

INTERGOVERNMENTAL AGREEMENT

This **INTERGOVERNMENTAL AGREEMENT**, dated as of December 20, 2012, among the Greenville Arena District, South Carolina (the “**District**”), a body corporate and politic and a political subdivision of the State of South Carolina (the “**State**”), Greenville County, South Carolina (the “**County**”), a body corporate and politic and a political subdivision of the State, the City of Greenville, South Carolina (the “**City**”), a body corporate and politic and a municipal corporation organized under the laws of the State, and The Bank of New York Mellon Trust Company, N.A. (the “**Escrow Agent**”), a national banking association organized and existing under the laws of the United States of America, as escrow agent and trustee with respect to the Accommodations Fee Revenue Bonds issued from time to time by the District (the “**Bonds**”).

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto hereby formally covenant, agree, and bind themselves as follows:

Section 1. Findings of Fact.

(a) The County Council of the County (the “**County Council**”), the governing body of the County, has previously enacted Ordinance No. 2594 of 1994, as amended by Ordinance No. 2842 of 1996, as amended by Ordinance No. 4276 of 2009, as amended by Ordinance No. ____ of 2012 (collectively, the “**County Ordinance**”) and the City Council of the City (the “**City Council**”), the governing body of the City, has previously enacted Ordinance Number 94-27 of 1994, as amended by Ordinance No. 96-63 of 1996, as amended by Ordinance No. 2009-33 of 2009, as amended by Ordinance No. 2012-__ of 2012 (collectively, the “**City Ordinance**”), each of which provides for the establishment, collection and distribution of an accommodations fee of 2.3% of gross receipts (collectively, the “**Accommodations Fee**”) of businesses engaged in providing accommodations for transients within the boundaries of the County (exclusive of incorporated municipalities) and within the boundaries of the City, respectively, and other matters related thereto.

(b) Pursuant to the City Ordinance and the County Ordinance, the City Council and the County Council have respectively provided that the Accommodations Fees shall be used (i) first to pay debt service on obligations issued from time to time by the District pursuant to a bond resolution (the “**Bond Resolution**”), as such Bond Resolution may be supplemented, amended or restated (or replaced by a new bond resolution in connection with the issuance of obligations) and (ii) secondly as further provided in this Agreement.

(c) The County Council and the City Council have determined that it is necessary and advantageous that the County and the City agree with the District and the Escrow Agent that the Accommodations Fees shall be made available to pay a portion of the cost of financing and refinancing the District’s sports and entertainment arena (the “**Arena**”) on behalf of the District without the need for annual appropriations.

(d) The District, the County, the City and an escrow agent have previously entered into an Intergovernmental Agreement (the “**2009 Intergovernmental Agreement**”) dated as of July 1, 2009 concerning the payment of the Accommodations Fees to the escrow agent for the purpose of making installment payments on the District’s \$14,985,000 Greenville Arena District Public Facilities Corporation, Refunding Certificate of Participation, Series 2009B (the “**Series 2009B Certificate**”). The parties to the 2009 Intergovernmental Agreement now desire to terminate that agreement and replace it with this Agreement.

Section 2. Definitions. The following words, terms, or phrases, when used in this Agreement, have the following meanings respectively, unless the context clearly indicates a different meaning.

“Accommodations Fees” means the Accommodations Fees collected by the City and the County pursuant to the City Ordinance and the County Ordinance, respectively. The term Accommodations Fees specifically excludes any accommodations fees collected by the County pursuant to Ordinance No. 2595 of 1994.

“Agreement” means this Intergovernmental Agreement and any amendments or supplements hereto.

“Arena” means the sports and entertainment arena owned by the District.

“Board” means the Board of Trustees of the District, or any successor governing body of the District.

“Bond Resolution” means the Bond Resolution adopted by the Board of the District on November 27, 2012, as amended or supplemented from time to time.

“Bonds” means the Greenville Arena District, South Carolina Accommodations Fee Revenue Bonds issued by the District payable from and secured by a pledge of and lien on the Accommodations Fees revenues, as may be outstanding from time to time.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of South Carolina or in the State of New York are required or authorized by law (including executive orders) to close.

“City” means the City of Greenville, South Carolina, a body corporate and politic and a municipal corporation of the State, its successors and assigns.

“City Council” means the City Council of the City, the governing body of the City.

“City Ordinance” means Ordinance No. 94-27 of 1994, as amended by Ordinance No. 96-63 of 1996, as amended by Ordinance No. 2009-33 of 2009, as amended by Ordinance No. 2012-__ of 2012, as enacted by the City Council.

