

CONSTRUCTION ADMINISTRATION AGREEMENT

BETWEEN:

THE CITY OF EDMONTON
(the "City")

- and -

EDMONTON ARENA CORP.
("EAC")

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CONSTRUCTION ADMINISTRATION AGREEMENT

THIS AGREEMENT is executed August 29, 2013 between THE CITY OF EDMONTON (the "City") and EDMONTON ARENA CORP. ("EAC"), with effect as and from January 23, 2013.

WHEREAS:

- A. EAC and the City have executed the Master Agreement and certain other agreements in respect of the design, development, ownership, construction, financing and operation of the Arena Area Facilities. The Parties have executed the IDA in respect to obtaining a design for the Arena Area Facilities and the GMP. This Construction Administration Agreement sets out the Parties' current agreement with respect to their roles and obligations with respect to the Design and Construction of 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

Terms in this Agreement shall have the meanings assigned to them in the Master Agreement unless defined in this Agreement, below:

- 1.1 "Agreement" means this agreement, together with all Schedules, as amended or replaced by the Parties from time to time.
- 1.2 "Approved GMP" means the GMP approved by the Parties pursuant to the Master Agreement.
- 1.3 "Architectural Services Agreement" means the agreement between the Architect and, originally, EAC, as agent for the City, dated December 15, 2011, with respect to architectural services for the Arena Area Facilities and all amendments thereto.
- 1.4 "Arena Contingency Use Guidelines" are set out in Schedule A.
- 1.5 "Arena Project Contingency" means the amount included in the Project Budget as the project contingency for the Arena (which, for greater certainty, excludes the EAC Contingency) plus any part of the CM Contingency related to the Arena which is not expended at the request of the CM.
- 1.6 "Available Contingency" means the total amount of the Arena Project Contingency which has not been allocated through approval of Change Documents or otherwise committed to be spent on Project Costs.
- 1.7 "Change Document" means an amendment, authorization, notice, change order or additional service request issued by a Project Professional reflecting a proposed change to the Project which describes with reasonable detail the nature of the change, the cost impact thereof on the Project Budget and any impact of the proposed change to the Master Project Schedule.
- 1.8 "CM Contingency" means the contingency established as part of the GMP for each of the Arena Area Facilities which may be either expended at the request of the CM or released to the Parties in accordance with the terms of the Construction Management Agreement.

- 1.9 "Construction Management Agreement" means the agreement between the CM and, originally, EAC as agent for the City, dated May 2012 with respect to construction management of the Arena Area Facilities and all amendments thereto.
- 1.10 "Consultant" means any consultant, other than the Architect, CM or PM, directly retained by either Party to provide services to the Project and to be paid as a Project Cost.
- 1.11 "Contractor" means any contractor, subcontractor or supplier, other than the Architect, CM or PM, directly retained by either Party to provide goods or materials, including fixtures, furniture and equipment, for the Project and to be paid as a Project Cost.
- 1.12 "Design and Construction" means the doing of all things necessary and incidental for the planning, design, engineering, development, supervision, servicing, construction and commissioning of the Arena Area Facilities, or a component thereof as the context may require, including, without limitation, obtaining all required services, materials and labour and equipment.
- 1.13 "Design Documents" means the drawings, plans, specifications and other material or documents that set forth, in detail, the design and other documentary requirements for construction of the Arena Area Facilities.
- 1.14 "EAC Contingency" means the amount of \$3,000,000.
- 1.15 "Forecasted Cost Exposure" means the estimated dollar value of all pending Change Documents (being those Change Documents that have not yet been negotiated, accepted or rejected) and all outstanding claims and potential changes known to the PM that may result in Change Documents.
- 1.16 "GMP Documents" is defined in the Architectural Services Agreement.
- 1.17 "Master Agreement" means the agreement executed by the City and EAC on August 29, 2013.
- 1.18 "Minimum Contingency Reserve" means the minimum dollar amount, set out in the Arena Contingency Use Guidelines, that is to be maintained as Available Contingency in accordance with Article 7, which amount, for greater certainty, is exclusive of the EAC Contingency.
- 1.19 "Percent Bought Out by CM" means the percentage of the Approved GMP that has been tendered by the CM and for which subcontracts have been approved.
- 1.20 "Percent Billed by CM" means the percentage of the Approved GMP that has been invoiced by the CM.
- 1.21 "PLT" means the project leadership team established under Section 2.2.
- 1.22 "PLT Representatives" mean the persons who are the designated representatives of the City and/or the designated representatives of EAC, as the context requires, to the PLT.
- 1.23 "Project Contingency" means (without duplication) the Arena Project Contingency, the amounts included in the Project Budget as the project contingency for each of the other Arena Area Facilities and any part of the CM Contingency related to each applicable facility which is not

expended at the request of the CM and, for greater certainty, does not include the EAC Contingency.

