

MEMORANDUM OF UNDERSTANDING

T-MOBILE CENTER CAPITAL IMPROVEMENTS

(Calendar Years 2021 and 2022)

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is entered as of the ____ day of October, 2021 (the "**Effective Date**") between the City of Kansas City, Missouri ("**City**") and AEG Kansas City Arena, LLC ("**Manager**").

Recitals.

1. City and Manager are parties to that certain Arena Management Agreement dated as of March 24, 2006 (the "**Original Agreement**"), as amended by that certain First Amendment to Arena Management Agreement dated as of March 24, 2006 (the "**First Amendment**"), that certain Second Amendment to Arena Management Agreement dated as of September 30, 2008 (the "**Second Amendment**"), that certain Third Amendment to Arena Management Agreement dated as of June 30, 2012 (the "**Third Amendment**"), that certain Fourth Amendment to Arena Management Agreement dated as of August 23, 2016 (the "**Fourth Amendment**"), and by that certain Fifth Amendment to Arena Management Agreement dated as of February 1, 2016 (the "**Fifth Amendment**"). The Original Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment is hereinafter referred to as the "**Management Agreement**".

2. Pursuant to the terms of the Management Agreement, City and Manager have agreed to a process for the approval of Arena Capital Repairs and Improvements ("**ACRI**"), and Manager has provided to City a list setting forth the Arena Capital Repairs and Improvements that Manager requests be approved by City for completion by Manager in calendar years 2021 and 2022 (the "**2021/2022 ACRI**"). The listing of the 2021/2022 ACRI is attached to this MOU as **Exhibit A**.

3. The Management Agreement provides for a process for City to approve the 2021/2022 ACRI, as well as an arbitration process for resolve any disagreements as to the items that Manager requests be made in calendar years 2021 and 2022 (as well as all other years during the Term), but City and Manager have agreed to the items to be included in the 2021/2022 ACRI.

4. Pursuant to the terms of the Management Agreement, the funding for the payment of the costs of the 2021/2022 ACRI are to be paid 65% by City and 35% by Manager.

5. In order to cause the portion of the 2021 ACRI that is listed on **Exhibit A** to be completed in calendar year 2021, Manager has proceeded with certain work to allow it to determine (a) the scope of the work to be performed, and (b) the cost of the necessary work to be performed in order to establish the costs of the 2021 portion of 2021/2022 ACRI.

6. The purpose of this MOU is to (a) set forth the agreement of the City and Manager as to the ACRI to be performed in calendar years 2021 and 2022, (b) confirm the appropriation of City to fund a portion of the costs of the ACRI to be performed in calendar year 2021, (c) state City's intent and commitment to appropriate the funds necessary to fund 65% of the costs of the ACRI to be performed in calendar years 2022, (e) state the commitment of Manager to fund 35% of the costs of the 2021/2022 ACRI (subject, however, to City's appropriation of funds sufficient to fund 65% of the costs of the 2021/2022 ACRI), and (f) agree upon any necessary true-ups of funding for each calendar year to allow Manager to advance funds so that the work may be commenced, carried out and completed in a timely and cost-effective manner.

7. City and Manager desire to enter into this MOU.

ARTICLE I – DEFINED TERMS AND EXHIBITS

1.1. Capitalized terms not otherwise defined herein shall have the same meanings as ascribed to them in the Management Agreement. Except as expressly set forth herein, the terms and provisions of the Management Agreement shall continue in full force and effect, unmodified by the provisions of this MOU. This MOU is not intended to modify or amend any of the terms and provisions of the Management Agreement.

1.2. City acknowledges that (a) Sprint Communications Company, L.P. ("**Sprint**") and Manager were parties to certain Arena Naming Rights and Sponsorship Agreement effective as of September 15, 2006 (the "**Naming Rights Agreement**"), pursuant to which Sprint acquired exclusive naming and sponsorship rights with respect to the Arena, and (b) T-Mobile USA, Inc. ("**T-Mobile**") has, by merger, succeeded to the interests of Sprint under the Naming Rights Agreement, and has exercised its rights under the Naming Rights Agreement to cause the Arena to be renamed T-Mobile Center. All references in the Management Agreement to "Sprint Center" shall, from and after the Effective Date, mean and refer to "T-Mobile Center."

ARTICLE II – APPROVAL OF 2021/2022 ACRI REQUEST

2.1. City hereby approves the 2021/2022 ACRI as set forth on **Exhibit A**, and waives any right to object to any of the 2021/2022 ACRI.

2.2. City and Manager agree that their mutual goal and objective is to complete the portion of the ACRI listed under calendar year 2021 on **Exhibit A** prior to December 31, 2021, subject to Force Majeure.

