not have duties, responsibilities, risks or loss, and management control over the Joint Venture that are commensurate with, or in proportion to, its Joint Venture ownership; or
- c.** To the extent the Targeted Firm's participation in a Joint Venture is 50% or less of the work or services to be performed under a contract for construction services, the percentage of the aggregate dollar value of such contract equal to the percentage performed by the Targeted Firm, as determined by the Construction Contractor and Business & Workforce Participation Advisor. The DDA, Certifying Body, Concessionaire, Construction Contractor and Business & Workforce Participation Advisor, reserve the right to challenge, deny or limit the Targeted Firm's credit to the Contractor, where the Joint Venture partner is found to not have duties, responsibilities, risks or loss, and management control over the Joint Venture that are commensurate with, or in proportion to, its Joint Venture ownership; or
- d.** A percentage of the aggregate dollar value of a contract for construction services equal to the proportionate portion of the aggregate dollar value of such contract, which is contracted to one or more Targeted Firms performing construction or professional services labor on the Project; or
- e.** 100% of the aggregate dollar value contracted for the purchase of materials to one or more Targeted Firms, which are bona fide manufacturers or warehousing distributors of such materials, to the extent they are used directly in the performance of the construction services;
- f.** 100% of the aggregate dollar value of materials, supplies, and/or services from Targeted Firms which supply and install such materials, supplies and/or services;

- g.** 100% of the aggregate dollar value of materials and supplies obtained from a Targeted Firm fabricator, who substantially alters the material before sale; or
- h.** 100% of the aggregate dollar value of materials and supplies purchased from a factory authorized and recognized Targeted Firm, wholesale distributor or retail distributor who owns, operates, or maintains a warehouse or store in which the same or similar materials or supplies required for the performance of the Project are bought, kept in stock, and are regularly sold in the usual course of business.

## **2. Compliance Options for Targeted Persons**

The Participation Levels for Targeted Persons may be met by employing qualified persons as defined by Executive Order No. 2007-1 (See Attachment B – Construction Trades). An individual shall be considered a Targeted Person if the individual was a Bona-fide Detroit Resident as of the date of hire by a Contractor subject to this Plan and remains a Bona-fide Resident during the entire term of his/her employment.

A "Bona-fide Detroit Resident" shall refer to an individual who can demonstrate permanent residency in the City of Detroit as of a date at least one hundred eighty (180) days prior to date the person seeks to be employed for this Project. Permanent residency shall be established by the address listed on (a) any two of the following: voter registration card, motor vehicle registration, Michigan state identification card or driver's license, or most recent federal, state or City of Detroit tax returns; plus (b) the most recent utility bill (or utility affidavit signed by a landlord with respect to a leased residence).

## **IV. Certification**

To guarantee compliance with this Plan, a bid will be considered “non-responsive” unless the Contractor submits proof of current certification of Targeted Firms to be used as Contractors. If the Contractor lists a Targeted Firm, with an application pending with the approved Certifying Body (i.e. City of Detroit Human Rights Department), the Contractor will be required to verify the Targeted Firm’s status by furnishing a copy of the Application for Certification with submission of their bid.

### **A. Commercially Useful Function/Independence**

The DDA, Certifying Body, Concessionaire, and Construction Contractor reserve the right to deny or limit Participation Levels credit to the Contractor where the Targeted Firm is found to be engaged in pass-through activities with others. In this regard, a Contractor may count toward its Participation Levels only expenditures to firms that perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for performance of a clearly defined and distinct

element of construction services, and is carrying out its responsibilities by actually performing a commercially useful function; the Construction Contractor, and Business & Workforce Participation Advisor, shall evaluate the amount of work contracted, reasonable and customary industry practices, and other relevant factors. The amount of Participation Levels credit shall be based upon an analysis by the Construction Contractor, and Business & Workforce Participation Advisor, of the specific duties that will be performed by the Targeted Firms. Each Targeted Firm shall be expected to actually perform, manage and supervise a substantial portion of the work contemplated for it by any contract or agreement through the use of its own employees and equipment.

Targeted Firms also must be independent businesses. A Targeted Firm will not be considered independent if one or more of the following conditions exist, and it is reasonable to conclude that the Targeted Firm is materially directed or influenced by another non-Targeted Firm by: (1) Interlocking management of 50% or more of its officers; (2) Management control of 50% or more of its finances; or (3) Sharing common employees and facilities with a non-Targeted Firm in the same or a related business.

**B. Joint Ventures**

Credit for participation of Targeted Firms as Joint Venture partners shall be based upon (see Section III. 1. (b) and (c)) an analysis of duties, responsibilities, and risk by the Targeted Firms as specified by the Joint Venture agreement. The DDA, Certifying Body, Concessionaire, Construction Contractor, and Business & Workforce Participation Advisor reserve the right to challenge, deny or limit a Targeted Firms credit to the Contractor, where the Joint Venture partner is found to not have duties, responsibilities, risks or loss, and management control over the Joint Venture that are commensurate with or in proportion to its Joint Venture ownership.

