

THE UNIVERSITY OF AKRON

RESOLUTION 4- -14

Development and Operation of an Arena in Downtown Akron

WHEREAS, the County of Summit, the City of Akron, the Development Finance Authority of Summit County, and The University of Akron have engaged in discussions in connection with the development and operation of an arena and related infrastructure in downtown Akron, Ohio;

NOW, THEREFORE, BE IT RESOLVED that the attached Outline for the Establishment of an Arena in Downtown Akron dated April 23, 2014, marked as Exhibit 1, be approved.

Ted A. Mallo, Secretary
Board of Trustees

April 23, 2014

Outline for Establishment of an Arena in Downtown Akron

April 23, 2014

The County of Summit, Ohio (the "County"), the City of Akron, Ohio (the "City"), the Development Finance Authority of Summit County (the "DFA"), and the University of Akron ("UA") have engaged in preliminary discussions regarding the development and operation of an arena and related infrastructure in downtown Akron. It is the parties' anticipation that the development of such arena would be a potential benefit for the entire region. Based on the DFA's initial investigation of various structures for the development of an arena (including the identification of a potential financing source to pay for the cost of constructing the arena) and the general framework provided by Ohio Revised Code Section 307.695(G), the Parties (defined below) have prepared this initial outline to embody the Parties' current conceptualization of the project and likely next steps.

Background:

- depending on the outcome of a feasibility study and further engineering, the arena will have a fixed seating capacity of approximately 8,500 seats with additional seating capacity of a minimum of 500 portable seats;
- the arena will not contain or provide infrastructure for permanent ice capabilities;
- the arena will be a community resource to host a variety of entertainment events and will be operated to maximize revenue from outside sources, but will be scheduled and operated in such a manner that the primary user will be UA to host its sporting and such other events as UA may determine in its sole discretion.

For purposes of this outline, the proposed arena and related infrastructure will be collectively referred to as, the "Arena" and the City, the County, the DFA, and UA are sometimes collectively referred to as, the "Parties". Further, for purposes of this outline, it is anticipated that construction of the Arena will commence on a date that will allow the Arena to be operational on or before a date which will be mutually agreed upon by the parties and set forth in the definitive agreements referred to below.

The Parties acknowledge and agree that this outline and the terms contained herein are preliminary, "non - binding" upon the Parties and remain subject to and contingent on the Parties' successful completion of legal and financial due diligence with respect to the project, the negotiation, subsequent approval by the Parties' respective governing boards and execution of definitive agreements concerning the matters described herein.

Cooperative Agreements:

The Parties will, subject to the approval of their respective public entities as necessary, enter into a cooperative agreement and such other agreements necessary or desirable to effect the development, design, and construction of the Arena and the ongoing operation and management of the Arena. It is anticipated that the agreements will provide for the following:

1. The City and UA, subject to and contingent upon various external approvals, including but not limited to approval of the Controlling Board, General Assembly and Governor of the State of Ohio, will assemble and contribute to the County the real property constituting the site for the Arena. The Arena will be located at the site shown on Exhibit "A" attached hereto (the "Site"). UA will cause those parcels owned by the State of Ohio to be conveyed to the County and the balance of the parcels constituting the Site will be contributed by the City. The City will use its full legal authority to commence and pursue any appropriations proceedings necessary to acquire the necessary parcels for the Site and shall commence and conduct such appropriations proceedings at its sole cost and expense.
2. All parcels constituting the Site will be conveyed to the County free and clear of all liens, restrictions, and encumbrances, unless otherwise acceptable to the County. The transfer of the parcels will occur by limited warranty deed, and said deed(s) will contain a reversionary clause to the effect that the parcels will revert to the City or UA, as applicable, should certain conditions (to be mutually agreed upon by the Parties) not be satisfied and the Arena project doesn't proceed within 24 months after the date of such transfer.
3. Each UA and the City, at their respective expense, will cause to be performed a Phase I environmental investigation and, if necessary, Phase II environmental investigation of each of the parcels of the Site. The County will not accept the donation of any parcel unless and until the parcel is free of all contamination and is otherwise buildable and acceptable to the County. Notwithstanding the foregoing, neither UA nor the City will be required to perform environmental remediation or site preparation to the extent that the cost of remediating any such contamination and site preparations exceeds \$100,000. If the cost of remediating contamination and site preparations exceeds \$100,000, then the Parties must either revise the Site to exclude the applicable property or the cost of such remediation and site preparation exceeding \$100,000 will become a project cost.
4. The City, at no expense to the other Parties, will vacate such streets, alleys, roadways, and such other public improvements within its jurisdiction located within the Site.
5. The County will own the Arena and will lease the Arena to the DFA for a term of 20 years from the completion of construction.

