

**MASTER AGREEMENT**

**BETWEEN:**

**THE CITY OF EDMONTON**  
(the "City")

- and -

**EDMONTON ARENA CORP.**  
("EAC")

Dated August 29, 2013.

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## MASTER AGREEMENT

THIS AGREEMENT is dated August 29, 2013 between THE CITY OF EDMONTON (the "City") and EDMONTON ARENA CORP. ("EAC").

### WHEREAS:

- A. EAC, a member of the Katz Group of corporations, and the City recognize the importance of the sustainability of National Hockey League hockey in Edmonton, together with the value and benefit of a downtown arena to increase economic potential and benefit all of the capital region, as well as northern and central Alberta.
- B. EAC and the City have executed the IDA in respect to obtaining a design and guaranteed maximum price for the construction of the Arena, Wintergarden, Corridor, LRT Link, and Community Rink, and a land inventory agreement dated October 28, 2011 (as amended) in respect of lands for the Project. The IDA provides that the CM shall deliver a proposed GMP to the Parties for their approval and also provides for the review and approval by the Parties of the design of the Arena Area Facilities at various stages in the design process. This Agreement and the Ancillary Agreements outline the Parties' further roles and obligations with respect to the Project.

NOW THEREFORE in consideration of the mutual promises, undertakings and covenants hereinafter set forth and intending to be legally bound hereby, EAC and the City agree as follows:

### 1. DEFINITIONS

The terms listed below shall have the meanings assigned to them, unless the context otherwise indicates:

- 1.1 "100% DD Documentation" means the design development documentation for the Arena and the Wintergarden prepared by the Architect, dated September 14, 2012 (representing 100% completion of the design development stage), as amended by the Arena Area Facilities trend logs dated January 22, 2013 and all associated drawings, concepts and specifications.
- 1.2 "Act" means the *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended from time to time.
- 1.3 "Administrative Fee" means a semi-annual fee in the amount of 0.125% on the declining principal of the Construction Borrowing, calculated commencing on the Construction Borrowing Commencement Date.
- 1.4 "Affiliate" has the meaning set out in the *Business Corporations Act* (Alberta), R.S.A. 2000, c. B-9, as amended from time to time, and includes Affiliates existing at the time of this Agreement or incorporated thereafter.
- 1.5 "Agreement" means this agreement, together with all schedules attached to this Agreement, as amended or replaced by the Parties from time to time.



- 1.6 "Ancillary Agreements" means the Construction Administration Agreement, IDA, Restated Land Inventory Agreement, Lease Agreement, Lease Indemnity Agreement, Location Agreement, Location Support Agreement, LIA Agreements, Sponsorship Agreement, Tax Agreement and Ticket Surcharge Agreement, and such other agreements as the Parties consider necessary or appropriate in relation to the Project, all as amended or replaced from time to time.
- 1.7 "Applicable Laws" with respect to a person, property, transaction or event, means all federal, provincial or municipal laws (including the common law and principles of equity), statutes, regulations, bylaws, ordinances, judgments, decrees, orders, awards (including judicial or administrative awards or orders) and legal requirements of governmental or other public authorities that apply to that person, property, transaction or event.
- 1.8 "Architect" means 360 Architecture Canada Inc., the architect retained by the Parties pursuant to the IDA.
- 1.9 "Arena" means the multipurpose sports and entertainment facility to be utilized, inter alia, as a professional hockey arena, associated food, beverage, retail and entertainment areas, associated public gathering and circulation areas within the facility, ice plant, parking garage (350 parking stalls) and loading facilities as set out in the 100% DD Documentation, to be constructed in downtown Edmonton on the Arena Lands, which for illustration purposes is shown on Schedule A.
- 1.10 "Arena Area Facilities" means the Arena, Wintergarden, Corridor, LRT Link, and Community Rink.
- 1.11 "Arena Lands" is defined in the Restated Land Inventory Agreement.
- 1.12 "Arena/WG Project Budget" means the budget for the design and construction of the Arena and the Wintergarden, attached as Schedule B.
- 1.13 "City's 35 Year Borrowing Rate" means the annual interest rate for borrowings of a 35-year term established by the City's Lender at the time of borrowing.
- 1.14 "City's Lender" means either the Alberta Capital Finance Authority or any other such lender to the City of Edmonton.
- 1.15 "City Wintergarden Costs" means any and all costs, expenses and charges related to the repair and replacement of the following major building components as described below:
- (a) Building structural components of the Wintergarden consisting of the roof (including roof membrane), foundation, structural portions of load bearing walls, structural sub-floors and building envelope structures which are required to support the vertical and horizontal load, complete replacement of glass entrances and storefront doors;
  - (b) Mechanical – all air conditioning, ventilating and refrigeration systems and the major equipment which directly services the Wintergarden including boilers, furnaces, HVAC units, pumps, chillers and compressors together with associated piping, ductwork, insulation and controls;

- (c) Electrical – all service, distribution and fire alarm systems and the major equipment which directly services the Wintergarden consisting of switchgear, transformers, motor control centres, fire alarm systems, main distribution panel, secondary distribution panels in the Wintergarden at completion of construction and distribution wiring;
  - (d) Fire suppression system for the Wintergarden – change of service or replacement of the fire sprinkler system;
  - (e) Utilities – the change of service or replacement of all power, water, sanitary, sewer, gas or any other utility lines which provide service to the Wintergarden;
  - (f) Escalators and elevators – change of service, rehabilitation (which, for greater certainty, means to overhaul, refurbish, or restore the component, as much as possible, to its original functional condition, operation or capacity) or replacement of all cabling, elevator cabs and equipment directly related to the use of elevators and/or escalators in the Wintergarden, and controls relating thereto; and
  - (g) Major building architectural/structural upgrades and improvements to or for the Wintergarden that are required and/or mandated due to changes in legislation or City policies (e.g. Building Code, accessibility).
- 1.16 "CM" means the construction manager selected and retained by the Parties for the Project.
- 1.17 "Community Rink Lands" is defined in the Restated Land Inventory Agreement.
- 1.18 "Construction Administration Agreement" means the agreement governing the management, as between the Parties, of the completion of the design, construction and commissioning of the Project.
- 1.19 "Construction Borrowing" means the principal amount not exceeding \$140,000,000 (representing EAC's contribution to the Project Costs for the Arena and 50% of the Wintergarden Net Project Costs to a maximum of \$25,000,000) less the Pre-Development Expenses.
- 1.20 "Construction Borrowing Commencement Date" means the date that the Construction Borrowing is made by the City from the City's Lender.
- 1.21 "Corridor" means the public walkway that connects the LRT Link to the Wintergarden and, for illustrative purposes only, shown on Schedule A.
- 1.22 "Damages" means any and all liabilities, losses, demands, costs, damages, claims, suits, expenses or actions (including solicitor-client legal fees on a full indemnity basis).
- 1.23 "EAC Wintergarden Costs" means any and all costs, expenses and charges related to the operation, repair, replacement or maintenance of the Wintergarden other than (and for greater certainty, excluding) the City Wintergarden Costs and the Operating Costs for the Wintergarden.



- 1.24 "Edmonton Oilers" means the National Hockey League franchise, the Edmonton Oilers, owned by RSC.
- 1.25 "EMJHC" means the Edmonton Major Junior Hockey Corp.
- 1.26 "FOIP" means the *Freedom of Information and Protection of Privacy Act* (Alberta), R.S.A. 2000, c. F-25, as amended from time to time.
- 1.27 "Force Majeure" means, in relation to a Party, any cause beyond the reasonable control of that Party which prevents or delays that Party from fulfilling its obligations under this Agreement and which, exercising reasonable diligence, that Party could not have either avoided or overcome, such as civil disturbances, acts of public enemies, vandalism, war, riots, sabotage, blockades, embargoes, lightning, earthquakes, fire, storms, hurricanes, floods, wash-outs, explosions and other acts of God, strikes, lockouts by third parties or other labour disturbances; but, for greater certainty, does not include inability to perform due to financial condition or lack of finances.
- 1.28 "GMP" means the guaranteed maximum price proposed by the CM for furnishing of all materials, labour, equipment, supplies, tools, scaffolding, transportation, temporary construction, superintendence, demolition, inspections, and other services, facilities and items reasonably necessary for the full and proper performance and completion of the construction of each of the Arena, Wintergarden, Corridor, LRT Link and Community Rink.
- 1.29 "IDA" means the interim design agreement dated November 9, 2011, executed by the Parties.
- 1.30 "Lease Agreement" means the agreement between the City and EAC pursuant to which EAC leases the Arena and the Corridor.
- 1.31 "Lease Commencement Date" means 5 days following the date that is the "Facility Takeover Date", as defined in the construction management agreement with the CM dated May, 2012.
- 1.32 "Lease Indemnity Agreement" means the agreement between the City and RSC in respect of EAC's obligations under the Lease Agreement.
- 1.33 "Lease Payment Commencement Date" means the first date following the Lease Commencement Date on which EAC must make a payment of Rent to the City under the Lease Agreement.
- 1.34 "LIA Agreements" means the agreements defined as the "Corollary Agreements" in and entered into pursuant to the Restated Land Inventory Agreement.
- 1.35 "Location Agreement" means the agreement between the City and RSC in respect of the Edmonton Oilers.
- 1.36 "Location Support Agreement" means the agreement between the City and Daryl Katz in support of the Location Agreement.