- 1.24 "Project Coordination Team Meetings" means the meetings among the PLT Representatives and representatives of the Project Professionals (as applicable).
- 1.25 "Project Management Agreement" means the agreement between the PM and, originally, EAC, as agent for the City, dated December 15, 2011, with respect to project management services for the Arena Area Facilities and all amendments thereto.
- 1.26 "Project Professionals" means the Architect, PM, CM and any other Contractor or Consultant retained by either Party to provide services relating to the Design and Construction of the Arena Area Facilities.
- 1.27 "Project Steering Committee" means the committee consisting of an equal number of representatives appointed by each of the Parties.
- 1.28 "Project Steering Committee Representatives" means the persons who are designated representatives of the City and/or the designated representatives of EAC, as the context requires, to the Project Steering Committee.
- 1.29 "Recent Arena Facilities" means the Consol Energy Center in Pittsburgh, Pennsylvania (Pittsburgh Penguins), Nationwide Arena in Columbus, Ohio (Columbus Blue Jackets), Prudential Centre in Newark, New Jersey (New Jersey Devils) and Excel Energy Center in St. Paul, Minnesota (Minnesota Wild).
- 1.30 "Structural Steel Topping Off Ceremony" means that stage in the Project when the final structural steel element, usually a roof beam, is installed.
- 1.31 "Unencumbered Contingency Value" means the difference between the Available Contingency and the Forecasted Cost Exposure.
- 1.32 "Working Days" means days other than Saturdays, Sundays and statutory holidays in the Province of Alberta.

2. MANAGEMENT OF PROJECT

- 2.1 Pursuant to and in accordance with the terms of the IDA, EAC acted as agent for the City in the management of the Design and Construction of the Project. The Parties affirm and agree that EAC ceased to act as agent for the City on January 23, 2013. The Design and Construction shall be managed in accordance with the terms of this Agreement.
- 2.2 The Parties shall establish a project leadership team (the "PLT") consisting of two representatives appointed by the City and two representatives appointed by EAC. The City and EAC shall be jointly responsible for managing, directing, supervising and coordinating all aspects of the Design and Construction in accordance with and subject to this Agreement and the Master Agreement and shall exercise their authority to jointly manage, direct, supervise and coordinate the Project through the PLT, except to the extent provided otherwise in this Agreement.

- 2.3 The Parties shall cause the PM to manage the Design and Construction and provide direction to the Architect, CM, Consultants and Contractors for the Project pursuant to the terms of the Project Management Agreement and in accordance with the direction of the PLT. The PLT shall provide direction to the PM through the minutes of Project Coordination Team Meetings or otherwise in writing. For clarification, the PM shall not have the responsibility or authority to enter into or amend any agreements related to the Design and Construction.
- 2.4 The City and EAC will maintain regular communication to ensure that the Parties are kept apprised of the progress of the Project. In furtherance thereof, the Parties shall consult regularly on the status of the Project, as set out below:
- (a) The Parties shall hold Project Coordination Team Meetings to obtain progress reports on the Project from the Project Professionals, which meetings shall generally occur on a biweekly basis. Minutes of these meetings shall be kept by the PM, subject to the review and approval of the PLT;
 - (b) The Parties shall cause the PM to provide the PLT with: (i) written reports, no less than monthly, relating to compliance with the Master Project Schedule, updated financial information about the Project Costs incurred and the allocation thereof in relation to the Project Budget, (ii) copies of all written reports received from the Project Professionals, (iii) copies of such other documentation as may be received by the PM and reasonably required to keep the Parties informed during the Project including, without limitation, requests for qualifications, proposals and bidding documents, all executed contracts relating to the Project, all notices and other significant correspondence relating to the Change Documents, all warranties and guarantees, and all notices from any governmental authority relating in any manner to the Project;
 - (c) The Parties shall cause the PM to provide advance notice of scheduled inspections relating to testing of systems and equipment, acceptance, start-up and commissioning, substantial performance, final acceptance and other milestones in the Project (as more particularly specified in the agreement with the CM) to the PLT, which shall have the right to attend all such inspections; and
 - (d) Each of the Parties shall notify the PLT of any claim, suit, proceeding or action that is initiated or, to the knowledge of the applicable Party, threatened in connection with the Project.
- 2.5 This Agreement sets out certain processes to be used by the PLT in respect of its decision-making. In addition to such processes, if consensus is not reached by the PLT or either Party continues to believe that a decision reached by PLT should be reconsidered, then a Party, through its PLT Representatives, may resubmit the issue, agreement or amendment to the PLT Representatives of the other Party, who shall reconsider the matter and provide (within the earlier of (i) 10 Working Days, or (ii), such other time period as the Parties may reasonably agree based on the stage of the Project and other relevant circumstances) either:
- (a) unqualified approval of the proposed agreement or amendment, or concurrence with the position of the Party requesting the reconsideration of the issue, as applicable; or

- (b) detailed written comments identifying which provisions of the issue, agreement or amendment that it disapproves of, setting forth the reasons therefore, which reasons may be prepared by the PM at the request of the PLT Representatives.