6. The DFA will oversee the design and construction of the Arena and coordinate the development, design, and construction of the Arena so that it is commercially suitable as a multi-event entertainment venue, specifically including for use for NCAA events.
7. The DFA will engage, with UA's consent, design and construction professionals to develop a design, schematic and construction drawings and a construction budget for the Arena, which design, drawings and budget shall be subject to the approval of the County and UA.
8. Once the construction drawings and a construction budget have been approved by both the County and UA, the DFA will take the lead in the procurement process and will seek bids and select contractors for the construction of the Arena. To the extent required under Ohio law, the DFA will follow ORC Chapter 153 requirements. The County and UA (a) will have the right to approve the selection criteria to be used in selecting the contractors; and (b) at their election will be involved in the DFA's selection of contractors, which selection shall be subject to UA's and the County's consent. The construction budget shall include a contingency fund of not less than 7.5% of the total construction budget which shall not be utilized without the prior approval of the County and UA.
9. The guaranteed maximum price construction contract is subject to the prior approval of the County and UA.
10. The DFA will engage the contractors, other construction professionals and other professionals as the parties may mutually agree. The Arena will be constructed using prevailing wages. The DFA will also serve as the prevailing wage coordinator. The DFA, or such other party as undertakes the activities described herein, at its sole cost and expense, to the extent permitted under Ohio law, will defend UA against any litigation arising out of the construction and its activities undertaken pursuant to this section, including the payment of defense costs, settlements and judgments.
11. The County, through the County's Financial Contribution (defined below) and entering into a cooperative agreement with the DFA which will allow the DFA to issue the bonds will pay for the cost of the design and construction of the Arena and the funding of an operating reserve and a capital reserve more fully described below. The project shall not be refinanced in whole or in part without prior approval of the County and UA.
12. The DFA will operate and manage the Arena but may engage a third party, subject to the approval of UA and the County, to perform such management and to further lead in the marketing and promotion of the Arena to attempt to maximize use and generate revenue sufficient to pay for operating costs, repairs, and capital improvements and replacements, subject to any reserve for each, in such amounts as the Parties may mutually agree. The parties will agree on how the Arena may

support real property tax exemption and will agree on a clear definitions that distinguish operating and maintenance expenses that include routine, recurring repairs and replacements from major repairs, capital improvements or replacements that may be appropriate for the facilities separately financed sinking fund (i.e., capital reserve).