“County” means Greenville County, South Carolina, a body corporate and politic and political subdivision of the State, its successors and assigns.

“County Council” means the County Council of the County, the governing body of the County.

“County Ordinance” means Ordinance No. 2594 of 1994, as amended by Ordinance No. 2842 of 1996, as amended by Ordinance No. 4276 of 2009, as amended by Ordinance No. ____ of 2012, as enacted by the County Council. The term County Ordinance specifically does not include Ordinance No. 2595 of 1994.

“Debt Service Fund” means the special fund created under the Bond Resolution for the purpose of holding and disbursing to the Registered Owners the Debt Service Payments paid by the District.

“Debt Service Payments” means payments payable by the District pursuant to the Bond Resolution as specifically set forth in exhibits to the supplemental resolutions that may be outstanding,

from time to time, as they may be amended or supplemental pursuant to the Bond Resolution, as well as the payment made on the closing date of the Series 2012A Bond related to the March 1, 2013 debt service payment for the Series 2009B Certificate which will be deemed to have been made on March 1, 2013 for purposes of determining the first date for calculating the distribution of money in the Excess Accommodations Fees Account.

“District” means the Greenville Arena District, South Carolina, a body corporate and politic and political subdivision of the State, its successors and assigns.

“District Representative” means (a) the person or persons at the time designated to act on behalf of the District for the purpose of performing any act under this Agreement by a written certificate furnished to the Escrow Agent containing the specimen signature of such person or persons and signed on behalf of the District by the Chairman of the Board, or (b) if any or all of the District’s rights and obligations are assigned hereunder, the person or persons at the time designated to act on behalf of the District and the assignees by the Chairman of the Board.

“Escrow Agent” means The Bank of New York Mellon Trust Company, N.A., a national banking association, acting in the capacity of escrow agent and trustee for the Registered Owners pursuant to the Bond Resolution, and any successor thereto appointed under the Bond Resolution.

“Event of Default” means one or more events of default as defined in **Section 6** of this Agreement.

“Permitted Investments” means investments permitted under State law for political subdivisions and by the District’s investment policy.

“State” means the State of South Carolina.

“Term” means the term of this Agreement.

Section 3. Representations, Warranties, and Covenants.

(a) The County represents and warrants that:

(i) it has full legal right, power, and authority to levy and collect the Accommodations Fees pursuant to the terms of the County Ordinance and apply them for the purpose of financing or refinancing a portion of the cost of the Arena and related ancillary facilities; and has full legal right, power, and authority to enter into this Agreement and carry out and consummate all other transactions contemplated by this Agreement;

(ii) it has duly authorized the execution, delivery, and performance of its obligations under this Agreement and the taking of any and all actions as may be required on the part of the County to carry out, give effect to, and consummate the transactions contemplated by this Agreement;

(iii) this Agreement constitutes a legal, valid, and binding obligation of the County, enforceable in accordance with its terms;

(iv) there is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any court, public board, or body, pending or, to the best of the knowledge of the County, threatened against the County, nor to the best of the knowledge of the County is there

any basis therefor, which in any manner questions the validity of the County Ordinance, the powers of the County referred to in paragraph 3.(a)(i) above, or the validity of any proceedings taken by the County Council in connection with this Agreement or wherein any unfavorable decision, ruling, or finding could materially adversely affect the transactions contemplated by this Agreement or which, in any way, would adversely affect the validity or enforceability of the County Ordinance or this Agreement (or of any other instrument required or contemplated for use in consummating the transactions contemplated thereby and hereby); and

(v) the execution and delivery by the County of this Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of, or default under, any material commitment, agreement, or other instrument to which the County is a party or by which it is bound, or under any provision of law, rule, regulation, ordinance, resolution, judgment, order, or decree to which the County is subject.

(b) The City represents and warrants that:

(i) it has full legal right, power, and authority to levy and collect the Accommodations Fees pursuant to the terms of the City Ordinance and apply them for the purpose of financing or refinancing a portion of the cost of the Arena and related ancillary facilities; and has full legal right, power, and authority to enter into this Agreement and carry out and consummate all other transactions contemplated by this Agreement;

(ii) it has duly authorized the execution, delivery, and performance of its obligations under this Agreement and the taking of any and all actions as may be required on the part of the City to carry out, give effect to, and consummate the transactions contemplated by this Agreement;

(iii) this Agreement constitutes a legal, valid, and binding obligation of the City, enforceable in accordance with its terms;

(iv) there is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any court, public board, or body, pending or, to the best of the knowledge of the City, threatened against the City, nor to the best of the knowledge of the City is there any basis therefor, which in any manner questions the validity of the City Ordinance, the powers of the City referred to in paragraph 3.(b)(i) above, or the validity of any proceedings taken by the City Council in connection with this Agreement or wherein any unfavorable decision, ruling, or finding could materially adversely affect the transactions contemplated by this Agreement or which, in any way, would adversely affect the validity or enforceability of the City Ordinance or this Agreement (or of any other instrument required or contemplated for use in consummating the transactions contemplated thereby and hereby); and

(v) the execution and delivery by the City of this Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of, or default under, any material commitment, agreement, or other instrument to which the City is a party or by which it is bound, or under any provision of law, rule, regulation, ordinance, resolution, judgment, order, or decree to which the City is subject.