- 1.37 "LRT Link" means a public structure including any elevators, escalators and stairs required to move pedestrians from the LRT station to the Corridor and, for illustrative purposes only, shown on Schedule A.
- 1.38 "Master Project Schedule" means the timing of design, construction and commissioning of the Arena Area Facilities, as set out in Schedule F, and revised from time to time and as approved by the Parties.
- 1.39 "Money Market Fund" means a fund established and controlled by the City for the excess or shortfall in the daily operating funding requirements of the City, the purpose of which is to ensure that sufficient cash and liquid assets are available to cover the City's short term obligations. The duration of investments in this fund is one year or less, depending on the City's forecasted commitments.
- 1.40 "Money Market Fund Rate" means the quarterly rate of return based on the Towers Watson Investment Performance Summary Report provided to the City for the Money Market Fund for that quarter of the year.
- 1.41 "Operating Costs for the Wintergarden" means those costs attributable to the day-to-day operation and routine maintenance (in accordance with commercially reasonable standards) of the Wintergarden, including power, water, sewer, gas and any other utilities consumed in the operation and maintenance of the Wintergarden, security, telephone, cable, satellite, fibre optics and internet, insurance, custodial and window cleaning, waste collection and removal, heating and air conditioning.
- 1.42 "Party" means the City or EAC as the context so requires and "Parties" means both the City and EAC.
- 1.43 "PM" means ICON Venue Group ULC, the project manager retained by the Parties pursuant to the IDA.
- 1.44 "Pre-Development Expenses" means the sum of \$2,189,336.00.
- 1.45 "Project Budget" means the budget for the design and construction of the Arena Area Facilities, which includes the Arena/WG Project Budget.
- 1.46 "Project Costs" means the costs and expenses for doing all things necessary and incidental for the planning, design, engineering, development, supervision, servicing, construction and commissioning of the specified premises including, without limitation, costs for services, materials, equipment, labour, overhead, infrastructure, management and supervision.
- 1.47 "Restated Land Inventory Agreement" means the amended and restated land inventory agreement executed by the City and EAC's Affiliate, Katz Group Properties Inc.
- 1.48 "Rexall Place" means the arena located in northeast Edmonton, operated by Edmonton Northlands at the date of this Agreement.
- 1.49 "RSC" means Rexall Sports Corp.

- 1.50 "Sales Tax" means a sales tax, social service tax, value added tax, goods and services tax or any other similar tax, charge, duty or rate, imposed by any governmental authority, irrespective of whether the same is created or modified after the date of execution of this Agreement, but for greater certainty, does not include the ticket surcharges levied pursuant to the Ticket Surcharge Bylaw.
- 1.51 "Short Term Bond Fund" means a fund established and controlled by the City for working capital that is not currently needed to fund City operations, but will be needed in less than five years. The duration of investments in this fund is less than five years.
- 1.52 "Short Term Bond Fund Rate" means the quarterly rate of return based on the Towers Watson Investment Performance Summary Report provided to the City for the Short Term Bond Fund for that quarter of the year.
- 1.53 "Ticket Surcharge Agreement" means the agreement between the City and EAC in respect of implementation of the Ticket Surcharge Bylaw.
- 1.54 "Ticket Surcharge Borrowing" means the principal amount of \$125,000,000.
- 1.55 "Wintergarden" means the public enclosed bridge structure spanning 104 Avenue and connecting to the Arena at the main concourse level, as set out in the 100% DD Documentation, which for illustration purposes is shown on Schedule A.

In addition to the foregoing, the following terms are defined in the following sections of this Agreement:

<b>Term</b>	<b>Section</b>
Advertising and Commercial Rights	21.1
Advertising Dispute	21.4
Approved Design	4.1
Carrying Costs	18.1
Community Rink	7.1
Credit	18.2
Event of Default	27.1
Excess Wintergarden Project Costs	6.2
Indemnatee	28.3(a)
Indemnitor	28.3(a)
Net Carrying Costs	18.1



<b>Term</b>	<b>Section</b>
Project	3
Rent	17.4
Rent A	17.4
Rent B	17.4
Sponsorship Agreement	14.1
Tax Agreement	11.1
Third Party Claims	28.3(b)
Ticket Surcharge Bylaw	16.1
Wintergarden Net Project Costs	6.3

**2. SCHEDULES**

2.1 The following Schedules are attached to and form part of this Agreement:

- Schedule A Site Plan
- Schedule B Arena/WG Project Budget
- Schedule C Example of Calculation of Rent
- Schedule D Community Benefits
- Schedule E Dispute Settlement
- Schedule F Master Project Schedule

**3. PROJECT**

The Parties agree, subject to and in accordance with the conditions and provisions of this Agreement and the Ancillary Agreements, to proceed with the construction and commissioning of the Arena, the Wintergarden, the Community Rink, the LRT Link and the Corridor (the "Project") in downtown Edmonton in accordance with the Approved Design. The Arena, Wintergarden, Community Rink, LRT Link and the Corridor shall be owned by the City (subject to the rights of EAC and its Affiliates and its joint-venture developer entity pursuant to the Ancillary Agreements). The Arena and Corridor will be leased by EAC and serve as a multipurpose sports and entertainment facility and the home for the Edmonton Oilers.

**4. PROJECT DESIGN AND BUDGET**

4.1 The Parties have approved the design of the Arena and the Wintergarden set out in the 100% DD Documentation as at January 22, 2013 ("Approved Design") and the Arena/WG Project Budget, based on the Approved Design.

## 5. ARENA

- 5.1 Subject to Section 5.3, the Project Costs (including the Pre-Development Expenses) for the Arena as described in the 100% DD Documentation and the Arena/WG Project Budget shall not exceed \$480,000,000.
- 5.2 EAC shall, or shall cause an Affiliate to, contribute an amount not exceeding \$130,000,000 to the Project Costs for the Arena: as described more particularly in this Agreement and certain Ancillary Agreements in respect of \$115,000,000, and as described more particularly in such other agreements or documents as the Parties determine appropriate as to the remaining \$15,000,000. This latter \$15,000,000 contribution shall be made in three instalments (which need not be equal instalments, provided each of the first two instalments shall be at least \$5,000,000) on or before October 1 in each of 2014, 2015 and 2016.
- 5.3 If the private sector development attached to the east wall of the Arena and south wall of the Community Rink does not proceed in conjunction with the construction of the Arena and Community Rink:
- (a) any resulting changes to the design of such east wall and south wall shall be in the discretion of the City, provided that such changes will not materially change the characteristics or function of the Approved Design of the Arena or the Community Rink, apart from the east wall and south wall; and
  - (b) the costs relating thereto, which may result in an increase of the Project Costs beyond \$480,000,000 for the Arena and \$56,500,000 for the Wintergarden, shall be the responsibility of the City.

## 6. WINTERGARDEN

- 6.1 The Project Costs for the Wintergarden as described in the 100% DD Documentation and the Arena/WG Project Budget shall not exceed \$56,500,000.
- 6.2 The City shall be responsible for 50% of the Wintergarden Net Project Costs (defined below) to a maximum of \$25,000,000. EAC shall contribute an equal amount as the City plus an amount equal to any excess Project Costs over \$50,000,000 ("Excess Wintergarden Project Costs"), to a maximum total contribution from EAC of \$31,500,000.
- 6.3 "Wintergarden Net Project Costs" means the total Project Costs of the Wintergarden less the reasonable value of the retail commercial space to a developer in the south end of the Wintergarden. If the Parties are unable to agree on the reasonable value of such retail commercial space to a developer within 30 days following approval of the GMP pursuant to Section 20, the provisions of Schedule E shall apply.

**7. COMMUNITY RINK**

7.1 The City will proceed with the construction of a community rink ("Community Rink") on the Community Rink Lands as part of the Project. The maximum to be paid by the City for the Project Costs of the Community Rink is \$21,000,000. The City will own and operate the Community Rink with all revenues and expenses relating thereto accruing to the City.

7.2 The Community Rink will be open to and serve the needs of the City and the community. It will also be used by and made available:

(a) as a practice rink to the National Hockey League team, the Edmonton Oilers, and the Western Hockey League team, the Edmonton Oil Kings, at a cost which shall be equivalent to normal adult rates for City-owned community ice rinks charged by the City; and

(b) to EAC and its Affiliates for other uses or events, on a full operating costs recovery basis.

The City, EAC and its Affiliates shall work cooperatively on scheduling access to the Community Rink for hockey and for other uses or events in accordance with booking guidelines and procedures agreed to by the Parties.

7.3 The Parties recognize that there are existing downtown parking facilities as well as public transportation to serve the needs of the public who will use the Community Rink. As well, EAC will provide access to the public to park on the lands its Affiliates own which are situated immediately north of the Arena Lands unless or until such lands are developed.

**8. CORRIDOR**

8.1 The Project Costs of the Corridor shall not exceed \$15,000,000 and are the responsibility of the City.

**9. LRT LINK**

9.1 The Project Costs of the LRT Link shall not exceed \$7,000,000 and are the responsibility of the City.

**10. COSTS FOR OPERATION, MAINTENANCE AND REPAIR**

10.1 Arena, Corridor:

(a) The Parties are responsible for their respective costs to operate, maintain, repair and replace the Arena and the Corridor as more specifically set out in the Lease Agreement; provided however, notwithstanding the provisions of the Lease Agreement, the City is responsible for any incremental costs directly relating to the City's use of the Arena pursuant to Section 19.2.

10.2 Wintergarden:

(a) The City is responsible for the City Wintergarden Costs.



- (b) EAC is responsible for the EAC Wintergarden Costs.
- (c) Each Party is responsible for 50% of the Operating Costs for the Wintergarden; provided however, each Party is responsible for any incremental Operating Costs for the Wintergarden directly relating to that Party's use of the Wintergarden (pursuant to Section 21 for EAC and its Affiliates and Section 19.2 for the City).

**10.3 LRT Link and Community Rink:**

- (a) The City is responsible for any and all costs, expenses and charges whatsoever to operate, maintain, repair and replace the LRT Link and the Community Rink.

**11. TAX AGREEMENT**

11.1 The Parties agree that the City and EAC, RSC and EMJHC will execute an agreement ("Tax Agreement") pursuant to section 333.1 of the Act in respect of municipal property taxes on the arena lands as designated and described in the Tax Agreement, to be effective on the Lease Commencement Date.