A failure to respond within the designated period shall be deemed to be provision of unqualified approval or consensus under subsection (a). If written comments are provided under subsection (b) and the PLT is still unable to reach consensus within such period as the PLT determines is reasonable, then Section 10 shall apply.

- 2.6 The PLT may, from time to time and at any time, record in the minutes of Project Coordination Team Meetings any approvals or decisions of the Parties required under this Agreement and such approvals or decisions shall be valid and binding, notwithstanding any non-compliance with the processes and time periods set out in this Agreement to be used by the PLT in respect of approvals by the Parties or decision making by the PLT.
- 2.7 The City will provide written notice to all Project Professionals with respect to the joint management of the Project by the City and EAC, the form of which will be determined by the PLT. Amendments to the Architectural Services Agreement, the Construction Management Agreement and the Project Management Agreement shall be made to clarify the joint management of the Project and that directions to the applicable Project Professional under the applicable agreement shall be given by the PLT through the PM.
- 2.8 The Parties agree that the benefits of all warranties, guarantees, indemnities and other contractual rights contained in, or arising as a result of Project-related contracts entered into with third parties shall be shared by the City and EAC, based on their interests in and obligations related to those Arena Area Facilities which are the subject of said warranties, guarantees, indemnities and other contractual rights. As an example and for clarification purposes, where and to the extent EAC is responsible for the repair, replacement or maintenance of an Arena Area Facility or component thereof, EAC shall be entitled to the benefit of any third party warranty, guarantee, indemnity or other contractual right which would result in the third party bearing its appropriate share of the costs of the repair, replacement or maintenance involved. The City agrees to expeditiously execute all such documents and take all such actions as may be reasonably necessary to enable EAC to enjoy its share of the benefits of any third party warranties, guarantee, indemnities or other contractual rights derived in relation to the Project. This Section 2.8 shall survive termination of this Agreement.

3. APPROVAL OF DESIGN DOCUMENTS AND MASTER PROJECT SCHEDULE

- 3.1 The Parties adopt the principles set out in Schedule B in relation to the Design and Construction of the Arena Area Facilities. The Parties will instruct the Project Professionals to prepare Design Documents based on the Approved Design (in respect of the Arena and the WG) and consistent with the principles set out in Schedule B (for the Corridor, LRT Link and Community Rink) and in accordance with the Project Budget and the Master Project Schedule.
- 3.2 The following Design Documents, as defined and described in the Architectural Services Agreement, shall be submitted for approval of the Parties:
 - (a) Revised Schematic Design Package;

- (b) Preliminary GMP Documents;
- (c) GMP Documents; and
- (d) Final Construction Documents.

3.3 The process for the approval of the Design Documents listed in Section 3.2 shall be as set out below:

- (a) The Design Documents shall be submitted to the PLT for approval and, in the case of the Preliminary GMP Documents, an estimate of the Project Costs based on such documents (prepared by the CM and/or other Project Professional, as applicable) shall be provided as soon as available. The PLT shall require the Project Professionals to provide any other information reasonably required in connection with the review of the Design Documents and shall arrange meetings, as necessary, amongst the PLT and the Project Professionals;
- (b) The PLT Representatives for each of the Parties shall provide to each other, within the earlier of: (i) 10 Working Days after receipt of the applicable Design Documents, or (ii) in the case of resubmittal of Design Documents in response to comments described in paragraph (ii) below, such other time period as may reasonably be required based on the needs of the Project Professionals and other relevant circumstances, either:
 - i) unqualified approval; or
 - ii) qualified approval, subject only to detailed written comments identifying which element(s) or aspects(s) of the Design Documents that the PLT Representatives of a Party disapprove and setting forth the reasons therefore, which comments may be prepared by the PM at the request of the PLT Representatives of either Party;
- (c) If, within the period for approval, the PLT Representatives of a Party do not object to the Design Documents submitted to them, then that Party shall be deemed to have approved those Design Documents. Similarly, if the PLT Representatives of a Party object only to certain specified element(s) or aspect(s) in the Design Documents, the element(s) or aspect(s) to which no objection is made shall be deemed to have been approved;
- (d) The provisions of Section 10 shall apply if the PLT is unable to agree on and approve a Design Document; and
- (e) On resolution of a disputed matter within the Design Documents, the PLT shall, where appropriate, cause the Project Professionals to either (i) revise the applicable Design Documents based on such resolution, with such revised Design Documents to be submitted to the PLT for review and approval in accordance with the approval procedures specified above, or (ii) if reasonable and appropriate, incorporate such resolution into the next set of Design Documents, which would then be subject to review and approval in accordance with the approval procedures specified in this Section.