(c) The District represents and warrants that:

(i) it has full legal right, power, and authority to apply the Accommodations Fees received from the City and County pursuant to the terms of this Agreement for the purpose of

financing or refinancing a portion of the cost of the Arena and related ancillary facilities; and has full legal right, power, and authority to enter into this Agreement and carry out and consummate all other transactions contemplated by this Agreement;

(ii) it has duly authorized the execution, delivery, and performance of its obligations under this Agreement and the taking of any and all actions as may be required on the part of the District to carry out, give effect to, and consummate the transactions contemplated by this Agreement;

(iii) this Agreement constitutes a legal, valid, and binding obligation of the District, enforceable in accordance with its terms;

(iv) there is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any court, public board, or body, pending or, to the best of the knowledge of the District, threatened against the District, nor to the best of the knowledge of the District is there any basis therefor, which in any manner questions the powers of the District referred to in paragraph 3.(c)(i) above, or the validity of any proceedings taken by the Board in connection with this Agreement or wherein any unfavorable decision, ruling, or finding could materially adversely affect the transactions contemplated by this Agreement or which, in any way, would adversely affect the validity or enforceability of this Agreement (or of any other instrument required or contemplated for use in consummating the transactions contemplated thereby and hereby); and

(v) the execution and delivery by the District of this Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of, or default under, any material commitment, agreement, or other instrument to which the District is a party or by which it is bound, or under any provision of law, rule, regulation, ordinance, resolution, judgment, order, or decree to which the District is subject.

Section 4. Accommodations Fees.

(a) Upon the terms and conditions of this Agreement, the City and the County respectively agree to pay, or cause to be paid, to the Escrow Agent pursuant to an Escrow Agreement (the “*Escrow Agreement*”) dated of even date herewith among the City, the County and the Escrow Agent, for the account of the District by the twenty-fifth day of each month or the next succeeding Business Day if the twenty-fifth day of the month is not a Business Day (each a “*Deposit Date*”), commencing December 26, 2012 (the “*Initial Deposit Date*”), during the entire Term hereof all Accommodations Fees collected pursuant to the City Ordinance and the County Ordinance, respectively. All Accommodations Fees paid to the Escrow Agent in accordance with the terms of this Agreement shall be held in an Escrow Fund (as defined in the Escrow Agreement) and applied in accordance with the provisions of this Agreement. All Accommodations Fees paid by the County or the City to the Escrow Agent shall be paid at the Escrow Agent’s principal corporate trust office.

(b) The obligations of the City and the County to make payments of Accommodations Fees under this **Section 4** shall be absolute and unconditional, and the City and the County shall make the payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever, including, without limitation, any defense, setoff, recoupment, or counterclaim which either the City or the County may have or assert against the District, the Escrow Agent, or any other person.

(c) Moneys in the Escrow Fund shall be transferred by the Escrow Agent to the Debt Service Fund, established pursuant to the Bond Resolution and maintained by the Escrow Agent, as trustee under the Bond Resolution, on the first Business Day following each Deposit Date, commencing with the first

Business Day following the Initial Deposit Date, and allocation therefrom shall be made immediately to the Interest Account of the Debt Service Fund, to the Principal Account of the Debt Service Fund, to the Reserve Fund, if any, and then to the Excess Accommodations Fees Account (as defined and established in the Bond Resolution) pursuant to the Bond Resolution and the Escrow Agreement in order to satisfy the obligation of the District to make Debt Service Payments pursuant to the Bond Resolution.

(d) Any moneys held as part of the Escrow Fund shall, at the written direction of and as specified by the District Representative, be invested and reinvested by the Escrow Agent in Permitted Investments to the extent practicable. Any investments shall be held by or under the control of the Escrow Agent and shall be deemed at all times a part of the Escrow Fund and the interest accruing thereon and any profit realized from said investments shall be credited to the Escrow Fund, and any loss resulting from the investments shall be charged to the Escrow Fund. The Escrow Agent is directed to sell and reduce to cash funds a sufficient amount of investments whenever the cash balance of the Escrow Fund is insufficient to make any necessary transfers or withdrawals from the Escrow Fund. The Escrow Agent shall value the Permitted Investments in the Escrow Fund on the same occasions and under the same terms and conditions as it shall value funds held by it under the Bond Resolution.