**C. Confirmation**

The inclusion of any Targeted Firm, as certified in a Contractor's Utilization Plan (the "Utilization Plan"), shall not conclusively establish the Contractor's right to full Participation Levels credit for that intended participation in the contract. The Construction Contractor, and Business & Workforce Participation Advisor, shall review bid submittals to verify proper certification of Targeted Firms. The Business & Workforce Participation Advisor also shall develop and implement additional appropriate procedures, as needed, for confirming substantive participation of Targeted Firms during performance of the Project consistent with this Plan.

For purposes of confirmation, the bidder, or Contractor shall furnish, upon request, additional information to assist in the making of Participation Levels determinations, including, but not limited to, the following:

- (1) Specific brokers' fees and/or commissions information;
- (2) Suppliers or other sources of labor, equipment, materials or services;
- (3) Specific financial, or business risks assumed by Targeted Firms;

- (4) List of employees and supervisory personnel assigned to perform the Construction Services; and
- (5) Certified payrolls of all personnel assigned to perform any Construction Services.

**V. Resources for Achieving and Maintaining Participation Levels**

**A. Certification Information**

The Construction Contractor and Business & Workforce Participation Advisor will provide information regarding certification requirements to Targeted Firms and Persons, and to potential bidders and Contractors.

**B. Information Dissemination**

The Business & Workforce Participation Advisor, with assistance from the Construction Contractor, will commit to the following:

- (1) Hold workshops for the purpose of informing Targeted Firms and Persons about this Plan, and Project contracting and employment opportunities;
- (2) Furnish information to Targeted Firms and Persons about training and educational programs intended to increase their ability to successfully compete and perform on the Project;
- (3) Give presentations at Project bid and pre-award meetings to ensure Contractor understanding of this Plan and of their compliance obligations;
- (4) Set up a notification system to inform Targeted Firms of bid dates and bid package descriptions;
- (5) Publish a quarterly newsletter to inform the public, Targeted Firms and majority firms of the Project status and opportunities; and
- (6) Selectively pursue local press, newspapers, TV and radio to get print and air time to communicate opportunities and the Project status.

**C. Communication and Outreach Center**

The Concessionaire has authorized the establishment of a Communication and Outreach Center on the Project site to provide Targeted Firms and Persons with up-to-date information regarding contracting and employment opportunities. The Business & Workforce Participation Advisor will be present at this location. The Business & Workforce Participation Advisor and City of Detroit's Human Rights Department Representative will have office space in this Center.

In the Center, the Business & Workforce Participation Advisor will maintain:

- (1) An updated database of individuals interested in being employed in the construction;
- (2) Updated list and background information on qualified Targeted Firms;
- (3) Project plans and specifications;
- (4) Applications for employment; and
- (5) Certification information.

**D. Bid Packages**

The Construction Contractor, in conjunction with the Advisor and the DDA, will perform a thorough analysis of the Greater Metropolitan Detroit Area construction community to determine scopes of work in which several bidding packages can be prepared to enhance Targeted Firms' ability to successfully bid as Contractors. The Construction Contractor also will collaborate with the Advisor and the DDA to prepare blended work scope bidding packages designed to assist Contractors in achieving Participation Levels. The Construction Contractor will also consider the development of bid packages that group together multiple trades to allow Targeted Firms, with a strong emphasis in General Trade Contracting, to participate on the Project. In these cases, a Targeted Firm's General Trade Contractor participation would be counted as 100% participation, only if they achieved participation goals and requirements at the tiered contracting level for Targeted Firms.

**E. Assistance Agencies (not all inclusive list)**

**City of Detroit  
Human Rights Department**  
1240 CAYMC  
2 Woodward Ave.  
Detroit, MI 48226  
(313) 224-4950  
(313) 224-3434 FAX

**Wayne County Commission  
Human Relations Division**  
500 Griswold, 5<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-7737

**Booker T. Washington  
Business Association**  
2885 E. Grand Blvd.  
Detroit, MI 48202  
(313) 875-4250

**Michigan Minority Business  
Development Council**  
100 River Place, Suite 300  
Detroit, MI 48207-  
(313) 873-3200  
(313) 873-4783 FAX

**Mich. Dept. of Transportation  
Office of Equal Opportunity**  
P. O. Box 30050

**National Assn. of Women  
Business Owners**  
First National Building, Suite 1166

Lansing, MI 48909  
(517) 373-2160  
(517) 373-8518 FAX

600 Woodward Avenue  
Detroit, MI 48226  
(313) 961-4748  
(313) 961-5434 FAX

**Detroit Employment Solutions Corp.**  
9301 Michigan Avenue  
Detroit, Michigan 48213;  
(313) 962-9675

**F. Bidder Strategic Planning Meeting**

In trade areas where participation from Targeted Firms is traditionally low, interested bidders are strongly encouraged to schedule a strategic planning meeting with the Construction Contractor and Business & Workforce Participation Advisor, in order to develop strategies that may maximize the utilization of Targeted Firms and Persons.