3.4 Notwithstanding the foregoing, 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, any changes to the Design Documents to reflect the resulting changes to the design of such east wall and south wall shall be in the discretion of the City, provided that such changes to the design of such east wall and south wall shall not materially change the characteristics or function of the Approved Design of the Arena or of the Community Rink, apart from the east wall and south wall.

3.5 During the period up to the date of acceptance by the Parties of the GMP, as additional information regarding the Design and Construction becomes available, the PLT shall direct the PM to revise the Master Project Schedule as necessary, to be submitted to the PLT for approval. The PLT Representatives of each of the Parties shall provide each other, within 10 Working Days after receipt of any such revisions, either:

- i) unqualified approval; or
- ii) detailed written comments identifying which element(s) or aspect(s) of the revised Master Project Schedule that the PLT Representatives of that Party disapprove and setting forth the reasons therefore, which reasons may be prepared by the PM at the request of the PLT Representatives of either Party;

If, within the period for approval, the PLT Representatives of a Party do not object to any revisions submitted to them, then that Party shall be deemed to have approved such revisions. Similarly, if a Party objects only to certain specified element(s) or aspect(s) in any such revisions, the element(s) or aspect(s) to which it does not object shall be deemed to have been approved. The provisions of Section 10 shall apply if the PLT is unable to agree on and approve any revisions to the Master Project Schedule.

4. AGREEMENTS WITH PROJECT PROFESSIONALS AND CONTRACTORS

4.1 Any new agreement with any Project Professional, or amendments to the terms of the agreements with any Project Professional in effect as of the date hereof, shall require the approval of the PLT in accordance with this Section prior to execution. The proposed agreement or amendment shall first be reviewed by the PM, negotiated by the PM with the applicable Project Professional (if requested by the PLT) and then submitted to the PLT in a form approved by the PM. If the PLT approves the agreement or amendment, then the agreement or amendment may be entered into by the applicable Party or Parties. The provisions of Section 10 shall apply if the PLT is unable to agree on any agreement or amendment to an agreement with a Project Professional pursuant to this Section.

4.2 Any new agreements with Project Professionals will be solicited, negotiated and awarded by way of open, fair and transparent procurement methods to be agreed upon by the PLT, which methods shall respect City standards. Any applicable request for proposals or other solicitation packages for bidding and negotiation will be provided to the PLT for review and approval prior to distribution, and the solicitation, negotiation and recommendation for award shall be conducted by the PLT with the assistance of the PM, unless otherwise agreed by the PLT.

- 4.3 For clarification, any Change Document or matter arising out of a Change Document shall not be considered an agreement or amendment to an agreement with a Project Professional under Section 4.1 but shall fall under the scope of Section 5.

5. APPROVAL OF CHANGE DOCUMENTS

- 5.1 At any time that a Change Document is issued by a Project Professional, the PLT shall review the Change Document in consultation with the PM and such other Project Professionals as requested by any PLT Representative.

- 5.2 The process for the approval of a Change Document shall be as set out below:

- (a) The PM shall submit to the PLT its recommendations and any additional relevant documentation reasonably requested by the PLT, including any estimated Project Costs and impacts to the Master Project Schedule or Project Budget, if applicable;
- (b) The PLT shall consider the proposed Change Document and the PLT Representatives shall communicate their approval or disapproval of the proposed Change Document to each other, in writing, within the earlier of (i) 10 Working Days after receipt of the applicable Change Document or (ii) such other time period as may reasonably be requested by the PM, based on the nature of the proposed Change Document and consideration of the Master Project Schedule and other relevant circumstances. If, within the period for approval of the proposed Change Document, the PLT does not reach consensus on the approval or disapproval of the proposed Change Document, then the provisions of Section 10 shall apply;
- (c) The PLT Representatives of a Party shall be deemed to have approved the Change Document if they do not communicate their disapproval in writing within the applicable time period;
- (d) In exercising discretion in approving any Change Document submitted for review and approval, the approval of a Party shall not be unreasonably withheld, delayed or conditioned if the proposed change reflected in the Change Document:
 - (i) is materially consistent with provision(s), element(s) or aspect(s) of the relevant documents previously approved by the Parties under this Agreement or under the IDA;
 - (ii) is materially consistent with the Approved Design;
 - (iii) is substantially similar to the design, construction and capabilities of a first class, multi-purpose facility that meets or exceeds the standards of the design, construction and capabilities of the Recent Arena Facilities, subject to such differences as would apply due to differences in the greater Edmonton market, climate and urban environment;
 - (iv) is required to cause the Arena to comply with requirements of the National Hockey League or Applicable Laws;