11.2 The Tax Agreement will provide, among other terms:

- (a) for an annual payment of a maximum of \$250,000 instead of municipal property taxes (as defined in the Tax Agreement) which would otherwise be due and owing by EAC, RSC and EMJHC and their Affiliates carrying on business in the designated arena lands within event hours; and
- (b) that the annual payment referred to in Subsection (a), above, shall be reduced, on a dollar for dollar basis, to the extent that the aggregate municipal taxes levied on other assessed persons who are arm's-length to EAC, RSC and EMJHC and their Affiliates and carrying on business in the designated arena lands exceed \$250,000 per annum. The minimum that the annual obligation of EAC, RSC and EMJHC and their Affiliates may be reduced to under the Tax Agreement is \$0.00 and, for clarification, there shall be no rebate in cash to EAC, RSC or EMJHC or their Affiliates.
- (c) EAC, RSC and EMJHC and their Affiliates will, in addition, pay their proportionate share of the provincial school taxes levied on the designated arena lands under the Act.

**12. LEASE AGREEMENT, LEASE INDEMNITY AGREEMENT**

12.1 The Parties acknowledge and agree that the Parties shall execute the Lease Agreement for the Arena and Corridor, to be effective on the Lease Commencement Date. Prior to execution, the Lease Agreement shall have inserted therein the dollar amount of the Rent and number of Rent payments to be paid under the Lease Agreement, calculated in accordance with Section 17. Concurrently with the execution of the Lease Agreement, the City and RSC shall execute a Lease Indemnity Agreement, to be effective on the Lease Commencement Date.

**13. LOCATION AGREEMENT**

- 13.1 The Parties acknowledge that EAC shall cause RSC to execute the Location Agreement with the City and Daryl Katz to execute the Location Support Agreement with the City.

**14. SPONSORSHIP AGREEMENT**

- 14.1 The Parties acknowledge that the City and RSC will execute a sponsorship agreement (the "Sponsorship Agreement") for the purpose of marketing and promoting the image of the City of Edmonton and to build City recognition with the Edmonton Oilers' brand. The Sponsorship Benefits (as defined in the Sponsorship Agreement) provided to the City shall be consistent with the quality and quantity of promotional rights provided to private sector sponsors. As part of the Sponsorship Agreement, the City shall be provided with a suite within the Arena. Commencing on the Lease Commencement Date, the City shall pay a sponsorship fee of \$2,000,000 (plus applicable Sales Tax) per year for a term of 10 years (in accordance with and as more particularly set out in the Sponsorship Agreement), with a review of the Sponsorship Benefits at least every two years, upon the written request of either party.

**15. OTHER ANCILLARY AGREEMENTS**

- 15.1 The Parties acknowledge that concurrently with the execution of this Agreement, the City and EAC and/or EAC's Affiliate(s) and/or EAC's joint-venture developer entity, as applicable, will execute the Ancillary Agreements.

**16. TICKET SURCHARGE BYLAW**

- 16.1 The City intends to pass a ticket surcharge bylaw ("Ticket Surcharge Bylaw") pursuant to the Act, authorizing the City to impose a surcharge on tickets sold for National Hockey League events and for other events held at the Arena, as more particularly set out in the Ticket Surcharge Bylaw.
- 16.2 The Parties shall execute the Ticket Surcharge Agreement, which shall specify the procedure for establishing the amount of the ticket surcharge and other related matters.
- 16.3 As more particularly described in the Ticket Surcharge Agreement, EAC will be responsible for the collection of the Ticket Surcharge for all National Hockey League events and for the other events held at the Arena during the term of the Ticket Surcharge Agreement and for remitting same to the City after the Lease Commencement Date. EAC will be entitled to retain any funds collected under the Ticket Surcharge Agreement in excess of the amounts required for the quarterly payments to the City as set out in the Ticket Surcharge Agreement, and to use such funds at its sole discretion.
- 16.4 The City shall also impose a surcharge on tickets sold for events at Rexall Place, pursuant to a ticket surcharge bylaw, for the duration of the Lease Agreement. The rate of the ticket surcharge shall be at the same rate as the rate levied on tickets for non-hockey events at the Arena, to a maximum of 7%. The City agrees that the money collected from this ticket surcharge on tickets for Rexall Place shall not be paid to Edmonton Northlands nor be used for the direct benefit of Rexall Place.



**17. BORROWING BY CITY; EAC CONTRIBUTION PAID AS RENT**

- 17.1 Subject to the provisions of this Agreement, the City, as owner of the Arena Area Facilities, has the sole obligation to finance all of the Project Costs. If a borrowing bylaw is not passed by the Municipal Council for the City on or before September 1, 2013, this Agreement shall immediately terminate on the earlier of (i) September 2, 2013 and (ii) the 7<sup>th</sup> day following the date on which the Municipal Council for the City declined to pass the bylaw, unless the Parties agree otherwise, in writing.
- 17.2 Once a borrowing bylaw has been passed by the Municipal Council for the City and the GMP for all of the Arena Area Facilities is finalized and approved in accordance with Section 20 of this Agreement, the City shall borrow the Construction Borrowing from the City's Lender on the 1st quarterly date on which the City may borrow funds, or such later date as EAC requests in writing, but not beyond the date the funds are actually required to fund the construction of the Arena.
- 17.3 The Construction Borrowing will be utilized to finance the construction of the Arena and the Wintergarden. The Construction Borrowing shall be amortized over a 35 year term, with interest thereon at the City's 35 Year Borrowing Rate. The Construction Borrowing will be repaid by the City in 70 equal semi-annual instalments of principal and interest commencing 6 months after the Construction Borrowing Commencement Date. The Construction Borrowing funds will be expended during the course of construction of the Arena and the Wintergarden on a proportionate basis in accordance with the percentage that each Party's aggregate contribution to the Project Costs under this Agreement bears to the total Project Costs for the Arena and Wintergarden.
- 17.4 In lieu of EAC contributing to the funding of the Project Costs of the Arena and the Wintergarden (as set out in this Agreement) EAC shall pay rent under the Lease Agreement, calculated as the aggregate of the following:
- (a) the principal of the Construction Borrowing and interest thereon at the City's 35 Year Borrowing Rate, plus the Administrative Fee, remaining at the Lease Commencement Date ("Rent A");
  - (b) the Net Carrying Costs on the Construction Borrowing and interest thereon at 6% per annum ("Rent B"); and
  - (c) the applicable Sales Tax on all of the foregoing.
- (Rent A and Rent B shall be referred to, collectively, as the "Rent".)
- 17.5 Payment of Rent A shall be made in equal semi-annual instalments, amortized over a period of time equal to the term of the Construction Borrowing remaining at the Lease Payment Commencement Date. Payment of Rent B shall be made in equal semi-annual instalments, amortized over the 35 year term of the Lease Agreement. EAC shall make each payment of Rent at least 15 days prior to the date that the City must make payments to the City's Lender for the Construction Borrowing and thereafter (after the City has repaid the Construction Borrowing) semi-annually on the same dates. Schedule C provides, for illustration purposes only, an example of the calculation of Rent as described in this Section



17. The Parties agree that this Schedule C will be amended and replaced within eight months of the Lease Commencement Date to incorporate the actual interest rate from the City's Lender, Net Carrying Costs, and all other amounts described in Section 17.

- 17.6 Once payment for the Project Costs for the Wintergarden has exceeded the \$50,000,000 contribution to be made by the Parties pursuant to Section 6.2 (which will have been paid out on a proportionate basis as described in Section 17.3), payment of the Excess Wintergarden Project Costs by EAC to the City will be made at the time these excess Project Costs are due and payable during construction. Further, should EAC agree to pay any cost related to the Arena Area Facilities not otherwise provided for in this Agreement, such payment will be made at the time these costs are due and payable during construction.
- 17.7 Notwithstanding the foregoing, EAC may pay, without penalty, the Net Carrying Costs on the Construction Borrowing and interest accrued thereon as at the date of payment and remaining unpaid (as set out in Section 17.4(b)), on providing written notice to the City of at least 40 days prior to the next semi-annual instalment date on which Rent is due under the Lease Agreement.

**18. CALCULATION OF THE NET CARRYING COSTS ON THE CONSTRUCTION BORROWING**

- 18.1 The net carrying costs ("Net Carrying Costs") are calculated as the total carrying costs on the Construction Borrowing (calculated pursuant to Section 18.3) ("Carrying Costs") for the period of time between the Construction Borrowing Commencement Date and the Lease Payment Commencement Date less the Credit for such period of time (calculated pursuant to Section 18.4).
- 18.2 The Construction Borrowing shall be deemed to be invested and notionally accrue interest (the "Credit") as follows:
- (a) The amount representing the funds expected to be paid out within the 12 months following the Construction Borrowing Commencement Date, based on the Master Project Schedule and Arena/WG Project Budget current as at the date of the Construction Borrowing, will be deemed to be invested in the Money Market Fund and earn interest at the Money Market Fund Rate for that 12 month period;
  - (b) The balance of the Construction Borrowing will be deemed to be invested in the Short Term Bond Fund and earn interest at the Short Term Bond Fund Rate for that 12 month period; and
  - (c) Thereafter, on the annual anniversary date of the Construction Borrowing Commencement Date (and only on an annual basis) until the expenditure of the Construction Borrowing is complete, an amount representing the funds expected to be paid out within the next 12 months, based on the Master Project Schedule and Arena/WG Project Budget current as at that annual anniversary date, shall be deemed to be transferred from the Short Term Bond Fund to the Money Market Fund and the Construction Borrowing for the next 12 months shall be deemed to earn interest in accordance with the rates set out above in subsections (a) and (b), as applicable.

18.3 ~~The Carrying Costs on the Construction Borrowing will be calculated as of the Lease Payment Commencement Date in respect of the periods set out in Section 18.2, as follows:~~

- (a) The aggregate principal and interest payments made by the City to the City's Lender in repayment of the Construction Borrowing during the period commencing on the Construction Borrowing Commencement Date and ending on the Lease Commencement Date; plus
- (b) For the periods in which the Construction Borrowing is deemed to be invested in the Short Term Bond Fund, the Carrying Costs on the Construction Borrowing will be calculated by multiplying the aggregate principal and interest payments made by the City to the City's Lender in repayment of the Construction Borrowing during the period commencing on the Construction Borrowing Commencement Date by the Short Term Bond Fund Rate; plus
- (c) For the periods in which the Construction Borrowing is deemed to be invested in the Money Market Fund, the Carrying Costs on the Construction Borrowing will be calculated by multiplying the aggregate principal and interest payments made by the City to the City's Lender in repayment of the Construction Borrowing during such period by the Money Market Fund Rate; plus
- (d) The Administrative Fee to the Lease Commencement Date.