**G. Additional Initiatives**

In order to achieve the maximum Participation Levels results through this Plan, the Construction Contractor, in conjunction with the Business & Workforce Participation Advisor, will initiate the following:

- (1) Work with the local trade unions to implement and administer the apprenticeship program, and identify other areas for their constructive involvement;
- (2) Obtain a commitment from the local trade union and successful bidders to maximize the utilization of Targeted Persons with the apprenticeship program;
- (3) Work in conjunction with local trade unions to enhance recruitment activities towards Targeted Persons;
- (4) Review the breakdown of Project's budget, schedule and work scopes with bidding Contractors to develop trade packages that enable Targeted Firms to be more competitive;
- (5) Help identify and encourage non-Targeted and Targeted joint-venture relationships for the Contractors' bid list;
- (6) Hold a pre-bid conference for the bidders, Contractors, Targeted Firms and suppliers;
- (7) Identify bid packages with Contractors that can provide opportunities for structured and monitored joint venture arrangements,

mentor/protégé relationships, strategic alliances, and other capacity-building support mechanisms for Targeted Firms;

- (8) Develop a Sub-Contractor recordkeeping and reporting system for Targeted Firm utilization and workforce composition;
- (9) Develop trade-by-trade goals for the employment of Targeted Persons based on the composition of available labor force within each trade union in the Greater Metropolitan Detroit Area; and
- (10) Establish a student internship program for the Construction Contractor and successful larger contract bidders, designed to provide equal employment opportunities to students from area vocational high schools to large scale construction projects.

## **VI. Documentation for Targeted Firms Only**

If a bidder asserts an effort and fails to meet the standards set forth in this Plan for the Project, the documentation described below must be included with the bid. The documentation must be submitted on the bidder's letterhead, must declare under oath that all required efforts were made, and include the following support:

- (i) Documentation of Unavailability/Excessive Cost; and
- (ii) Documentation from one or more Assistance Agencies, contacted by the Contractor, acknowledging their inability to assist them with securing qualified Targeted Firms to meet Project commitments.

Contractor should further provide such information as the DDA, Construction Contractor and Business & Workforce Participation Advisor shall reasonably require to evaluate the Contractor's efforts to comply with this Plan. Failure to submit documentation sufficient to support the Contractor's efforts to comply with this Plan will cause the bid to be found non-responsive, and the bid may be rejected.

### **A. Unavailability/Excessive Cost (Targeted Firms Only)**

The bidder has documented the unsuccessful solicitation for either Contractors or Joint Venture partners of at least three (3) certified and qualified Targeted Firms to perform any Construction Services identified or related to the bid. Documentation must include, but may not be limited to the following:

- (1) A statement of efforts to identify and select portions of Construction Services identified in the bid solicitation for contracting to certified Targeted Firms;
- (2) A listing of all Targeted Firms contacted that include:

- (i) Names, addresses and telephone numbers of Targeted Firms solicited;
  - (ii) Date and time of contacts; and
  - (iii) Method of contact (i.e., written, telephone, fax, etc).
- (3) Copies of letters or any other evidence of mailing that substantiates outreach to Targeted Firms that include:
- (i) Project identification and location;
  - (ii) Classification of work items for which quotations were sought;
  - (iii) Date, item and location for acceptance of contractor bid proposals;
  - (iv) Summary of direct negotiations with appropriate Targeted Firms for specific portions of the Construction Services, and proof of why negotiations were unsuccessful; and
  - (v) Affirmation that best efforts have been demonstrated by choosing reasonable contracting opportunities likely to achieve Targeted Firms' goals by not imposing any limiting conditions which are not mandatory for all contractors, or denying the benefits ordinarily conferred on Targeted Firm contractors for type of Construction Services solicited.

**OR**

Contractor participation will be deemed excessively costly when the Targeted Firm's proposal exceeds the price of all other bids. In order to establish that a Targeted Firm's quote is excessively costly, the bidder must provide to the DDA, Construction Contractor and Business & Workforce Participation Advisor the following:

- (4) A statement of work identified for Targeted Firm's participation for which the bidder asserts the Targeted Firm's quotes were excessively costly:
  - (i) A listing of all potential Contractors contacted for a quotation on that statement of work; and
  - (ii) Prices quoted for the contract in question by all such potential Contractors for that statement of work.
- (5) Other documentation which demonstrates to the satisfaction of the DDA, Construction Contractor and Business & Workforce Participation Advisor

that the Targeted Firms' proposals are excessively costly. This determination will be based on factors that include, but are not limited to, the following:

- (i) The Construction Contractor's estimate for the statement of work;
- (ii) The bidder's own estimate for the statement of work;
- (iii) An average of the qualified prices quoted for the statement of work; and
- (iv) Demonstrated increase in other contract costs as a result of contracting to the Targeted Firm.

**B. Best Effort Assessment (Targeted Firms Only)**

If a Contractor asserts that it is unable to meet the Participation Levels for Targeted Firms, the DDA, Certifying Body, Construction Contractor and Business & Workforce Participation Advisor also shall assess whether the Contractor has made its best effort to reach the Participation Levels. In determining whether best effort was made, the DDA, Certifying Body, Construction Contractor and Business & Workforce Participation Advisor shall consider all of the following:

- (1) Contact Targeted Firms that reasonably could have been expected to submit a quote and that were known to the Contractor, or available on State or local government maintained lists, before the bid or proposal date, and notify them of the nature and scope of the work to be performed;
- (2) Make the construction plans, specifications and requirements available for review by prospective Targeted Firms, or provide these documents to them immediately upon publication for bids or proposals;
- (3) Break down or combine elements of work in economically feasible units to facilitate Targeted Firms participation;
- (4) Work with trade, community, or contractor organizations identified by the Human Rights Department, and those included in the bid documents, to provide assistance in recruitment of Targeted Firms;
- (5) Attend pre-bid meetings scheduled by the public owner;
- (6) Provide assistance in getting required bonding or insurance, or provide alternatives to bonding or insurance for Targeted Firms;
- (7) Negotiate in good faith with interested Targeted Firms, and do not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a