(v) is needed so as to not materially impede or otherwise adversely affect adherence to the Master Project Schedule; or

(vi) is required to address changes due to Force Majeure;

provided always, that the PLT Representatives of a Party shall not be required to approve a Change Document which will result in the Project Budget for any component of the Arena Area Facilities being exceeded; and

(e) The PLT shall direct the PM to communicate the approval or disapproval or any proposed revision to any Change Document to the Project Professionals, and, if approved, the City and EAC shall execute such Change Document.

5.3 If a Change Document would result in an increase to the Project Budget, such Change Document will, in addition to the approval of the Parties as outlined above, require the approval of the City's municipal council in their sole unfettered discretion, unless EAC, in the case of the Arena, agrees that it will pay the amount of such increase as an additional contribution to the Project Budget upon completion of the Arena Area Facilities if there is not sufficient Arena Project Contingency available at that time to cover the costs associated with such Change Document.

6. EAC FURNITURE, FIXTURES, EQUIPMENT

6.1 Notwithstanding any other provision of this Agreement and the legal ownership of the Arena Area Facilities by the City, EAC, or any of its Affiliates, may, in its sole discretion:

(a) obtain (through its own bidding or sourcing processes and procedures that it, in its sole discretion, determines to be appropriate), pay for and cause to be installed furniture, fixtures or equipment to be placed in the Arena provided that, in each case,

(i) any costs for such items are not Project Costs or are funded directly by EAC at the time of purchase; and

(ii) such items will remain the property of EAC and will be removed from the Arena on expiry of the Lease in accordance with the terms thereof, unless the Parties agree otherwise.

(b) obtain (through its own acquisition process), pay for and cause to be installed fixtures to be placed in the Arena that, by their nature, will necessarily remain in the Arena on expiry of the Lease, provided that

(i) any costs for such items are not Project Costs or are funded directly by EAC at the time of purchase; and

(ii) the City, acting reasonably, approves of the installation of the fixtures.

In such case, the City shall be the sole legal owner of such items and the EAC shall use such procurement methods that respect City standards, to be agreed upon by the PLT.

7. PROJECT BUDGET, PROJECT CONTINGENCY AND EAC CONTINGENCY

- 7.1 The Parties, through the PLT, and the PM shall, in the period prior to the receipt of the proposed GMP from the CM, prepare, amend and refine a proposed Project Budget, reflecting in reasonable detail the Project Costs associated with each of the Arena Area Facilities in separate columns. Once the GMP is approved under the Master Agreement, the PLT shall finalize the Project Budget.
- 7.2 Schedule C describes the infrastructure, landscaping and hardscaping to be included in the Project Costs for the Arena, Community Rink, LRT Link and Corridor as part of the Project Budget, unless the Parties agree that any of the costs thereof shall be removed from the Project Budget.
- 7.3 The Parties agree that the primary purpose of the Project Contingency is to address various risks inherent in the Design and Construction, without exceeding the applicable portion of the Project Budget. The Parties agree that the primary purpose of the EAC Contingency is to pay for Project Costs that may not be approved by the City but which EAC believes are important to the aesthetics, operations or revenue generation of the Arena. The purpose for which the EAC Contingency may be used is in the sole and unfettered discretion of EAC. The point in time at which the EAC Contingency may be used is subject to the following:
- (a) commencing on the occurrence of the Structural Steel Topping Off Ceremony, the EAC Contingency can be utilized at any time, in the sole discretion of EAC; and
 - (b) prior to the occurrence of the Structural Steel Topping Off Ceremony, the timing of the utilization of the EAC Contingency will be determined by the PLT;

provided that the Minimum Contingency Reserve is maintained as noted in the Arena Contingency Use Guidelines, unless the PLT agrees otherwise.