18.4 The amount of the Credit will be calculated as of the Lease Commencement Date for the periods set out in Section 18.2, as follows:

- (i) The amount of the Construction Borrowing notionally invested in the Money Market Fund for the periods set out in Section 18.3(b) will notionally bear interest at the Money Market Fund Rate (whether or not the funds are invested by the City in the Money Market Fund); plus
- (ii) The amount of the Construction Borrowing notionally invested in the Short Term Bond Fund for the periods set out in Section 18.3(c) will notionally bear interest at the Short Term Bond Fund Rate (whether or not the funds are invested by the City in the Short Terms Bond Fund).

## 19. COMMUNITY BENEFITS

19.1 The Parties shall implement the community benefits described in Schedule D.

19.2 The City may use the Arena and/or the Wintergarden for a total of 28 days per calendar year. (For clarification, the City's use of either or both facilities is for a total of 28 days and not 28 days for each facility.) The City's use of these facilities pursuant to this Section is subject to the limitation that it shall not use the Arena/and or the Wintergarden for events in competition with EAC; that is, events that EAC may wish to hold in the Arena/and or the Wintergarden. (For example, and without limitation, the Canadian Finals Rodeo constitutes an event for which the Arena and/or Wintergarden could not be used by the City.) The City shall coordinate and cooperate with EAC in determining its events and scheduling the dates



of its use. The City shall reimburse EAC for its incremental costs arising from the City's use, with all food, beverage and other revenues accruing to EAC.

## 20. GMP AND PROJECT BUDGET

20.1 The Parties anticipate receiving the proposed GMP from the CM on or before March 15, 2014. The Parties and the PM shall review the proposed GMP, reconcile any discrepancies and work together to negotiate with project professionals and finalize the GMP. If the proposed GMP for:

- (a) the Arena and for the Wintergarden would result in the projected total Project Costs of each not to exceed the amount set out for each in the Arena/WG Project Budget; and
- (b) the Community Rink, Corridor and LRT Link would result in the projected total Project Costs of each not to exceed the maximum Project Costs required by Sections 7.1, 8.1 and 9.1,

then the Parties shall finalize and approve the GMP. Once the GMP has been finalized and approved and the borrowing bylaw has been passed by the Municipal Council for the City, then the Parties shall be bound by the obligation under Section 3 to proceed with the construction and commissioning of the Arena Area Facilities in accordance with the Approved Design.

20.2 If the proposed GMP for the Arena or the Wintergarden would result in the projected total Project Costs of either exceeding the amount set out for each in the Arena/WG Project Budget:

- (a) The Parties shall work together in good faith for a period of 60 days (or such other period as the Parties agree) to assess what courses of action are available to the Parties to achieve the Arena/WG Project Budget. The City Manager or his designee(s) and John Karvellas, or his designee(s) shall participate in such process, in addition to any other representatives that each Party may designate.
- (b) If, within the time period noted above or such other period as the Parties may agree, the Parties have not agreed on a course of action agreeable to both Parties, either Party may terminate this Agreement by providing written notice of termination to the other.

20.3 If the proposed GMP for the Community Rink, Corridor and LRT Link would result in the projected total Project Costs thereof exceeding the maximum Project Costs for each as required by Sections 7.1, 8.1 and 9.1,

- (a) The City, in consultation with EAC, shall, for a period of 60 days (or such other period as the Parties agree) assess what courses of action are available to it.
- (b) If, within the 60 day period noted above or such other period as the Parties may agree, the City has not determined a course of action agreeable to both Parties, either Party may immediately terminate this Agreement by providing written notice of termination to the other.



- 20.4 For greater certainty, any costs arising pursuant to Section 5.3 shall not be considered as part of or form any part of the calculation of the proposed GMP or the Project Costs for the purpose of Sections 20.2 and 20.3.
- 20.5 The Construction Administration Agreement may designate, in more detail than the foregoing, the procedures for approval of the GMP.

**21. ADVERTISING AND COMMERCIAL RIGHTS**

- 21.1 With respect to the interior and the exterior of the Wintergarden, the City shall grant to EAC and its Affiliates the exclusive, irrevocable license during the period of construction of the Arena Area Facilities and during the term of the Lease Agreement to:
- (a) install and erect temporary kiosks or other structures to operate retail, food and beverage operations;
  - (b) install, erect and affix advertising and promotional signage, messages, displays and multimedia installations of all kinds and in all forms (including, without limitation, print, poster, billboard, electronic, pylon or other form and media, whether now known or hereafter developed);
  - (c) conduct promotional activities and conduct events;
  - (d) conduct advertising including, without limitation, through the licensing of naming or sponsorship rights; and
  - (e) operate retail, food and beverage operations;

including all benefits derived from the foregoing and the right to sublicense such rights (collectively, the "Advertising and Commercial Rights").

- 21.2 EAC and its Affiliates may exercise the Advertising and Commercial Rights without any further consent of the City, other than consents or permits required in the ordinary course by Applicable Laws; provided however, that if the exercise of such rights will adversely impact the integrity of the structure of the Wintergarden, then City consent will be required as to the structural matters only.
- 21.3 Notwithstanding any other provision herein, the exercise by EAC or its Affiliates of the Advertising and Commercial Rights shall not materially adversely affect pedestrian access between the Wintergarden, the Corridor and the LRT Link during the hours of operation of the LRT.
- 21.4 Notwithstanding any other provision herein, all advertising described above shall comply with Applicable Laws. If at any time the City is concerned that any of the advertising offends the moral standards of the community that prevail at that time (the "Advertising Dispute"), EAC shall, on receipt of written notice from the City, meet with the City in such time frame as is appropriate in the circumstances to resolve the Advertising Dispute. If EAC and the City are unable to resolve the Advertising Dispute within 10 days of EAC's receipt of the City's written notice, then the City may give further written notice that it wishes to

proceed to a formal dispute resolution process and the provisions of Schedule E shall apply, with such changes to the time frames set out in Schedule E as are reasonable, given the circumstances in each case.

- 21.5 The City does not warrant the quality, condition or sufficiency of the Wintergarden for the exercise by EAC of the Advertising and Commercial Rights, including the adequacy of any utility services, and EAC shall satisfy itself as to condition and fitness for its intended exercise of the Advertising and Commercial Rights.
- 21.6 EAC shall pay or cause to be paid all property and business taxes with respect to EAC's exercise of the Advertising and Commercial Rights.
- 21.7 EAC shall maintain in full force and effect general liability insurance in an amount of not less than \$10,000,000.00 dollars per occurrence for personal injury or property damage (or both) arising from EAC's and its Affiliates' exercise of the Advertising and Commercial Rights.
- 21.8 In addition to the Advertising and Commercial Rights, the Parties acknowledge that EAC and its Affiliates and its joint venture developer entity have certain rights to segregated retail space in the Wintergarden, as more particularly set out in the LIA Agreement(s).

## 22. REXALL PLACE

### 22.1 The City:

- (a) from the date of this Agreement until the Lease Commencement Date while the Edmonton Oilers play at Rexall Place (i) will continue payments and subsidies for capital expenditures for Rexall Place required under the support agreement between it and Edmonton Northlands (pursuant to which the City provides financial assistance to fund capital improvements and replacements to Rexall Place) in order to maintain the operations of Rexall Place as they are being conducted as at the date of execution of this Agreement, (ii) will make additional payments for capital expenditures for Rexall Place only so far as required to comply with Applicable Laws and necessary to maintain public safety, and (iii) may continue with any operating subsidies during this period of time;
- (b) commencing on the Lease Commencement Date, will cease providing any payments, subsidies, financial assistance or concessions for capital expenditures, operating expenditures or any other purpose (whether pursuant to a support agreement, lease or any other agreement) to or for the benefit of Rexall Place, directly or indirectly, other than payments for capital expenditures for Rexall Place required to comply with Applicable Laws and necessary to maintain public safety;
- (c) will not financially support or advocate in favour of any initiative to rebuild or substantially renovate Rexall Place unless such rebuilding or renovation is for the purpose of converting Rexall Place into a facility to be used for purposes other than as a sports or entertainment facility.



**23. DOWNTOWN DEVELOPMENT**

- 23.1 The Parties believe that the construction and successful ongoing operations of the Arena Area Facilities will provide a catalyst for further development in downtown Edmonton. EAC confirms its commitment to participate in such development and, through Affiliates, invest a minimum of \$100,000,000 in downtown development, if it determines it is commercially viable.
- 23.2 The Parties recognize that the development of a new casino would provide a further catalyst to downtown development, thereby enhancing tax revenue for the City. Thus, the City will, when requested by EAC, support EAC, its Affiliates and its joint venture developer entity, in their efforts to promote the development of a new casino (by a third party) on the Inventory Lands (as defined in the Restated Land Inventory Agreement) by facilitating meetings, voicing support and providing other similar non-monetary support to the extent permitted by law; provided however, the Parties acknowledge that in providing such requested support, the City shall not contravene the provisions of the restrictive covenant registered against the Arena Lands regarding the operation of a casino.

**24. SEAT LICENSES**

- 24.1 Any method of personal seat licenses, equity seat rights, personal seat ownership or any similar initiatives for the Arena will not be pursued by EAC and its Affiliates; provided that if they are introduced at any time in the future, it would be subject to the prior written consent of the City and the City may withhold its consent if the City would receive less than 50% of the net revenue associated with such initiative.