Targeted Firm, based on lack of qualifications, should have the reasons documented in writing;

- (8) Provide assistance to an otherwise qualified Targeted Firm in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assist Targeted Firms in obtaining the same unit pricing with the bidder's suppliers in order to help Targeted Firms in establishing credit;
- (9) Negotiate joint venture and partnership arrangements with Targeted Firms in order to increase opportunities for Targeted Firms participation, on the Project, when possible;
- (10) Provide quick pay agreements and policies to enable Targeted Firms and suppliers to meet cash-flow demands;
- (11) The supply of qualified Targeted Firms that have the financial capacity, technical capacity, and previous experience in the areas in which contracts were awarded;
- (12) The competing demands for the services provided by qualified Targeted Firms in areas in which contracts were awarded;
- (13) The extent to which the contractors advertised for and aggressively solicited bids from qualified Targeted Firms, and the extent to which qualified Targeted Firms submitted bids;
- (14) Whether all the elements of Unavailability or Excessive Cost are present;
- (15) Whether Assistance Agencies were contacted; and
- (16) Such other objective factors as the DDA, Certifying Body, Construction Contractor and Business & Workforce Participation Advisor deem appropriate.

## **VII. Bids Submittal Requirements**

Each bidder shall comply with the following bid submittal requirements. Failure to submit completed Schedule and/or other documents required in accordance with this Section, shall entitle the Construction Contractor to deem the bid non-responsive and, therefore, reject the bid. The following Schedules and documents identifying Participation Levels of Targeted Firms and Persons must be submitted as part of a bid to the Construction Contractor:

### **1. Utilization Plan**

- (a) Each bidder must submit with its bid a completed Utilization Plan, committing them to utilization of the Targeted Firms listed, and a commitment to employ Targeted Persons; and

- (b) The bidder must commit to expenditure of a specific dollar amount of participation by each Targeted Firm. The total dollar commitment to proposed Targeted Firms must at least equal the Targeted Firm's Participation Level. The bidders are responsible for calculating the dollar equivalent of each of the Participation Levels as a percentage of their total base bid.

## **2. Joint Venture Agreements**

- (a) If the bidders' proposal includes the participation of a Targeted Firm as a Joint Venture on any tier (either as a bidder or as contractor), the bidder must provide a copy of the Joint Venture Agreement(s), and Affidavit of Joint Venture for each of the Joint Ventures for which credit is sought. The DDA, Concessionaire, Construction Contractor and Business & Workforce Participation Advisor reserve the right to challenge, deny or limit the Targeted Firm's credit as defined in Section III. 1. b and c.

In order to demonstrate the Targeted Firm's partnership share in the ownership, control, management responsibilities, risks and profits of the Joint Venture, the proposed Joint Venture Agreement must include specific details related to:

- (a) Contributions of capital and equipment;
- (b) Responsibilities for financial obligations and liabilities;
- (c) Responsibilities for the Work and other performance obligations; and
- (d) Commitment of management, supervisory and operative personnel employed, or to be employed, and dedicated for performance of the contract.

The Joint Venture Agreement(s) must also clearly define each partner's authority to contractually obligate the Joint Venture, and each partner's authority to expend Joint Venture funds (e.g., contract and check signing authority).

## **VIII. Contractor Reporting Requirements**

### **A. Reporting Forms**

The Contractor shall prepare and submit an accurate and timely Utilization Plan in a format acceptable to the Construction Contractor. The Construction Contractor shall compile periodic Project results and report to all necessary parties. Failure to submit the required forms and reports to the Construction Contractor may result in disqualification of future bids, delay of payments, or other appropriate sanctions.

### **B. Maintenance of Participation Levels**

The Contractor will maintain the Participation Levels approved at the time of its contract execution, and as may be amended from time to time, in writing, during the Project.

**C. Change Orders**

The decision to increase or decrease a scope of work committed to Targeted Firms must be approved by the Construction Contractor and Business & Workforce Participation Advisor.

**D. Tiered Contracts**

The Contractor will submit to the Construction Contractor, and Business & Workforce Participation Advisor, copies of all executed contracts with Targeted Firms, within thirty (30) days after the Contractor receives its contract from the Construction Contractor, or before each Targeted Firm starts work on the Project, whichever comes first. The Contractor will not falsify any information related to any contract, including, but not limited to Contractor's name and/or actual work contracted to Targeted Firms.

**E. Construction Meetings**

The Contractor shall attend all construction meetings, as required, at which time this Plan will be discussed. The Contractor is responsible for conveying all relevant information regarding this Plan, and its enforcement to all of its contractors.