- 7.4 On a monthly basis, the PLT will require the PM to provide the PLT with a report outlining the Available Contingency amounts and the Forecasted Cost Exposure.
- 7.5 The Arena Contingency Use Guidelines represent the Parties' agreement on guidelines with respect to the Minimum Contingency Reserve to be maintained as the Project progresses. The Arena Contingency Use Guidelines indicate an estimate for the Percent Billed by CM and an estimate for the Percent Bought Out by CM in association with the milestones noted. If either the actual Percent Billed by the CM or the actual Percent Bought Out by CM, or both, varies by 10% or more from the estimates noted in the Arena Contingency Use Guidelines at any particular milestone, then the Minimum Contingency Reserve for the milestone will be the greatest of the Minimum Contingency Reserve for the:
- (a) Estimate of Percent Billed by CM which is closest to the actual Percent Billed by the CM;
 - (b) Estimate of Percent Bought Out by CM which is closest to the actual Percent Bought Out by CM; and
 - (c) the milestone achieved;
- unless the PLT agrees otherwise.

7.6 The PLT shall endeavour to maintain the Minimum Contingency Reserve as outlined in the Arena Contingency Use Guidelines as follows:

- (a) If the Unencumbered Contingency Value is less than the Minimum Contingency Reserve noted in the Arena Contingency Use Guidelines, then the PLT shall take reasonable measures to increase the Unencumbered Contingency Value, including by deferring changes that would result in an allocation of Available Contingency and by resolving the Forecasted Cost Exposure;
- (b) Notwithstanding (a) above, if the Unencumbered Contingency Value is less than the Minimum Contingency Reserve noted in the Arena Contingency Use Guidelines, then the PLT shall not be precluded from approving any reasonably justified changes that would result in an allocation of Available Contingency, so long as it has established a reasonable basis for believing that the Available Contingency will be sufficient for the remainder of the Project.

8. INSURANCE

8.1 A comprehensive insurance program for the Project shall be developed by EAC for the review and approval of the City, acting reasonably, prior to implementing an insurance program for the Project. This program shall identify all insurance, bonding or other security which will be required to be maintained by or on behalf of the City, EAC, the Architect, the PM, the CM and all Contractors and Consultants with respect to the Project at all times until final completion of the Project, and any warranty periods following completion. In particular, the required insurance coverage shall be with insurers licenced to carry on an insurance business in Alberta and having a recognized rating which is acceptable to both Parties, acting reasonably. Such insurance coverage shall include a waiver of subrogation and be for such amounts and with such deductibles, such exclusion and such additional risk coverage as are normal in a project of this size and complexity. In addition, labor and material and surety bonds may be required at the Parties' reasonable discretion.

9. PAYMENT PROCEDURES

9.1 At the direction of the PLT, the City will pay the Project Costs to the Project Professionals, Contractors, Consultants and all others providing goods and services for the Project on a prompt basis in accordance with the applicable agreements with such parties. The Parties will provide each other with all written reports, reconciliations and recommendations prepared by the PM, CM and/or Architect resulting from the review of the applications for payment and invoices received from Project Professionals, contractors, subcontractors, trades and suppliers. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the Project shall accrue to the City for the payment of Project Costs and the agreements with Project Professionals and Contractors shall incorporate such provisions.

9.2 EAC shall directly invoice the City on a monthly basis for its administration and oversight costs, as determined in accordance with the Project Budget based on its costs specifying the services performed, personnel providing services and the applicable rate agreed to in advance by the City.

10. DISPUTE RESOLUTION

- 10.1 If any differences, disagreements, claims or disputes arise under this Agreement which are not resolved by the PLT, the Parties agree that such matters will be referred to the Project Steering Committee for resolution in good faith and on an expeditious basis, including through face-to-face meetings among the Project Steering Committee Representatives 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, claims or disputes made by either Party will be honoured.
- 10.2 Any difference, disagreement, claim or dispute between the Parties that is not resolved in accordance with Section 10.1 shall be subject to the dispute resolution procedures set out in Schedule E of the Master Agreement, unless provided otherwise in this Agreement.

11. TERMINATION

- 11.1 This Agreement may be terminated by the written agreement of the Parties.
- 11.2 This Agreement shall automatically terminate on the termination of the Master Agreement.

12. INDEMNITY

- 12.1 EAC indemnifies and saves harmless, and shall indemnify and save harmless, the City from any and all losses, liabilities, costs, demands, damages, claims, suits, expenses or actions incurred by the City arising from 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.
- 12.2 The City indemnifies and saves harmless, and shall indemnify and save harmless, EAC from any and all losses, liabilities, costs, demands, damages, claims, suits, expenses or actions incurred by EAC arising from 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 the EAC or the wilful default or negligent act or omission of EAC, its officers, employees or agents.
- 12.3 Any claim for indemnification under Section 12.1 or Section 12.2 arising:
- (a) from (i) claims advanced against a Party by third parties or (ii) counterclaims or defences in response to such third party claims advanced against a Party, must be made within such applicable limitation period as prescribed by the Applicable Laws;
 - (b) in all other cases, within the period ending on the earlier of (i) termination of this Agreement and (ii) 6 months following the Lease Commencement Date; and
 - (c) shall be asserted and resolved in accordance with Section 28.3 of the Master Agreement, which Section is incorporated into this Agreement and forms part hereof.
- 12.4 The provisions of Section 12 survive termination of this Agreement.