**25. RECOGNITION OF CITY CONTRIBUTION**

- 25.1 The City shall provide and install, at its cost, prior to completion of the Arena, a number of plaques, permanent signs or other suitable identifiers which shall be to a design and specification solely within the City's discretion, acting reasonably, and the location of which shall be determined by the City, acting reasonably; provided however that the design, size and location of the plaques or signs shall not materially limit or interfere with the exercise by EAC of its Advertising and Commercial Rights or EAC's rights under the Lease Agreement. The plaques or signs shall bear an appropriate inscription recognizing the City's involvement in funding the Arena, which inscription shall be approved by the City Manager.
- 25.2 If the City is able to obtain the necessary permission from Molson's Alberta Brewery Ltd. under the Agreement dated May 9, 1989 between the City and Molson's Alberta Brewery Ltd., the City will give EAC permission to move the statue of Wayne Gretzky currently located beside Rexall Place to a location within the Arena Area Facilities on or before the Lease Commencement Date.

**26. DISPUTE RESOLUTION**

- 26.1 The Parties agree to attempt to resolve any differences, disagreements, claims or disputes under this Agreement in good faith and on an expeditious basis within (i) any time so stipulated in this Agreement, or (ii) such other period as the Parties agree from time to time, acting reasonably. The Parties agree to provide candid and timely disclosure of all



relevant facts and information. All reasonable requests for relevant documentation relating to the differences, disagreements or disputes made by either Party will be honoured.

26.2 Subject to Section 26.3, any difference, disagreement, claim or dispute between the Parties that is not resolved in accordance with Section 26.1 shall be subject to the dispute resolution procedures set out in Schedule E unless provided otherwise in an Ancillary Agreement.

26.3 Schedule E shall not apply to any difference, disagreement, claim or dispute between the Parties relating to or arising under Articles 19, 20 or 23.

## **27. DEFAULT, TERMINATION**

27.1 An event of default ("Event of Default") shall be deemed to have occurred if a Party fails to perform or observe any material term, covenant or condition of this Agreement, other than as a result of Force Majeure, which failure (if not remedied within 60 days after receipt of written notice from the other Party identifying the failure) will result in or can reasonably be expected to:

- (a) result in the suspension of the design, construction or commissioning of the Arena, Wintergarden, Community Rink, Corridor or LRT Link for more than 120 consecutive days; or
- (b) materially impair the non-defaulting Party in exercising any material right it has under this Agreement.

27.2 Neither Party shall be liable or deemed to be in default under this Agreement for failure to perform or delay in performance of any of its duties or obligations under this Agreement due to Force Majeure. Any Party prevented from performing, or delayed in performance, due to Force Majeure shall advise the other Party, as soon as is practicable, of the occurrence of the event or the existence of the cause and the anticipated consequence and shall use all reasonable commercial efforts to mitigate those consequences.

27.3 This Agreement shall terminate:

- (a) pursuant to Section 17.1 (borrowing bylaw is not passed), Section 20.2(b) (proposed GMP for Arena or Wintergarden causes Arena/WG Project Budget to be exceeded) or Section 20.3(b) (proposed GMP for the Community Rink, Corridor or LRT Link causes the individual maximum Project Costs set out in this Agreement for such facilities to be exceeded);
- (b) on the termination or expiry of the Lease Agreement.

27.4 This Agreement may be terminated:

- (a) by the written agreement of the Parties; or

- (b) following the occurrence and during the continuance of an Event of Default, by and at the option of the non-defaulting Party, by such non-defaulting Party providing written notice to the other and such termination will be effective on the date stated in such notice.

## 28. INDEMNITY

- 28.1 EAC indemnifies and saves harmless, and shall indemnify and save harmless, the City from Damages incurred by the City arising from:
- (a) the breach or non-performance by EAC of its obligations under this Agreement, save and except for and to the extent arising from the breach of this Agreement by the City or the wilful default or negligent act or omission of the City, its officers, employees or agents;
  - (b) EAC's and its Affiliates' exercise of the Advertising and Commercial Rights under Section 21, save and except for and to the extent arising from the breach of this Agreement by the City or the wilful default or negligent act or omission of the City, its officers, employees or agents.
- 28.2 The City indemnifies and saves harmless, and shall indemnify and save harmless, EAC from Damages incurred by EAC arising from:
- (a) the breach or non-performance by the City of its obligations under this Agreement, save and except for and to the extent arising from the breach of this Agreement by EAC or the wilful default or negligent act or omission of EAC, its officers, employees or agents; and
  - (b) the City's use of the Arena or Wintergarden under Section 19.2, save and except for and to the extent arising from the breach of this Agreement by EAC or the wilful default or negligent act or omission of EAC, its officers, employees or agents.
- 28.3 All claims for indemnification under this Section 28 shall be asserted and resolved in accordance with the following:
- (a) A Party claiming indemnification ("Indemnitee") from the other Party ("Indemnitor") shall promptly give the Indemnitor notice of any matter that an Indemnitee has determined has given or could give rise to a right of indemnification under this Agreement, stating the nature of such matter, an estimate of the amount of the Damages incurred, if known, (which estimate shall not be conclusive of the final amount of such Damages) and the method of computation thereof, all with reasonable particularity. Failure to provide such notice shall not affect the right of the Indemnitee to indemnification except to the extent such failure shall have resulted in liability to the Indemnitor that could have been actually avoided had such notice been provided within such required time period and with the required particularity. If the Indemnitor does not notify the Indemnitee within 20 days from its receipt of the written notice that the Indemnitor disputes such claim, the claim specified by the Indemnitee in that written notice shall be deemed accepted by the Indemnitor. If the Indemnitor notifies the Indemnitee, within 20 days from its receipt of the written notice from the Indemnitee,



that it disputes the claim of indemnification by the Indemnitee, or any aspect thereof, the provisions of Section 26 shall apply.

- (b) The obligations and liabilities of an Indemnitor with respect to Damages arising from claims of any third party ("Third Party Claims") that are subject to the indemnification provisions in this Section 28 shall be governed by the following additional terms and conditions:
- (i) If an Indemnitee receives notice of any Third Party Claim, then the Indemnitee shall give the Indemnitor prompt notice of the Third Party Claim and the Indemnitor may, at its option, assume and control the defence of the Third Party Claim at the Indemnitor's expense and through council of the Indemnitor's choice reasonably acceptable to the Indemnitee. If the Indemnitor assumes the defence against the Third Party Claim as provided above, the Indemnitee shall have the right to participate at its own expense in the defence of the Third Party Claim, shall reasonably cooperate with the Indemnitor in such defence and will make available, on a reasonable basis, to the Indemnitor all witnesses, pertinent records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnitor and at the Indemnitor's expense.
  - (ii) If the Indemnitor does not respond within 20 days from receipt of the notice from the Indemnitee under subsection (a), above, that it agrees to conduct the defence against a Third Party Claim, the Indemnitor shall be deemed to have accepted responsibility to pay all reasonable costs and expenses of such defence as incurred, shall cooperate with the Indemnitee (and be entitled to participate at its expense) in such defence and make available to the Indemnitee, on a reasonable basis, all such witnesses, records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnitee, and shall take such action as reasonably requested by the Indemnitee to enable the Indemnitee to take any action the Indemnitee deems appropriate with respect to any such defence.
  - (iii) Except for the settlement of a Third Party Claim that involves the payment of money only and is paid in full by the Indemnitor and where there is no finding or admission of wrongdoing or violation of Applicable Laws by the Indemnitee and no adverse effect on any other claims that may be made against the Indemnitee or any rights or claims held by the Indemnitee, no Third Party Claim may be settled without the written consent of the Indemnitee, such consent not to be unreasonably withheld or delayed.

28.4 The provisions of Section 28 survive termination of this Agreement.

## 29. NOTICE

29.1 Notice in writing or other correspondence required or permitted to be given to either Party pursuant to this Agreement shall be sufficiently given when delivered to the following addresses (or to any other address or to the attention of any other person as may be designated in writing by a Party):



To the City:  
The City of Edmonton  
3rd Floor, City Hall  
1 Sir Winston Churchill Square  
Edmonton, Alberta T5J 2R7  
Attention: City Manager

To EAC:  
1702 Bell Tower  
10104 – 103 Ave  
Edmonton, Alberta T5J 0H8  
Attention: John D. Karvellas, Q.C.

Notice shall conclusively be deemed to have been given on the date of delivery.

### **30. GENERAL**

- 30.1 The Ancillary Agreements shall be in such form as approved by the Parties.
- 30.2 Nothing in this Agreement restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government, subject to the compliance by the City of its obligations under this Agreement. For greater certainty, nothing in this Agreement shall constitute the granting by the City of any development, construction or other similar approval or permit pursuant to the Act as may be required for the carrying out of the design and construction of the Arena Area Facilities.
- 30.3 This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein.
- 30.4 EAC acknowledges that (i) the City is subject to the provisions of FOIP, (ii) the City may be requested to disclose any records relating to this Agreement and under the custody or control of the City, including, without limitation, the contents of this Agreement, and (iii) any such disclosure if required by FOIP will only be made in accordance with and to the extent required by the provisions of FOIP. For greater certainty, the foregoing shall not limit or restrict the rights of objection to disclosure that EAC has under FOIP.
- 30.5 The waiver of any covenant, condition or provision of this Agreement must be in writing. The failure of any Party at any time to require strict performance by the other Party of any covenant, condition or provision of this Agreement shall in no way affect such Party's right thereafter to enforce such covenant, condition or provision, nor shall the waiver by any Party of any breach of any covenant, condition or provision hereof be taken or held to be taken as a waiver of any future breach of any such covenant, condition or provision.
- 30.6 An amendment of any term of this Agreement, including the Schedules, must be in writing and signed by the Parties.