**F. Performance Assistance**

The Contractor will ensure that Targeted Firms that perform any portion of the Project have maximum opportunity to successfully perform, including:

- (1) Negotiating in good faith to finalize contracts consistent with this Plan, and by securing signed contracts with Targeted Firms within thirty (30) days after contract award to the Contractor, or before a Targeted Firm commences work;
- (2) Notifying Targeted Firms, in writing, of any potential problems and attempt to resolve them prior to formally requesting a replacement of a Targeted Firm;
- (3) Making payments of all monies due and owing to Targeted Firms within ten (10) days of receipt of payment from Construction Contractor;
- (4) Submitting all invoices received from Targeted Firms within thirty (30) days after receipt for Work properly performed; and
- (5) Informing the Business & Workforce Participation Advisor, in a timely manner, of any problems anticipated in attaining the Participation Levels, or affecting continued Targeted Firms' participation as agreed to under this Plan.

**IX. Replacement of Targeted Firms**

In order to comply with the Participation Levels required by this Plan, all Contractors are encouraged to make a best effort to replace Targeted Firms that are unable to perform the work with another Targeted Firm. If a replacement Targeted Firm cannot be found, the Contractor shall provide written notice to the DDA, Construction Contractor and Business & Workforce

Participation Advisor before replacing the Targeted Firm with a non-Targeted Firm. For example, if a Targeted Firm goes out of business during the Project, and another Targeted Firm cannot reasonably be substituted, and work is completed by a non-Targeted Firm or Contractor, Contractor will receive credit only for the actual participation of the Targeted Firm.

#### **X. Audit and Inspection**

The Certifying Body, DDA, Construction Contractor and Business & Workforce Participation Advisor reserve the right to audit the records and inspect the facilities of any contractors or suppliers for the purpose of verifying Plan compliance. The Contractor, and any of its contractors or suppliers, will permit access to records related to the Project upon request of the Certifying Body, DDA, Construction Contractor and/or Business & Workforce Participation Advisor. Upon three (3) days' notice, the Certifying Body, DDA, Construction Contractor and/or Business & Workforce Participation Advisor may examine any and all records relevant to the full compliance of the Plan's Participation Levels.

#### **XI. Non-Compliance Remedies (Targeted Persons Only)**

If through observations and formal audit or inspection, a Contractor is found to be in non-compliance with this Plan as it relates to the Participation Levels of Targeted Persons, the Business & Workforce Participation Advisor will notify the Construction Contractor, in writing, of the Contractor's non-compliance and the Construction Contractor shall require the Contractor to select one of the actions from items 1 to 3 listed below and require the Contractor to promptly implement the selected action. If the Contractor fails or refuses to take corrective actions or select one of the options below within thirty (30) days, the financial penalties described in item 4 below shall immediately apply and any and all other remedies available may be exercised, including but not limited to, termination of the contract, in whole or in part.

To determine the contributions or penalties (hereinafter "Non-Compliance Remedy") described in items 1 to 4 below, the Contractor shall multiply the total labor hours expended in a given month by the Targeted Persons Participation Level set forth in this Plan, subtract the actual number of hours in compliance with the Plan goals, determine the total labor costs associated with this difference, and then multiply these labor costs by the Monthly Recruitment Fee percentages listed in item 4, consistent with the City of Detroit Executive Order 2007-1. The Non-Compliance Remedy shall be assessed only for those Contractors that fail to meet the 51% Detroit Resident goal in a given month and each month that such failure continues.

- (1) Consent to voluntary monetary contributions, in lieu of monthly financial penalties imposed by item 4, **equivalent to 100% of the Non-Compliance Remedy**, to accredited apprenticeship training program(s) located in the City of Detroit, selected and approved by the DDA and recognized by the building trades and construction industry;
- (2) Consent to voluntary in-kind contributions of new materials, tools and equipment approved by the DDA to be used in the training of skilled tradesmen, in lieu of monthly financial penalties imposed by item 4, **equivalent to 75% of the Non-Compliance Remedy**, to accredited apprenticeship training program(s) located in

the City of Detroit, selected and approved by the DDA and recognized by the building trades and construction industry;

- (3) In lieu of paying monthly financial penalties imposed by item 4, consent to commitment to volunteer a minimum of in-class teaching and instructional training hours per month, per school year, for each month of non-compliance, **equivalent to 50% of the Non-Compliance Remedy**, to accredited apprenticeship training program(s) located in the City of Detroit, selected and approved by the DDA and recognized by the building trades and construction industry for each trade-discipline that Contractor failed to meet the requirements of this Plan. The in-class instructional hours must be provided by a certified/licensed professional for the trade/subject matter covered.
- (4) Pay the monthly financial penalties as described below. The monthly financial penalties shall be calculated using the percentages as follows:

<b>Detroit Resident Hours</b>	<b>Monthly Recruitment Fee</b>
a. 45% - 50%	3%
b. 40% - 44%	7%
c. 30% - 39%	10%
d. 0% - 29%	15%

Monthly recruitment fee shall be **equivalent to 100% of the Non-Compliance Remedy**, as described above.

## **XII. Definitions**

**Assistance Agencies** means the Business & Workforce Participation Advisor, the City of Detroit Human Rights Department, representatives of the Concessionaire, or such other entities or individuals retained to facilitate outreach efforts for all Targeted Firms and Persons, and compliance with the Participation Levels.

**Best Effort** means all concerted and documented measures taken to identify and utilize Targeted Firms, for the purpose of meeting Participation Levels for the Project.