13. The terms of any third party management agreement are subject to the prior approval of the County and UA and will contain provisions customary in a contract relating to the management of a government-owned venue such as the Arena and will address, without limitation, the compensation to be paid to the manager of the Arena, the obligations of the manager for the promotion and use of the Arena (by parties other than UA), oversight of the payment of the ongoing operating expenses, maintenance, repair and preventative care of the Arena, and the conditions for the termination of such management agreement. Because some or all of the bonds proposed to be issued may qualify as "tax-exempt obligations" under applicable provisions of the Internal Revenue Code of 1986 (the "Code") and, therefore, to the extent required to preserve the tax-exempt status of any bonds so issued, the terms of the management agreement will conform to the "management contract rules" promulgated under authority of the Code so as not to cause the interest on any such bonds to no longer be excluded from gross income under the Code. The parties will agree on procurement policies and standards which will apply to the management of the Arena.
14. The DFA will be charged with the development of an annual operating budget, subject to the approval of the County and UA, which will provide for general administrative costs, staffing costs, reserves, maintenance, repair, capital expenses, management fees paid to the DFA and any third party manager (both of which are reflected, in the aggregate as "Management Fees" in the projections contained in The Gateway Group's Proforma Operating Statement circulated on April 21, 2014), and other operating expenses.
15. The County, UA, and the DFA (and any third party manager) will agree upon a process by which ticket charges, surcharges for admissions, charges or surcharges for parking and charges for suites, seating rights, etc. will be determined, to develop an operating model that increases the marketability and use of the Arena and provides for the greatest likelihood of sustainability for the Arena.
16. The DFA will coordinate the use of the Arena by parties other than UA in a manner to maximize the use of the Arena. UA will use the Arena as its exclusive arena (excepting occasional home games played in other specialty venues) to hold and host home games for men's and potentially women's basketball and other university sports and entertainment events from time to time. The UA will be the primary user of the Arena and will have the right to approve the scheduling of other users of the Arena.
17. The Arena will be managed in a manner to optimize efficiencies and operations for the benefit of UA. Should the operation of the Arena operate at a deficit, UA will fund such shortfall and any necessary repair and maintenance of the Arena if there

are no reserves available for either, up to a maximum annual amount which shall be initially mutually agreed upon by the Parties. Should the operations of the Arena generate net revenue, after allowing for the funding of reserves or replenishing of any used reserves, in amounts as the Parties may mutually agree, UA will receive the net revenues. The manner of calculation of net revenues will be agreed upon by the parties as will the custody of and disbursements from the operating reserve and capital reserve.

18. The DFA, together with UA, will market and sell naming rights with respect to the Arena, subject to prior approval of the County, which will be used toward the cost to operate, repair, and maintain the Arena. To the extent that Ohio law may require sales of naming rights to be negotiated and approved by the County, the County will contribute all revenues received from such sales of naming rights to the project in addition to the County's Financial Contribution.
19. The DFA shall provide the County and UA with quarterly revenue and expenses statements for the Arena along with balance sheets and statements of cash flow. To the extent not included within the Auditor of State's annual audit of the DFA, County or UA, the Arena's annual financial statements shall be audited by an independent public accountant mutually agreed upon by the County, UA and the DFA.
20. To the extent permissible under Ohio law, upon repayment of the bonds issued to finance the design and construction of the Arena, the County will convey fee simple ownership of the Arena to the DFA for \$1.00. UA shall have an option to purchase the Arena for \$1.00 from the DFA, or may elect to extend the term of the agreements to provide for its use of the Arena.
21. The terms of such agreements will contain provisions customary in a contract relating to the use of a government-owned venue such as the Arena. The term of such agreements will be coterminous with any credit facility used to finance the construction of the Arena and any future re-financing of such debt, which future refinancing may only occur with the prior consent of the County and UA.

County's Financial Contribution:

Subject to the satisfaction of certain conditions, the Executive of the County will introduce legislation to the County Council that, if approved by County Council, will call for an election to be conducted on November 4, 2014, for the purpose of seeking the approval of the voters of the County to increase the County's sales and use tax by one-quarter of one percent to be used, in part, to finance the design and construction of the Arena and the funding of the County's Financial Contribution (the "Election"). UA shall have no responsibility to pay any costs incurred with the Election or participate financially in any campaign activities incident to the Election. In any event, in addition to the contingencies stated hereinabove, the development of the Arena would be conditioned upon the (a) the County Council approving legislation calling for the Election; (b) the approval by the County's voters of the matters submitted at the Election; (c) the negotiation, approval and execution of the agreements contemplated in this outline; and (d) the County determining that the increased sales tax so approved will

generate monies sufficient to fund the County's Financial Contribution.