- 30.7 Each of the Parties shall from time to time execute and deliver all further documents and instruments and do all things and acts as the other Parties may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 30.8 The relationship of the Parties under this Agreement is solely that of independent contractors and the Parties are not to be deemed or construed as being in partnership, in a joint venture or in a relationship of employment under this Agreement, and any representation, claim or assertion to the contrary is hereby negated.
- 30.9 The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement. The reference to any legislation in this Agreement shall be deemed to include all amendments thereto and all regulations thereunder and all statutes, including all amendments thereto and regulations thereunder, that may be substituted for that legislation.
- 30.10 Time is of the essence in this Agreement and no extension or variation of this Agreement operates as a waiver of this provision.
- 30.11 This Agreement and the Ancillary Agreements constitute the entire agreement between the Parties and there are no other representations, conditions, covenants or warranties other than those expressed therein.
- 30.12 If there is a conflict between this Agreement and any Ancillary Agreement, the provisions of this Agreement shall prevail except if there is a conflict between this Agreement and the Restated Land Inventory Agreement, the LIA Agreements, the Location Agreement or the Location Support Agreement, in which case the Restated Land Inventory Agreement, LIA Agreements, Location Agreement or Location Support Agreement, as applicable, will prevail.
- 30.13 If any provision of this Agreement or its application to any Party or circumstance is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, it will be ineffective only to the extent of its illegality, invalidity or unenforceability without affecting the validity or the enforceability of the remaining provisions of this Agreement and without affecting its application to other parties or circumstances.
- 30.14 This Agreement may be executed by exchange of faxed or electronically transmitted signatures of the Parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF the Parties have executed this Agreement.



EDMONTON ARENA CORP.

Per: [Signature]  
Daryl A. Katz

Per: [Signature]  
John D. Karvellas

Approved:

As to Form: [Signature]

As to Content: [Signature]

THE CITY OF EDMONTON

Per: [Signature] (seal)  
As represented by Simon Farbrother, City Manager

Approved by City Council: January 23, 2013 (Item 6.2); April 10, 2013 (Item 6.11); May 15, 2013 (Item 6.1)



**SCHEDULE A**

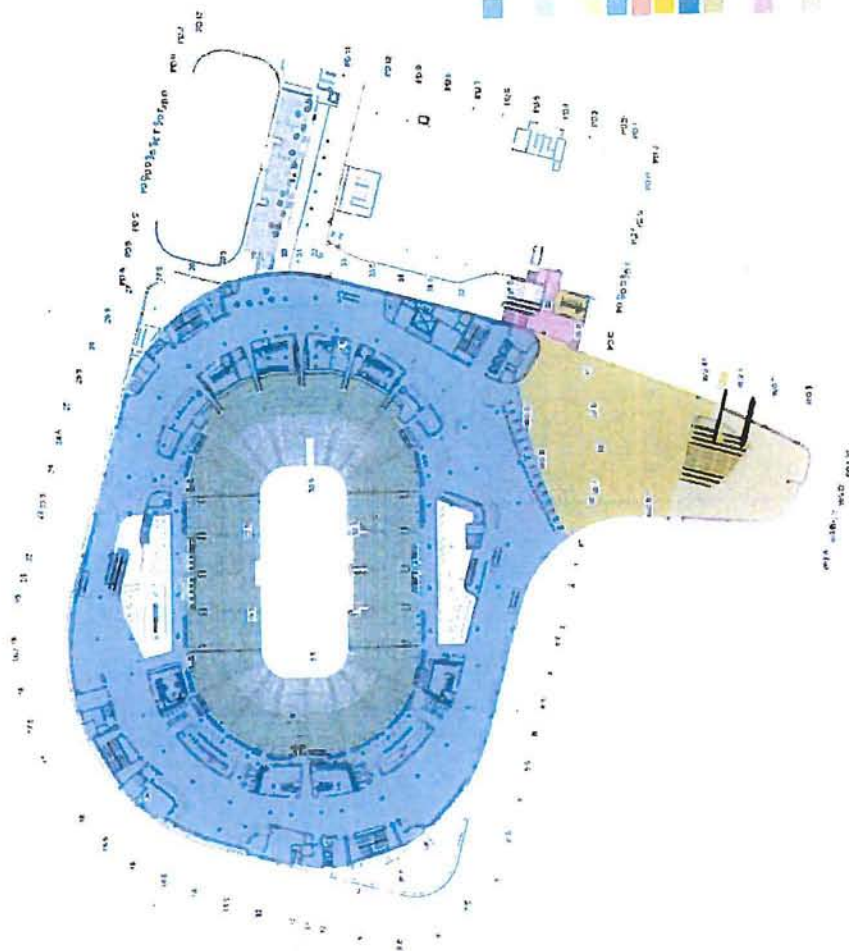
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**SITE PLAN**