**Business & Workforce Participation Advisor** or **Advisor** means Heritage Development Services, LLC, Buhl Building, Suite 1810, 535 Griswold, Detroit, MI 48226, retained by and contracted to the Concessionaire to perform monitoring and enforcement of this Plan, or such other entity approved to in writing by the DDA.

**Certification** means that if you are a Targeted Firm, you must complete the required paperwork and show proof to the **Certifying Body** that you meet the requirements for the participation classification as established by each **Certifying Body**.

**Certifying Body** means the City of Detroit Human Rights Department or its designated agent.

**City** means the **City of Detroit, Michigan**, or its authorized agent.

**Concessionaire** means Olympia Development of Michigan LLC, a Michigan limited liability company.

**Construction Contractor** means \_\_\_\_\_, retained by and Contracted to the Concessionaire to perform construction services related to the Project, in accordance with the Agreement dated \_\_\_\_\_.

**Construction Services** means providing construction labor, administrative, managerial, design, and other professional services pertaining to construction of the Project provided by Construction Contractor or its contractors, suppliers, subcontractors, or sub-subcontractors.

**Contractor** means any person or entity contracted by the Construction Contractor to perform any part of the Project. In addition, the term contractor shall apply to any other person or entity contracted at any tier to provide construction services to, or on behalf of, any other person or entity in connection with the Project.

**DDA** means the City of Detroit Downtown Development Authority, a public authority and corporate body established by the City of Detroit, pursuant to Michigan Public Act 197 of 1975, as amended, or its designated agent.

**Detroit Based Enterprise (DBE)** means a firm that has a physical and economic relationship with the City of Detroit, where the firm has paid taxes to the City of Detroit, for no less than one (1) year. In addition to paying taxes to the City, this firm must successfully meet two (2) of the following criteria: (i) Verification that an existing inventory of the product(s) the business proposed to offer the City is physically located within the City; and (ii) Verification of the business' ability to service/repair products to be sold to the City, at a site located within the City; (iii) References, licenses, or other means of verification acceptable to the City that the service(s) the applicant proffers to the City have been provided for at least one (1) year prior to the date of application as Detroit based; (iv) Verification that a majority (51%) of the full time employees, chief officers, and managers of the business regularly work and conduct business in the City; (v) Verification that a majority (51%) of the employees based at the business' City location(s) shall be residents of the City, as certified by City of Detroit Human Relations Department.

**EEO** means equal employment opportunity.

**Joint Ventures** mean an association that provides for the sharing of economic interest and the equal or proportionate control over management, interest in capital, and earnings.

**Participation Levels** means the percentage of participation requirement for Targeted Firms and Persons as set forth in Section II and III of this Plan.

**Supplier** means any person or entity providing goods, materials, equipment, or other consumables to the Construction Contractor, or any person or entity contracted by the Construction Contractor, including Contractors of any tier, for use or installation on the Project.

**Targeted Firms**, whether used in conjunction or disjunction with “Targeted Persons,” means Certified Detroit based, and/or Certified Detroit Headquartered Businesses.

**Targeted Persons**, whether used in conjunction or disjunction with “Targeted Firms,” means individuals that are bona-fide Detroit residents.

**Tiered Contract** means any contract, or other written agreement, between the Construction Contractor and a Contractor, pursuant to which a Contractor is to furnish labor, materials, services or equipment for work, including but not limited to all extensions or modifications to any of the foregoing.

#### **XIV. Apprentice Program**

The goal of the apprenticeship program is to create employment opportunities for Targeted Persons so that they may participate in the construction of the Events Center. Specifically, implementation of this Plan includes:

- A.** Contacting the Greater Detroit Unionized Construction Apprentice Schools:
  - (1) Reconfirm ongoing commitments from the Union leaders to encourage Detroit residents to enroll; and
  - (2) Set up meetings with the union leaders, and contractors to develop joint strategies for the utilization of Targeted Persons in the Project.
  
- B.** Identify and contact Detroit area Pre-Apprenticeship Training programs:
  - (1) Set up meetings between Construction Contractor, Union leaders and Pre-Apprenticeship programs to develop strategies for employment of students by contractors selected from those enrolled in Union apprenticeship schools;
  - (2) Preliminary List of organizations to contact regarding Pre-Apprenticeship Programs:
    - (i) Associated General Contractors of Michigan
    - (ii) Construction Association of Michigan
    - (iii) Detroit Public Schools
    - (iv) Detroit Works Partnership
    - (v) Youth Build Detroit
  - (3) Obtain listing of students currently enrolled and graduated from the Pre-Apprenticeship Programs to compile a listing of potential candidates.
  
- C.** Require Contractors to hire Detroit apprentices. Agree on the number of apprentices to be hired based on the anticipated manpower levels. This agreement should be included in the Contractor’s formal contract issued by the Construction Contractor.

- D.** Establish and maintain a list of Targeted Persons that will be forwarded to Union Apprenticeship Schools, Pre-Apprenticeship Schools and Contractors. The list would consist of both Non-Union and Union candidates seeking employment opportunities on the Project.