ARTICLE III – 2022 CITY APPROPRIATION

3.1. City and Manager agree that City's share of the cost of the 2021/2022 ACRI is \$4,192,451.50 (the "**City Share**"). Pursuant to Ordinance No. _____, City has appropriated the sum of \$1,390,226.50 (the "**2022 Appropriation Amount**"), to fund the City Share.

3.2. City and Manager agree that the 2022 Appropriation Amount shall be payable to Manager in accordance with the draw procedures set forth in **Exhibit G** of the Management

Agreement in the same manner as if the 2022 Appropriation Amount was being paid from the Capital Reserve Fund; provided, however, that each Requisition shall be submitted to and funded by the City and not the Trustee.

3.3. City hereby agrees to make the 2022 Appropriation Amount available for payment to Manager not later than December 31, 2021, and if and to the extent that Manager desires to, or is obligated to, fund any amounts with respect to the costs of the ACRI to be performed in calendar year 2021, Manager hereby agrees that, if City elects not to fund any such amounts prior to December 31, 2021, then Manager shall advance such amounts, and such amounts shall be subject to reimbursement by City at the times and as provided herein.

3.4. Upon the completion of the ACRI to be performed in calendar year 2021, City and Manager agree that the amounts paid by each party will be in accordance with the provisions of the Management Agreement, i.e., 65% by City and 35% by Manager, and there shall be such true-ups of payments between the parties to accomplish such objective.

ARTICLE IV – 2023 CITY APPROPRIATION

4.1. City hereby expresses its intent to appropriate, during its 2023 fiscal year, the sum of \$2,802,225.00 (the "**Planned 2023 Appropriation Amount**"), which Planned 2023 Appropriation Amount represents the balance of the City Share.

4.2. City hereby agrees that City Finance Department staff will (a) include the Planned 2023 Appropriation Amount in its proposed budget for its 2023 fiscal year for consideration by the City Council, and (b) support the inclusion of the Planned 2023 Appropriation Amount in the City's budget for its 2023 fiscal year. Nothing herein shall constitute or be deemed to be a legal commitment by the City to appropriate or otherwise commit to spend any funds, including without limitation the Planned 2023 Appropriation Amount, it being agreed and acknowledged by Manager that such a legal commitment may be made only by the approval by the City Council of the City of an ordinance appropriating the Planned 2023 Appropriation Amount. The terms of this **Article IV** do constitute an expression of intent by the City with respect to the Planned 2023 Appropriation Amount.

4.3. Upon the completion of the ACRI to be performed in calendar year 2022, City and Manager agree that the amounts paid by each party will be in accordance with the provisions of the Management Agreement, i.e., 65% by City and 35% by Manager, and there shall be such true-ups of payments between the parties to accomplish such objective.

ARTICLE V – MANAGER OBLIGATIONS

5.1. Manager hereby agrees as follows:

a. Manager shall provide and make available the sum of \$748,583.50 (the "**2021 Manager Funding Amount**"), which 2021 Manager Funding Amount represents 35% of the costs of the ACRI to be performed in calendar year 2021 as provided herein;

b. Manager shall provide and make available the sum of \$1,508,891.00 (the "**2022 Manager Funding Amount**"), which 2022 Manager Funding Amount represents 35% of the costs of the ACRI to be performed in calendar year 2022 as provided herein;

c. To the extent that City has not completed the appropriation of the Planned 2023 Appropriation Amount at the time necessary to provide the balance of such funds as required by Manager to carry out all work necessary to complete the 2021/2022 ACRI in accordance with Manager's schedule for such work, Manager shall have the right, but not the obligation, to advance such funds (the "**Manager Advance**") as shall be necessary to complete such work; and

d. Manager will carry out all work necessary to complete the 2021/2022 ACRI as set forth on **Exhibit A**. In carrying out such work, Manager will comply with all of its obligations relating to such work in accordance with the terms and provisions of the Management Agreement, including without limitation, to the extent applicable to such work, the provisions of **Section 4.19(d)**, **Section 4.19(e)** and **Section 6.5** of the Management Agreement.

5.2. All of Manager's obligations hereunder are subject to:

a. City providing the funding of the 2022 Appropriation Amount in accordance with Article III hereof; and

b. City finalizing (including the approval by ordinance of) the appropriation of the Planned 2023 Appropriation Amount for expenditure in accordance with Article IV hereof, and such appropriation remaining in full force and effect at such time as Manager seeks to draw such funding as provided herein.