**(SEE ATTACHED 4 PAGES)**

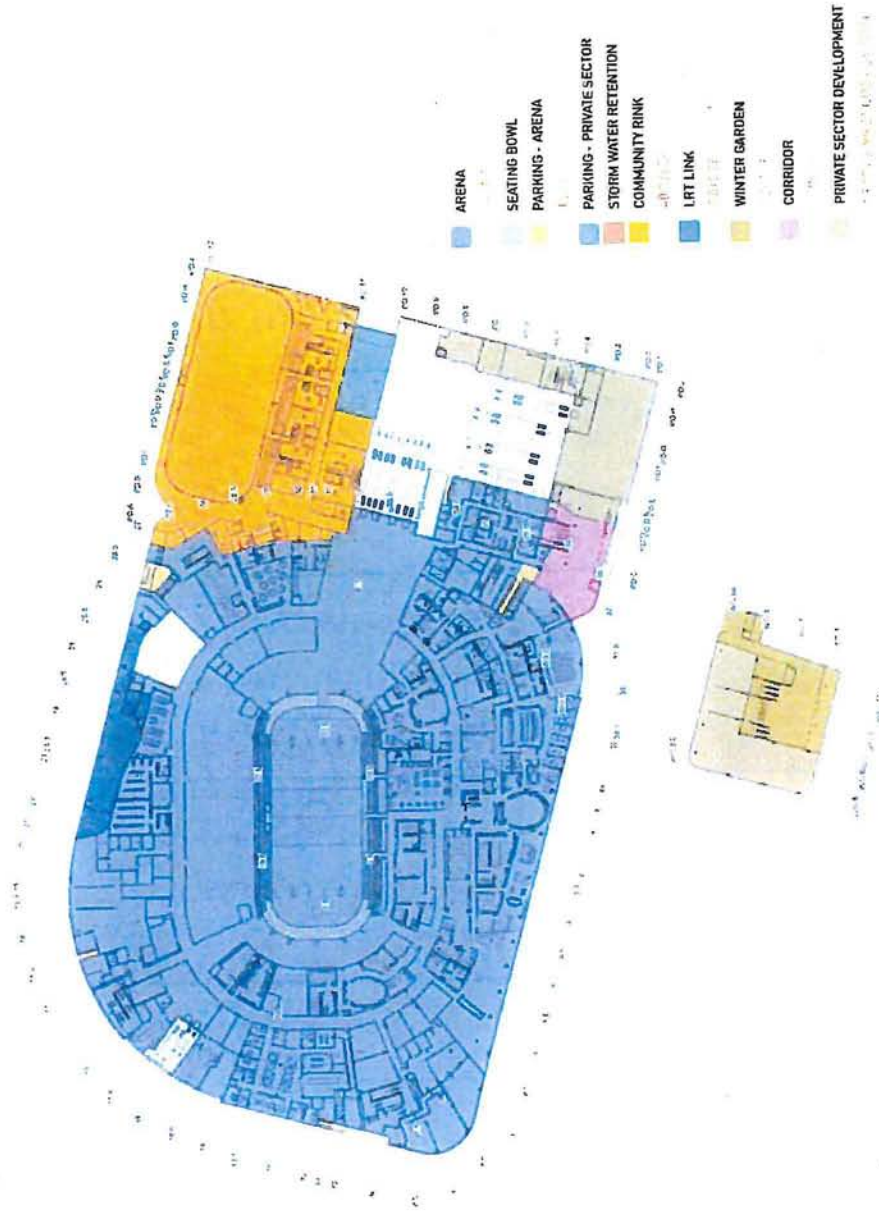
# SCHEDULE A

## SITE PLAN - PAGE 1



SCHEDULE A

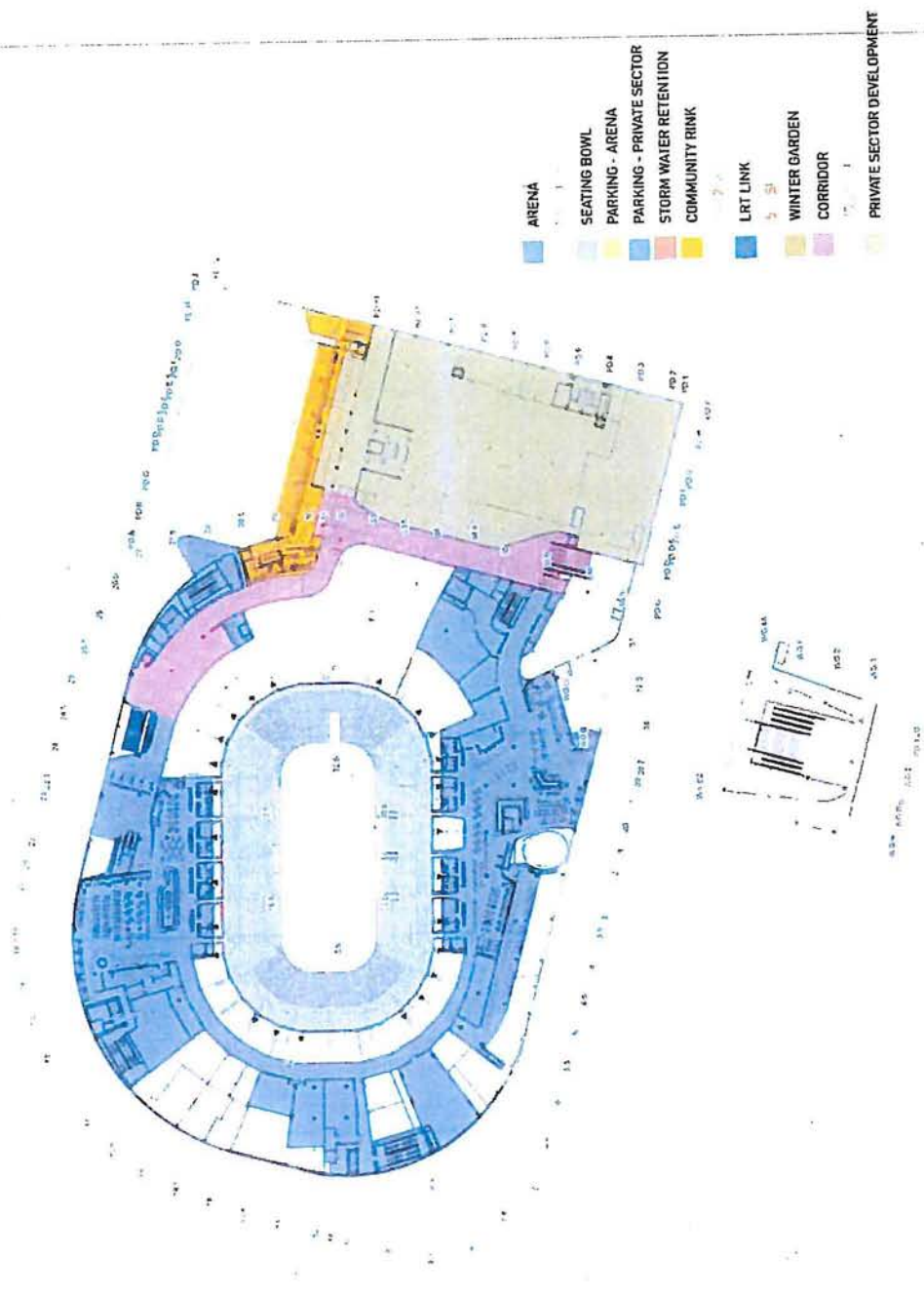
SITE PLAN - PAGE 2





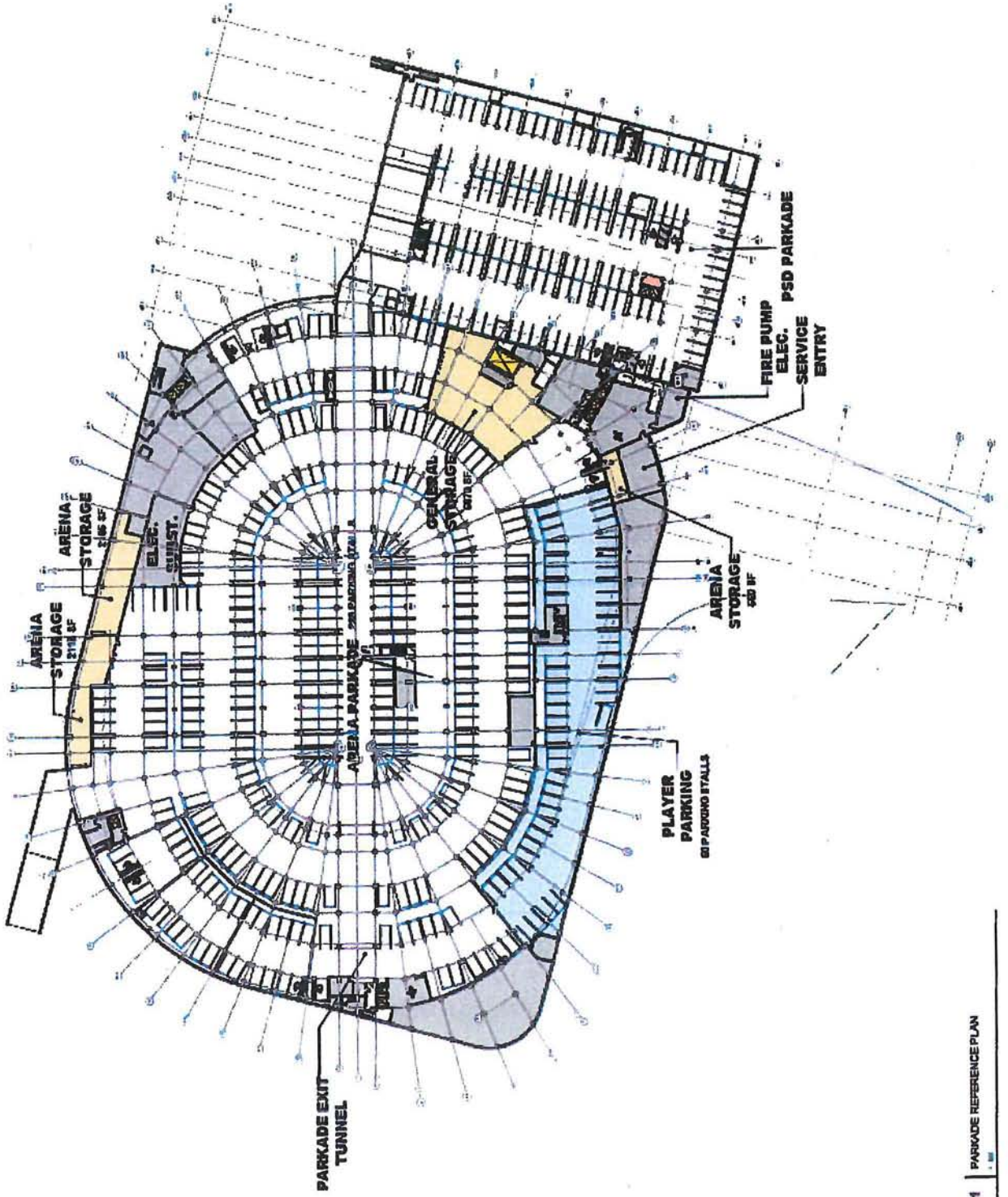
**SCHEDULE A**

**SITE PLAN - PAGE 3**



SCHEDULE A

SITE PLAN - PAGE 4



EDMONTON  
ARENA  
ARENA PROJECT  
ARENA PROJECT

EDMONTON  
ARENA  
ARENA PROJECT  
ARENA PROJECT

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	11/11/11
2	ISSUED FOR PERMITTING	11/11/11
3	ISSUED FOR PERMITTING	11/11/11
4	ISSUED FOR PERMITTING	11/11/11
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6	ISSUED FOR PERMITTING	11/11/11
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9	ISSUED FOR PERMITTING	11/11/11
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14	ISSUED FOR PERMITTING	11/11/11
15	ISSUED FOR PERMITTING	11/11/11



EDMONTON  
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ARENA PROJECT

SD1.01



SCHEDULE B

ARENA/WG PROJECT BUDGET

Project: Edmonton Arena Area Facilities  
 Client: Edmonton Arena Corporation and the City of Edmonton

OVERALL PROJECT BUDGET

Description	Arena and Parking Garage Budget	Bridge over 104 Ave (Wintergarden')	Community Rink	LRT Connection	Corridor
1. PRE-DEVELOPMENT AND PUBLIC ENGAGEMENT	\$ 3,210,043	\$ 364,124	\$ 129,360	\$ 105,404	\$ 105,404
2. SITE DEVELOPMENT	\$ 3,284,782	\$ 369,868	\$ 259,345	\$ 107,941	\$ 176,039
3. DESIGN, PROFESSIONAL SERVICES AND PROJECT ADMINISTRATION	\$ 41,911,191	\$ 5,190,086	\$ 1,924,109	\$ 1,541,867	\$ 1,541,867
4. CONSTRUCTION	\$ 357,014,855	\$ 42,428,551	\$ 17,081,196	\$ 4,866,160	\$ 12,066,159
5. SYSTEMS & EQUIPMENT	\$ 41,600,000	\$ 4,150,000	\$ 130,000	\$ -	\$ -
6. PERMITS, TESTING, FEES, TAXES & SPECIAL ASSESSMENTS	\$ 7,689,133	\$ 893,638	\$ 361,964	\$ 176,369	\$ 256,289
7. INSURANCE, FINANCING & TRANSACTION COSTS	\$ 2,909,158	\$ 340,023	\$ 140,242	\$ 35,523	\$ 88,084
<b>PROJECT BUDGET (without contingency)</b>	<b>\$ 457,519,163</b>	<b>\$ 53,736,281</b>	<b>\$ 20,026,216</b>	<b>\$ 6,833,265</b>	<b>\$ 14,233,843</b>
8. PROJECT CONTINGENCY	\$ 22,480,837	\$ 2,763,719	\$ 973,784	\$ 166,735	\$ 766,157
<b>TOTAL PROJECT BUDGET</b>	<b>\$ 480,000,000</b>	<b>\$ 56,500,000</b>	<b>\$ 21,000,000</b>	<b>\$ 7,000,000</b>	<b>\$ 15,000,000</b>

**SCHEDULE C**

**CALCULATION OF RENT**

SCHEDULE C CALCULATION OF RENT	
The Parties agree that this Schedule C will be amended and replaced within eight months of the Lease Commencement Date to incorporate the actual interest rate from the City's Lender, Net Carrying Costs, and all other amounts described in Section 17 and 18	
Assumptions:	
Proportionate construction cost expenditures assumed to be consistent month to month, but actual expenditures to be based on actual proportionate payments	
Money Market Fund and Short Term Bond Fund rates estimate based on current yields and implied forward yields at March 2013	
Money Market Fund 2013 Rate expressed as APR	1.20000%
Money Market Fund 2014 Rate expressed as APR	1.20000%
Money Market Fund 2015-17 Rate expressed as APR	1.50000%
Money Market Fund Rate for 2013, expressed as daily compound rate	0.00328%
Money Market Fund Rate for 2014, expressed as daily compound rate	0.00328%
Money Market Fund Rate for 2015-17, expressed as daily compound rate	0.00409%
Short Term Bond Fund 2013 Rate expressed as APR	1.50000%
Short Term Bond Fund 2014 Rate expressed as APR	1.50000%
Short Term Bond Fund 2015-17 Rate expressed as APR	1.75000%
Short Term Bond Fund Rate for 2013, expressed as daily compound rate	0.00409%
Short Term Bond Fund Rate for 2014, expressed as daily compound rate	0.00409%
Short Term Bond Fund Rate for 2015-17, expressed as daily compound rate	0.00477%
City's 35 Year Borrowing Rate estimated based on current yields and implied forward yields at March 2013	3.60000%
Semi-annual Instalment amortization of \$137,810,664 (\$140,000,000 less \$2,189,336) based on 35 year term and estimated City's 35 Year Borrowing Rate	3,478,362
Administrative Fee	0.125%