## **XV. Reporting**

Construction Contractor will produce reports on a monthly, bi-monthly and quarterly basis, as described below:

<b><u>Report Type</u></b>	<b><u>Description</u></b>	<b><u>Frequency</u></b>	<b><u>Distribution</u></b>
TP-001	Targeted Participation Report	Monthly	Distribution w / Monthly Report
CON-002	Contracts Report	Bi-Monthly	Certifying Body, DDA, Concessionaire, Advisor
TRD-003	Trade Labor Report EO No. 2007-1 Compliance	Bi-Monthly	Certifying Body, DDA, Concessionaire, Advisor
EO No. 2003-4	Business Compliance Report	Monthly	Certifying Body, DDA, Concessionaire, Advisor
EO No. 2007-1	Labor Compliance Report	Monthly	Certifying Body, DDA, Concessionaire, Advisor
APP-005	Apprenticeship Status Report	Quarterly	Certifying Body, DDA, Concessionaire, Advisor
Certified Payrolls	Prevailing Wage Status Report	Monthly	Certifying Body, DDA, Concessionaire, Advisor

**XVI. DDA Right to Enforce Compliance**

Notwithstanding anything to the contrary in this Plan, the DDA reserves the irrevocable right to approve, audit, deny, inspect, review, and/or request any documentation and/or information compiled, required or provided in connection with this Plan, including but not limited to, reports provided pursuant to Section XV. To ensure compliance with the Plan, failure to comply with the provisions set forth in this Plan will constitute a default under the CMA, and the DDA may exercise any and all remedies available to the DDA under the CMA.

**XVII. Business & Workforce Participation Advisor**

In the event the DDA, in its sole discretion, is not satisfied with the performance of the Business & Workforce Participation Advisor, then the DDA reserves the right to require the Concessionaire to replace the Business & Workforce Participation Advisor with another entity, approved to in writing by the DDA. In addition, if Heritage Development Services, LLC is unable to continue its services, as described in this Plan, on this Project for any reason whatsoever, Concessionaire reserves the right to appoint another suitable entity, subject to a written approval by the DDA, to assume the responsibilities of the Business & Workforce Participation Advisor.

## **EXHIBIT J**

### **Dispute Resolution**

Any dispute, controversy or claim (hereinafter “Dispute”) between the DDA and Concessionaire (collectively, the “Parties” and singularly, the “Party”) of any kind or nature whatsoever, arising under, in connection with or in relation to this Concession and Management Agreement (as amended, this “Agreement”), or any related document or agreement, or the breach, termination or validity thereof, whether arising in contract, tort or otherwise, shall be resolved according to the following procedures:

#### **Part A: Negotiation in Advance of Mediation**

1. The Parties shall attempt in good faith to resolve any Dispute promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within 5 business days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each Party’s position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within 7 business days after delivery of the notice, the executives of both Parties shall meet, without the presence of legal counsel, at a mutually acceptable time and place.
2. Unless otherwise agreed in writing by the negotiating Parties, the above-described negotiation shall end at the close of the first meeting of executives described above (“First Meeting”), at which time the Dispute may be submitted to mediation as provided below. Such closure shall not preclude continuing or later negotiations, if desired.
3. At no time prior to the First Meeting shall either side initiate mediation, arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the Parties. However, this limitation is inapplicable to a Party if the other Party refuses to comply with the requirements of Paragraph 1 of this Part A.
4. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs 1 and 2 of this Part A are pending and for 15 calendar days thereafter. The Parties will take such action, if any, required to effectuate such tolling.

#### **Part B: Mediation in Advance of Arbitration**

1. If the Dispute is not resolved by negotiation pursuant to Part A of this Exhibit, then the Dispute shall be submitted to JAMS for mediation, and if the Dispute is not resolved through mediation, then it shall be submitted to JAMS for final and binding arbitration pursuant to Paragraph 4 of this Part B.

2. Either Party may commence mediation by providing to JAMS and the other Party a written request for mediation, setting forth the subject of the Dispute and the relief requested.
3. The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties shall participate in the mediation in good faith and that they will share equally in its costs.
4. Either Party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 30 days from the date of delivering to the other Party the written request for mediation, whichever occurs first (“Earliest Initiation Date”). The mediation may continue after the commencement of arbitration if the Parties so desire.
5. Except as expressly permitted in Part C below, at no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a Party if the other Party refuses to comply with the requirements of Paragraph 3 of this Part B.
6. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The Parties will take such action, if any, required to effectuate such tolling.

Part C: Arbitration

1. In the event that any Party initiates arbitration in accordance with Part B of this Exhibit, then such Dispute (including the determination of the scope or applicability of this agreement to arbitrate) shall be determined by arbitration in the City of Detroit, Michigan before three arbitrators. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures as are in effect on the date of this Agreement (the “Rules”) and in accordance with the laws of the State of Michigan. Judgment on the arbitrators’ award determination (“Award”) may be entered in any court having jurisdiction. This paragraph shall not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
2. Within 10 days after the commencement of arbitration, each Party shall select one person to act as arbitrator (which selection shall be made by the Parties from the JAMS panel of arbitration neutrals), and the two so selected shall select a third arbitrator (which selection shall be made from the JAMS panel of arbitration neutrals) within 20 days of the commencement of the arbitration. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within the allotted time, the third arbitrator shall be appointed by JAMS (from the JAMS panel of arbitration neutrals) in accordance with its Rules. Arbitrators may be selected from the JAMS panel of neutrals from any JAMS office in the United States. All arbitrators shall serve as neutral, independent and impartial arbitrators. The third arbitrator shall serve as the Chair of the three-arbitrator panel, which Chair arbitrator, at minimum, must previously have served as Chair or sole arbitrator in at least 10 arbitrations where an award was rendered following a hearing on the merits.