(e) No later than twenty days after the Debt Service Payment date which occurs before July 1 of each year, after the Debt Service Payments have been satisfied for the prior twelve-month period, the Escrow Agent shall distribute the money in the Excess Accommodations Fees Account pursuant to the following calculations based on the Debt Service Payment schedules attached hereto as *Exhibit A*:

(i) for the Bonds or portions thereof used to refund the Series 2009B Certificate, the Escrow Agent will determine on a pro rata basis (based on the relative amounts of Accommodations Fees paid by the City and the County for the prior twelve-month period ending on the month preceding the Debt Service Payment date which occurs before July 1) (1) the amount of City Accommodations Fees used to pay such annual Debt Service Payments and (2) the amount of County Accommodations Fees used to pay such annual Debt Service Payments; and

(ii) for the Bonds or portions thereof used to finance improvements related to the Arena, the Escrow Agent will allocate half of the annual Debt Service Payments (1) as being payable from City Accommodations Fees to the extent City Accommodations Fees are available and (2) half of the annual Debt Service Payments as being payable from County Accommodations Fees to the extent County Accommodations Fees are available; and

(iii) to determine the total amount of annual Debt Service Payments for all Bonds that would be allocated to City Accommodations Fees, the Escrow Agent will then add together the sums derived under 4.(e)(i)(1) and 4.(e)(ii)(1); and

(iv) to determine the total amount of annual Debt Service Payments for all Bonds that would be allocated to County Accommodations Fees, the Escrow Agent will then add together the sums derived under 4.(e)(i)(2) and 4.(e)(ii)(2); and

(v) if the sum derived under 4.(e)(iii) is greater than the amount contributed by the City for the prior 12 month period as defined under 4.(e)(i), then the County agrees to allow any County Accommodations Fees that were deposited with the Escrow Agent to make such annual Debt Service Payments; and

(vi) if the sum derived under 4.(e)(iv) is greater than the amount contributed by the County for the prior 12 month period as defined under 4.(e)(i), then the City agrees to allow any

City Accommodations Fees that were deposited with the Escrow Agent to make such annual Debt Service Payments; and

(vii) the amount of funds, if any, in the Excess Accommodations Fees Account will be distributed to the City and the County, which will be calculated by the Escrow Agent as follows:

(1) the amount payable to the City will be based on the amount of City Accommodations Fees deposited with the Escrow Agent for the prior 12 month period as defined under 4.(e)(i) less the total amount of Debt Service Payments for all Bonds calculated under 4.(e)(iii) paid from City Accommodations Fees less the amount, if any, paid from County Accommodations Fees under 4.(e)(v); if this amount is greater than zero, then such amount will be distributed to the City; and

(2) the amount payable to the County will be based on the amount of County Accommodations Fees deposited with the Escrow Agent for the prior 12 month period as defined under 4.(e)(i) less the total amount of Debt Service Payments for all Bonds calculated under 4.(e)(iv) paid from County Accommodations Fees less the amount, if any, paid from City Accommodations Fees under 4.(e)(vi); if this amount is greater than zero, then such amount will be distributed to the County; and

(viii) to the extent the Escrow Agent has to utilize County Accommodations Fees as contemplated by 4.(e)(v), then the City agrees to reimburse the County for such expenditures but solely from City Accommodations Fees that may be subsequently deposited into the Excess Accommodations Fees Account with such reimbursement occurring after the calculation provided under 4.(e)(vii); and

(ix) to the extent the Escrow Agent has to utilize City Accommodations Fees as contemplated by 4.(e)(vi), then the County agrees to reimburse the City for such expenditures but solely from County Accommodations Fees that may be subsequently deposited into the Excess Accommodations Fees Account with such reimbursement occurring after the calculation provided under 4.(e)(vii).

Section 5. Suite Licenses. In order to promote economic development in the City and the County by assisting in the recruitment and expansion of businesses and as part of the consideration for entering into this Agreement, the District hereby grants a suite license each to the City and to the County, the terms of each will be coterminous with the term of this Agreement. The terms and conditions of each suite license will be memorialized in a suite license agreement entered into between the District and the City and between the District and the County.

Section 6. Events of Default.