13. ADDRESSES FOR NOTICES

- 13.1 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
20th Floor, Century Place
9803 – 102A Avenue NW
Edmonton, Alberta T5J 3A3
Attention: Eugene Gyorf, Program Manager

To EAC:
1702 Bell Tower
10104 – 103 Ave
Edmonton, Alberta T5J 0H8
Attention: J. Robert Black, Q.C., Executive Vice President

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

14. GENERAL

- 14.1 The Parties agree that Sections 5.1, 5.2, 5.3, 5.5, 5.7, 5.8, Articles 6, 7, 8, Sections 11.1, 11.2, 11.4.1 and Section 14.9 of the IDA shall be superseded by this Agreement. Article 9 of the IDA is superseded by the Master Agreement. Section 10.1 of the IDA has been superseded by agreement of the Parties.
- 14.2 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.
- 14.3 This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein.
- 14.4 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.
- 14.5 The waiver of any covenant, condition or other 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.

- 14.6 Schedules A, B and C are incorporated into and forms part of this Agreement. An amendment of any term of this Agreement, including the Schedules, must be in writing and signed by the Parties.
- 14.7 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.
- 14.8 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 disclaimed.
- 14.9 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.
- 14.10 Time is of the essence in this Agreement and no extension or variation of this Agreement operates as a waiver of this provision.
- 14.11 If there is a conflict between this Agreement and the Master Agreement, the Master Agreement shall prevail.
- 14.12 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.
- 14.13 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 Parbrother, City Manager

Approved by City Council: January 23, 2013 (Item 6.2)

SCHEDULE A

ARENA CONTINGENCY USE GUIDELINES

16(1)



SCHEDULE B

PRINCIPLES REGARDING THE DESIGN AND CONSTRUCTION OF THE ARENA AREA FACILITIES

It is the intent of the Parties that the following principles, taken together, will provide the greatest value and benefit of the Arena Area Facilities to increase economic potential and benefit all of the capital region, as well as northern and central Alberta:

(1) The Arena shall meet or exceed NHL standards; (2) the Project shall support the sustainability of NHL hockey in Edmonton; (3) the design of the Arena Area Facilities must optimize arena revenues for NHL events and other events; (4) the Project should maximize catalyst opportunities for the downtown revitalization; (5) the Arena Area Facilities shall be outstanding, consistent with the quality and standard of the architectural design evident in the Art Gallery of Alberta, located in Edmonton, Alberta; (6) the Wintergarden shall be of a size and quality consistent with and appropriate to the quality and design of the Arena; (7) the Arena shall be designed as a first class, multi-purpose facility that is comparable, at a minimum, to the design, construction and capabilities of the Recent Arena Facilities, subject to such differences as would apply due to differences in the greater Edmonton market, climate and urban environment; (8) the Program Requirements, as defined in the IDA, shall apply to the design of the Arena Area Facilities, except to the extent superseded by the Approved Design or subsequent revisions agreed to by the Parties.