5.3. If City shall fail to finalize (including the approval by ordinance of) the appropriation of the Planned 2023 Appropriation Amount for expenditure not later than June 1, 2022, then, if and to the extent that Manager has made any Manager Advance that has not been fully repaid by City, then City and Manager agree that the provisions of **Section 6.2(d)** of the Management Agreement shall be applicable, and Manager shall have the right to recover any portion of such Manager Advance that has not been fully repaid by City, together with interest thereon, as provided in said **Section 6.2(d)** of the Management Agreement. Manager shall have the right to continue to make any Manager Advance needed to fully fund the costs of the 2021/2022 ACRI at all times until such 2021/2022 ACRI has been completed, even if City has previously failed to finalize (including the approval by ordinance of) the appropriation of the Planned 2023 Appropriation Amount.

ARTICLE VI – FIVE-YEAR CAPITAL REPAIR AND IMPROVEMENT PLAN

6.1. City hereby acknowledges receipt of the five-year capital repair and improvement plan (the "**Five-Year Capital Plan**") which has been prepared by Manager and submitted in accordance with the provisions of **Section 6.3(a)** of the Management Agreement.

6.2. A copy of the Five-Year Capital Plan is attached to this MOU as **Exhibit B**.

6.3. Except as expressly set forth in this MOU, nothing herein represents any agreement by City or Manager with respect to the Five-Year Capital Plan, including without limitation:

a. The priority of any items listed in the Five-Year Capital Plan;

b. Which items, if any, set forth in the Five-Year Capital Plan, are proposed for funding as ACRI during calendar years 2023 through 2025; or

c. The completeness or incompleteness of the Five-Year Capital Plan.

6.4. City and Manager acknowledge and agree that:

a. The approval of ACRI for calendar years 2023 through 2025 shall be processed and carried out in accordance with the terms and provisions of the Management Agreement; and

b. Except as expressly set forth herein, neither City nor Manager has, pursuant to the terms and provisions of this MOU, made any commitment or agreement with respect to the funding of any ACRI, including without limitation any ACRI set forth in the Five-Year Capital Plan.

ARTICLE VII – MISCELLANEOUS

7.1. Notwithstanding anything to the contrary in this MOU, nothing herein shall be construed in a way that would limit, usurp or otherwise impair the governmental authority and police power of City or otherwise waive or modify any provision of law.

[SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, City and Manager have caused this MOU to be executed as of the Effective Date.

CITY:

CITY OF KANSAS CITY, Missouri

By: _____
Tammy Queen, Director of Finance

APPROVED AS TO FORM:

By: _____
Print: _____
Title: _____

MANAGER:

AEG KANSAS CITY ARENA, LLC

By: _____
Print Name: _____
Title: _____

EXHIBIT A
2021/2022 ACRI

<u>CY 2021</u>			
<u>Project Description</u>	<u>Components</u>	<u>Component Costs</u>	<u>Aggregate Cost</u>
Exterior LED Signage		\$1,344,486	
Point of Sale System		\$692,496	
	Gross Project Costs	\$2,036,962	
	Contingency (5%)	\$101,848	
Total Project Costs - 2021			\$2,138,810
<u>CY 2022</u>			
Building Automation System		\$1,080,100	
Interior LED Signage		\$1,070,136	
LED Scorer's Table (basketball)		\$200,000	
Building Enhancements		\$1,755,589	
	Gross Costs	\$4,105,825	
	Contingency (5%)	\$205,291	
Total Project Costs - 2022			\$4,311,116
Total 2021/2022 ACRI			\$6,449,926

EXHIBIT B

Five-Year Capital Plan

Project Type	2021	2022	2023	2024	2025
Audio / Visual	\$ 1,344,466	\$ 1,270,136	\$ 250,000	\$ 207,361	\$ 2,488,420
Electrical	\$ -	\$ 80,000	1,325,000	10,000	75,000
HVAC / Mechanical	\$ -	\$ 1,080,100	-	-	100,000
FF&E	\$ -	\$ 168,630	150,745	190,985	260,960
Food & Beverage	\$ 692,496	\$ 302,960	624,606	395,246	380,789
General Building	\$ -	\$ 800,000	779,000	2,880,000	530,000
Life Safety / Fire	\$ -	\$ -	-	-	-
Plumbing	\$ -	\$ 55,000	-	25,000	-
Security	\$ -	\$ -	54,804	63,246	135,747
Site	\$ -	\$ -	12,000	50,000	200,000
Telecommunications	\$ -	\$ -	36,000	150,000	300,000
Vehicles	\$ -	\$ -	-	13,000	43,000
Vertical Transport	\$ -	\$ -	-	-	-
Specialty Systems	\$ -	348,999	85,000	125,000	45,000
Gross Project Costs	\$ 2,036,962	\$ 4,105,825	\$ 3,317,155	\$ 4,109,838	\$ 4,558,915
5% Contingencies	\$ 101,848	\$ 205,291	\$ 165,858	\$ 205,492	\$ 227,946
Adjusted Annual Total Project Costs	\$ 2,138,810	\$ 4,311,116	\$ 3,483,012	\$ 4,315,330	\$ 4,786,861