Date	Days per period	1.19 Construction Borrowing	Proportionate construction expenditures	18.2(a) balance Money Market Fund	18.2(b) balance Short Term Bond Fund	18.2 notional interest Credit	18.3 (a) Semi annual Instalment	18.3 (b) (c) Carrying Costs on Construction Borrowing	1.3 Administrative Fee	18.1 Net Carrying Costs
15-Dec-13		(137,810,664)	11,453,670	38,186,221	88,170,773					
1-Jan-14	17		3,182,185	35,004,036	88,170,773	80,876				80,876
1-Feb-14	31		3,182,185	31,821,851	88,170,773	144,246				144,246
1-Mar-14	28		3,182,185	28,639,666	88,170,773	127,366				127,366
1-Apr-14	31		3,182,185	25,457,481	88,170,773	137,779				137,779
1-May-14	30		3,182,185	22,275,296	88,170,773	130,205				130,205
1-Jun-14	31		3,182,185	19,093,111	88,170,773	131,312	(3,478,362)		(171,016)	(3,518,066)
1-Jul-14	30		3,182,185	15,910,925	88,170,773	123,947		(4,272)		119,674
1-Aug-14	31		3,182,185	12,728,740	88,170,773	124,845		(4,415)		120,430
1-Sep-14	31		3,182,185	9,546,555	88,170,773	121,611		(4,415)		117,196
1-Oct-14	30		3,182,185	6,364,370	88,170,773	114,559		(4,272)		110,286
1-Nov-14	31		3,182,185	3,182,185	88,170,773	115,144		(4,415)		110,729
1-Dec-14	30		3,182,185	(0)	88,170,773	108,300	(3,478,362)		(169,746)	(3,544,080)
				54,756,073	33,414,700					
1-Jan-15	31		4,563,006	50,193,067	33,414,700	113,157		(10,295)		102,862
1-Feb-15	31		4,563,006	45,630,061	33,414,700	107,365		(10,295)		97,070
1-Mar-15	28		4,563,006	41,067,055	33,414,700	91,744		(9,299)		82,445
1-Apr-15	31		4,563,006	36,504,048	33,414,700	95,782		(10,295)		85,487
1-May-15	30		4,563,006	31,941,042	33,414,700	87,088		(9,963)		77,125
1-Jun-15	31		4,563,006	27,378,036	33,414,700	84,199	(3,478,362)		(10,295)	(3,572,912)
1-Jul-15	30		4,563,006	22,815,030	33,414,700	75,878		(14,944)		60,934
1-Aug-15	31		4,563,006	18,252,024	33,414,700	72,516		(15,443)		57,173
1-Sep-15	31		4,563,006	13,689,018	33,414,700	66,824		(15,443)		51,382
1-Oct-15	30		4,563,006	9,126,012	33,414,700	59,064		(14,944)		44,119
1-Nov-15	31		4,563,006	4,563,006	33,414,700	55,241		(15,443)		39,798
1-Dec-15	30		4,563,006	-	33,414,700	47,854	(3,478,362)		(14,944)	(167,138)
				33,414,700	-					
1-Jan-16	31		4,176,838	29,237,863	-	37,110		(17,660)		19,450
1-Feb-16	31		4,176,838	25,061,025	-	31,809		(17,660)		14,149
1-Mar-16	29		4,176,838	20,884,188	-	24,797		(16,520)		8,277
1-Apr-16	31		4,176,838	16,707,350	-	21,206		(17,660)		3,546
1-May-16	30		4,176,838	12,530,513	-	15,391		(17,090)		(1,699)
1-Jun-16	31		4,176,838	8,353,675	-	10,603	(3,478,362)		(17,660)	(3,651,217)
1-Jul-16	30		4,176,838	4,176,838	-	5,130		(17,090)	(165,799)	(11,959)
1-Aug-16	31		4,176,838	(0)	-	(0)		(17,660)		(17,660)
1-Sep-16	31		4,176,838	(0)	-	(0)		(17,660)		(17,660)
868		(137,810,664)	137,810,664	0	2,563,047		(17,391,808)	(316,663)	(842,153)	(15,987,577)
Net Carrying Costs										15,987,577
Rent B semi annual instalment @ 6%										548,959



## SCHEDULE D

### COMMUNITY BENEFITS

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#### OUR COMMITMENT

##### The EAC and the City will:

- seek mutually valuable community improvement opportunities,
- regularly communicate and share information on the Arena's impact in the community, and
- continually explore solutions for mutually important issues.

#### LOCAL ADVISORY COMMITTEE

The City will facilitate the creation of a community based advisory committee ("Committee") made up of representatives from the community leagues, social agencies and business revitalization zones adjacent to or in close proximity to the Arena, and labour representatives as appropriate. The Committee will work together to address the issues and opportunities of the Arena in the local community.

- The City has full authority to determine the membership criteria for the Committee.
- The City, in consultation with EAC, will develop a Terms of Reference for the Committee.
- The City will organize, host and cover all costs associated with Committee meetings.
- Committee meetings will not be open to the public, but minutes will be publically available.
- EAC will ensure that a senior member of the Edmonton Oilers administration and a senior member from Arena operations will participate in meetings on a quarterly basis.
- The City and EAC commit to reviewing guidelines, policies or related agreements on a yearly basis and amending as appropriate.

#### GOOD NEIGHBOR APPROACH

- 1. Policies and Guidelines:** As it may relate to the impact(s) of the Arena in this neighbourhood, the Committee will work proactively with EAC to develop good neighbour guidelines and policies to address typical concerns such as parking and noise levels.
- 2. Employment:** EAC will use their best efforts to encourage job training and employment programs targeted at low-income and high needs residents of downtown Edmonton communities during the construction phase and operations when the Arena is complete. The City will provide assistance and advice on recruitment of these individuals. As part of this process, the City will consult with selected social service agencies, community leagues and labour organizations.
- 3. Support to Community:** The City acknowledges that EAC, through affiliated organizations such as the Edmonton Oilers Community Foundation, is engaged in numerous charitable activities and causes of benefit to the greater Edmonton community and provides targeted support for youth and families, sponsors community activities and events, and contributes to the development of the social infrastructure of Edmonton. EAC shall continue to support and encourage such activities.



## SCHEDULE E

### DISPUTE SETTLEMENT

The following dispute resolution procedures shall apply to all disputes arising under this Agreement, unless specifically stated otherwise in this Agreement:

1. If a Party considers that a dispute has arisen under this Agreement that has not been resolved in accordance with the applicable provisions of this Agreement, that Party shall provide to the other Party a written notice of dispute, summarizing the issue(s) in dispute. Within 10 days of provision of the notice (or such earlier or later period as the Parties agree on a case by case basis), the City Manager or his designee(s) and John Karvellas, or his designee(s) shall meet (if possible in face-to-face meetings) and shall, acting in good faith, attempt to resolve the dispute.
2. If the dispute is not resolved in accordance with paragraph 1, either Party shall, on 10 days' written notice to the other, refer the dispute to arbitration. If the Parties cannot agree on a single arbitrator within the 10 day period, then the Party initiating the arbitration shall forthwith nominate an arbitrator and notify the other Party in writing of such nomination and the other Party shall, within 10 days of receipt of such notice of nomination, nominate one arbitrator and the two arbitrators so nominated shall select a third arbitrator to act as chairman of the arbitration tribunal to act jointly with the previously named arbitrators. The Parties will act reasonably and in good faith to select arbitrators who are objective and who are suitably qualified by education or experience to deal with the matters in issue.
3. Any arbitration conducted pursuant to this Agreement shall take place in the City of Edmonton and except as modified by agreement of the Parties, the provisions of the *Arbitration Act* (Alberta) shall govern the arbitration process. The arbitrator or the arbitration panel, as the case may be, must render a decision on the matter in issue within 30 days of the appointment of the arbitrator or the arbitration panel or such other earlier or later date agreed to by the Parties.
4. The decision of the single arbitrator, or a majority of the arbitration panel, as the case may be, in respect of all matters of procedure and with respect to the matter in issue shall be final and binding on the Parties.
5. The costs of the arbitration shall be borne as between the Parties in the manner specified in the arbitrator's decision. In the absence of any direction by the arbitrator, each Party shall bear its own costs and the costs of the arbitrator(s) will be shared equally.
6. The Parties shall, without prejudice to any claims, continue the performance of their respective obligations during the resolution of any dispute or disagreement, including during any period of arbitration, unless and until this Agreement is terminated.

## SCHEDULE F

### MASTER PROJECT SCHEDULE

**Project: Edmonton Arena Area Facilities**  
**Client: Edmonton Arena Corporation and the City of Edmonton**

#### OVERALL PROJECT SCHEDULE

1. PRELIMINARY GMP DOCUMENTS DELIVERED BY 360 ARCHITECTURE: SEPTEMBER, 2013
2. COST ESTIMATE ON PRELIMINARY GMP DOCUMENTS DELIVERED BY PCL CONSTRUCTION: OCTOBER, 2013
3. FINAL GMP DOCUMENTS DELIVERED BY 360 ARCHITECTURE: NOVEMBER, 2013
4. GMP PROPOSAL DELIVERED BY PCL CONSTRUCTION: JANUARY, 2014
5. GMP PROPOSAL APPROVED BY CITY OF EDMONTON AND EDMONTON ARENA CORP: FEBRUARY 2014
6. START CONSTRUCTION: MARCH, 2014
7. TURNOVER ARENA FACILITIES TO OILERS OPERATIONS GROUP: SEPTEMBER, 2016