The County's financial contribution will be \$7,000,000 per year (the "County's Financial Contribution") for twenty-three (23) years, beginning with the first year in which the sales tax increase takes effect. Subject to the limitations of Ohio law, the sales tax revenues which will fund the County's Financial Contribution will be used solely (w) to fund the cost of the design and construction of the Arena; (x) to pay the debt service on the bonds issued to finance the design and construction of the Arena; (y) to fund a capital reserve (in an amount to be mutually agreed upon by the Parties) that will be used from time to time to make capital repairs and replacements to the Arena; and (z) the balance to fund an operating reserve (in an amount to be mutually agreed upon by the Parties) to provide for the ongoing operating needs of the Arena. Neither the County, UA nor the DFA will be obligated to fund any other amount toward the construction of all or any part of the Arena. Neither the County nor the DFA will be obligated to fund any other amount toward the operation, repair, replacement, maintenance, or operation of all or any part of the Arena. UA will not be obligated to fund any other amount toward the operation, repair, replacement, maintenance, or operation of all or any part of the Arena other than the maximum annual amount provided for in Section 17 hereof. The University will have no liability whatsoever with respect to the repayment of the bonds to be issued by the DFA and/or County hereunder. The definitive agreements will address the extent to which the sales tax revenues to be generated for the County's Financial Contribution will be pledged as security for the bonds and the extent to which such revenues will be subject to repeal.

Prior to adoption by the County Council of a resolution providing for the Election, a preliminary capital budget for the construction of the Arena will be prepared and presented to the County and UA for their respective approvals, and prior to the issuance of bonds, as hereinafter provided, UA and the County will agree to a final budget for the Arena (the "Final Arena Budget"), which will be based upon the final plans and specifications. Nothing contained herein shall require any of the Parties to approve any Final Arena Budget in excess of the amount to be generated by the issuance of the bonds.

Assuming all of the conditions are satisfied and the necessary approvals received, including but not limited to the approval of the voters at the Election, the DFA will issue bonds in an amount not to exceed the amount that would be amortized by portion of the annual payment of the County's Financial Contribution dedicated to repayment of the bonds to finance the design and construction of the Arena, as reflected in the Final Arena Budget and the capital reserve fund (to the extent funded by the issuance of the bonds). The DFA will retain exclusive authority to retain bond counsel and financial advisor(s) for the sale of the bonds. The County's Financial Contribution will be limited to those funding sources approved by the voters of the County at the Election. It is intended that all costs with respect to the design and construction of the Arena will be borne out of the bonds to be issued by the DFA; and that, except as anticipated in this outline, the Parties will not be obligated to fund any additional amount toward the development and construction of the Arena. The definitive agreements will provide for the funding of the capital reserve fund and the payment of the County's Financial Contribution to the extent that the funds generated by the sales tax increase will be insufficient therefor.

To the extent that it is necessary to incur costs related to the Arena before the outcome of the Election, the Parties will agree amongst themselves who will engage and pay for the cost of such work and under what conditions that engagement might occur.

If the matters described in this outline are satisfactory and acceptable to the Parties, the DFA would propose that the Parties meet to commence the development and negotiation of definitive agreements concerning the matters described in this outline.

The Parties acknowledge and agree that to the extent that the provisions contained herein conflict with Ohio law, the Charter of the City of Akron and the Charter of the County of Summit, that such conflicting provisions will be interpreted to give the fullest effect possible to the Parties' intent, while fully complying with Ohio law and the Parties will mutually agree upon provisions in the definitive agreements (referred to in the Background hereof) which will fully comply with the provisions of Ohio law, the Charter of the City of Akron and the Charter of the County of Summit.

[Remainder of page is blank. Signatures follow on the next page.]

In Witness Whereof, the City, the County, the DFA and University have executed this Outline as of the date last written below.

CITY OF AKRON, OHIO

COUNTY OF SUMMIT

By: _____

By: _____

Print Name _____

Print Name _____

Its: _____

Its: _____

Date: _____, 2014

Date: _____, 2014

Approved as to form and correctness:

Approved as to form and correctness:

Director of Law

County Prosecutor

**DEVELOPMENT FINANCE
AUTHORITY OF SUMMIT COUNTY**

THE UNIVERSITY OF AKRON

By: _____

By: _____

Print Name _____

Print Name _____

Its: _____

Its: _____

Date: _____, 2014

Date: _____, 2014

Approved as to form and correctness:

General Counsel