SCHEDULE C

INFRASTRUCTURE, LANDSCAPE AND HARDSCAPE COSTS

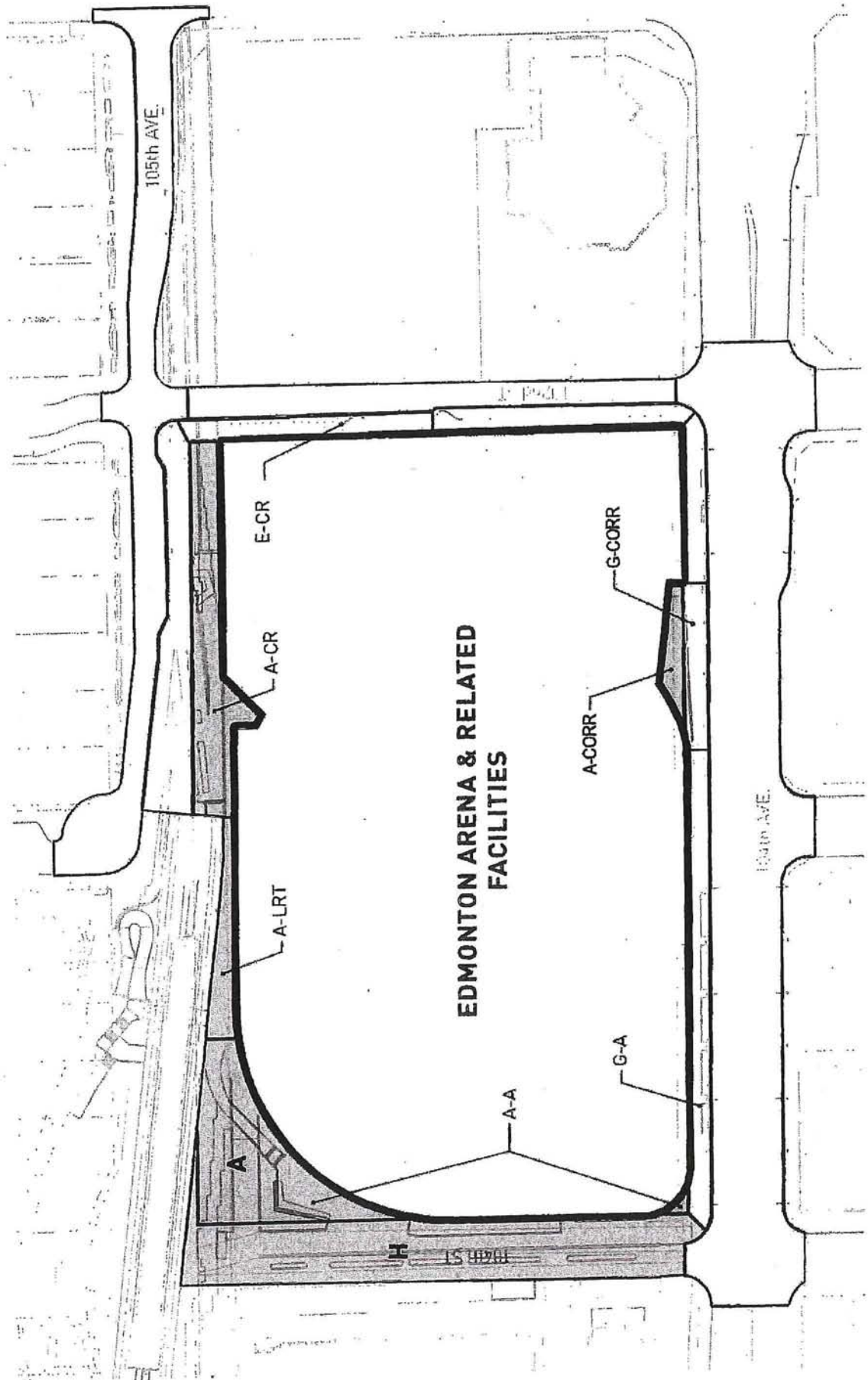
See Attached

SCHEDULE C
EDMONTON ARENA & RELATED FACILITIES
Infrastructure, Landscape & Hardscape Scope of Work
6/10/2013

ARENA¹
DESCRIPTION
DESIGN
Design of Offsite Blue Area H
CONSTRUCTION
Flag Poles
Site Accessories
Common Storm Sewer, Sanitary Pump Station & Domestic Water Service
Base & Premium Upgrades to Green On-Site Area A-A on Demarcation Plan
Base Upgrades to Offsite Yellow Area G-A on Demarcation Plan
Base Upgrades to Offsite Blue Area H on Demarcation Plan
Premium Upgrades to Offsite Blue Area H on Demarcation Plan
COMMUNITY RINK¹
DESIGN
Design of Offsite Yellow Area E-CR
CONSTRUCTION
Sanitary Sewer Connection Along 102 Street in R.O.W.
Base Upgrades to Offsite Yellow Area E-CR on Demarcation Plan
Premium Upgrades to Offsite Yellow Area E-CR on Demarcation Plan
Base Design & Premium Upgrades to Green On-Site Area A-CR on Demarcation Plan
LRT¹
CONSTRUCTION
Base & Premium Upgrades to Green On-Site Area A-LRT on Demarcation Plan
Add Canopy at LRT Connection
CORRIDOR¹
CONSTRUCTION
Base & Premium Design Upgrades to Green On-Site Area A-CORR on Demarcation Plan
Base Upgrades to Offsite Yellow Area G-CORR on Demarcation Plan

Notes:

1. All on-site design work included within 360 Architecture and Subconsultant Scope of Work.



* NOTE: NOT TO SCALE. DEMARCATION LINES ARE APPROXIMATE

LANDSCAPING AND INFRASTRUCTURE DEMISING PLAN
 *COSTS ASSOCIATED WITH THESE AREAS ARE INCLUDED IN PROJECT BUDGET