3. Any arbitration arising out of or related to this Agreement shall be conducted in accordance with the expedited procedures set forth in the Rules, including Rules 16.1 and 16.2 of those Rules. Without limiting the foregoing, the arbitration hearing, if any, shall be held, if possible, no later than four months after the appointment of the third arbitrator, and the Award shall be rendered, if possible, within 30 days after the conclusion of the hearing. The Award shall be a reasoned award and shall state the legal and factual basis for the arbitrators' ruling.
4. The arbitrators shall have the authority to grant injunctive relief and compel performance of duties under this Agreement by ordering specific performance or mandatory injunction.
5. By agreeing to arbitration, the Parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies in aid of arbitration as may be available under the jurisdiction of a federal or state court, the arbitrators shall have full authority to grant provisional remedies and to award damages for the failure of any Party to respect the arbitrators' orders to that effect.
6. The Award shall be final and binding on the Parties, and shall be the sole and exclusive remedy between the parties regarding any claims, issues or accounting presented to the arbitral tribunal. In the event either Party retains legal counsel and/or incurs attorney fees, costs and expenses in connection with the negotiations and/or arbitration, the arbitrators may include in the Award, if any, to the prevailing Party, its attorney fees, costs and/or expenses, including costs of enforcement of an arbitration Award.
7. The Parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an Award or its enforcement, or unless otherwise required by law or judicial decision.
8. Notwithstanding anything to the contrary set forth in this Exhibit, in the event that a Party believes, in its faith determination, that it needs to proceed immediately to arbitration in respect of a particular Dispute and that it could suffer irreversible harm as a result of having to wait to commence arbitration until completion of the procedures described in Parts A and B of this Exhibit, such Party shall have the right to initiate arbitration with respect to such Dispute at any time that is not less than 10 days after such Party delivers a written demand for arbitration to the other Party.

Part D: General Provisions regarding Dispute Resolution

1. "JAMS" means JAMS, the Resolution Experts or its successor.
2. If JAMS will not or cannot accept engagement with respect to a particular Dispute or if JAMS ceases to exist and there is no successor thereto, then Concessionaire and the DDA shall select a substitute provider of dispute resolution services mutually acceptable to

them (“Substitute Provider”), in which case all mediation and arbitration for any Disputes thereafter arising shall be submitted to the Substitute Provider instead of to JAMS. If the Parties fail, within 7 business days after the First Meeting for such Dispute to select a substitute provider of dispute resolution services mutually acceptable to them, then any Party shall be permitted to pursue resolution of such Dispute in a manner permitted at law or in equity, including, without limitation, initiation of litigation.

3. All notices relating to any Dispute shall be given in a manner permitted in the Agreement.
4. Discovery shall be permitted in accordance with the Rules; and the Parties shall provide to each other not less than ten (10) days in advance of the commencement of the arbitration hearing (i) a list of all witnesses intended to be produced at the arbitration and (ii) copies of any documentary evidence intended to be produced at the arbitration.
5. The Parties agree that they are not entitled to and shall not request or claim punitive or exemplary damages and the arbitrators shall not have the authority to award punitive or exemplary damages or any other damages in excess of actual pecuniary damages, except to the extent of damages stipulated as liquidated damages by and between any of the Parties.
6. Unless otherwise determined by the terms of the Award, each Party shall pay all of its own arbitration expenses and an equal share of the fees and expenses of JAMS and the arbitrators.
7. All data, documents, financial reports and analyses and other information which is marked as confidential and provided to another Party in connection with the negotiation, mediation or arbitration procedures above described (the “Confidential Information”), shall be kept strictly confidential and shall not be disclosed, reported, published or used, directly or indirectly, by or through such other Party, or such Party’s agents, for any purposes whatsoever, except that this restriction shall not apply to any (i) disclosure made to such Party’s legal or tax advisor in connection with the negotiation, mediation or arbitration procedures or such Party’s tax compliance, (ii) Confidential Information which is in the public domain other than by breach of a confidentiality obligation, or (iii) disclosure otherwise required by law or legal process, provided that the Party providing such Confidential Information shall provide the other Party within forty-eight (48) hours of receipt of such legal process with notice of the receipt of such legal process and shall provide advance notice of not less than forty-eight (48) hours of its intent to make such disclosure.
8. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation or mediation by any of the Parties, their agents, employees, experts and attorneys, and by a mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or mediation.

9. To the extent that any Party (including assignees of any Party's rights or obligations under this Agreement) may be entitled, in any jurisdiction, to claim for itself or its revenues, assets or properties, sovereign immunity from service of process, from suit, from the jurisdiction of any court, from attachment prior to judgment, from attachment in aid of execution of an arbitral Award or judgment (interlocutory or final), or from any other legal process, and to the extent that, in any such jurisdiction there may be attributed such a sovereign immunity (whether claimed or not), each Party hereto hereby irrevocably agrees not to claim, and hereby irrevocably waives, such sovereign immunity.

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