(a) Each of the following shall be an Event of Default:

(i) Any party hereto shall fail to observe and perform any agreement, term, or condition contained in this Agreement, and the continuation of the failure for a period of thirty (30) days after written notice thereof shall have been given to such party by any other party hereto; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected, but not within the applicable period, that failure shall not constitute an Event of Default so long as such party institutes curative action within the applicable period and diligently pursues that action to completion.

(ii) Either the County, the City, or the District shall: (a) admit in writing its inability to pay its debts generally as they become due; (b) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect; (c) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization, or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days; (d) make an assignment for the benefit of creditors; or (e) have a receiver or trustee appointed for it or for the whole or any substantial part of its property.

(iii) There shall occur an “Event of Default” pursuant to the terms of the Bond Resolution or the Bonds.

Notwithstanding the foregoing, if, by reason of Force Majeure, the defaulting party is unable to perform or observe any agreement, term, or condition hereof which would give rise to an Event of Default under paragraph (a) hereof, provided the inability to perform is other than the payment of money, that party shall not be deemed in default during the continuance of that inability. That party, however, shall promptly give notice to the other parties hereto of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided, that the settlement of strikes or other industrial disturbances shall be entirely within that party’s discretion.

Section 7. Remedies of Default. Whenever an Event of Default shall have happened to be continuing, any one or more of the following remedial steps may be taken:

(a) Any of the parties hereto may have access to, inspect, examine, and make copies of the books, records, accounts, and financial data of the defaulting party pertaining to the Arena.

(b) The non-defaulting parties hereto may seek damages or injunction or order of specific performance to collect all amounts and to enforce all obligations then due and thereafter to become due under this Agreement; provided, however, that no remedy against the District may affect the financial obligations, revenues, expenses, liabilities, or prospects of the Arena; and provided further that any remedies against the District shall be limited to Accommodations Fees received by or for the account of the District.

Section 8. Miscellaneous.

(a) This Agreement will become effective on the date of issuance of the first series of Bonds under the Bond Resolution and remain in effect until such time as all of the Bonds shall have been fully paid (or provision made for such payment) pursuant to the Bond Resolution.

(b) This Agreement replaces the 2009 Intergovernmental Agreement, and the 2009 Intergovernmental Agreement terminates on the effective date of this Agreement.

(c) All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when either (i) hand delivered, (ii) sent via overnight delivery service or (iii) deposited in the United States mail, certified mail, return receipt requested, with postage pre-paid, and addressed to the party or parties for whom intended as follows:

If to the County:

Greenville County
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attention: County Administrator

If to the City:

City of Greenville
P.O. Box 2207
Greenville, South Carolina 29602
Attention: City Manager

If to the District:

Greenville Arena District
650 North Academy Street
Greenville, South Carolina 29601
Attention: Chairman, Board of Trustees

If to the Escrow Agent:

The Bank of New York Mellon Trust Company, N.A.
10161 Centurion Parkway
Jacksonville, Florida 32256
Attention: Corporate Trust Division

A duplicate copy of each notice, certificate, request, or other communication given hereunder to the County, the City, the District, or the Escrow Agent shall also be given to the others. The County, the City, the District, and the Escrow Agent, by notice given hereunder, may designate any further or different address as to which subsequent notices, certificates, requests, or other communication shall be sent.

(d) No covenant, obligation, or agreement contained herein shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee, of the County, the City, the District, or the Escrow Agent in any other than his official capacity, and neither the members of the County Council, the City Council, the Board, nor any official executing this Agreement shall be personally liable thereon or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the County, the City, or the District contained in this Agreement.

(e) This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the District, the County, the City, the Escrow Agent, and their respective successors and assigns.

(f) This Agreement may not be effectively amended, changed, modified, altered, or terminated, except in accordance with the express provisions of this Agreement or with the written consent of all parties hereto.

(g) This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

(h) If any provision of this Agreement, or any covenant, obligation, or agreement contained herein, is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation, or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

(i) This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the District, the County, the City, and the Escrow Agent have caused this Agreement to be duly executed in their respective names, all as of the date first above written.

GREENVILLE ARENA DISTRICT

ATTEST:

By: _____
Its: Secretary, Board of Trustees

By: _____
Its: Chairman, Board of Trustees

GREENVILLE COUNTY, SOUTH CAROLINA

ATTEST:

By: _____
Its: Clerk to County Council

By: _____
Its: Chairman, Greenville County Council

By: _____
Its: County Administrator

CITY OF GREENVILLE, SOUTH CAROLINA

ATTEST:

By: _____
Its: City Clerk

By: _____
Its: City Manager

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS ESCROW AGENT

By: _____

Its: _____

EXHIBIT A
DEBT SERVICE PAYMENT SCHEDULES