

TICKET SURCHARGE AGREEMENT

THIS AGREEMENT is dated February 10, 2014 between THE CITY OF EDMONTON (the "City") and EDMONTON ARENA CORP. ("EAC").

WHEREAS:

- A. The City will borrow funds for the purpose of financing the capital cost of design and construction of the Arena;
- B. The City is responsible for ongoing costs related to the repair and replacement of major building components of the Arena;
- C. A portion of the total amount borrowed by the City, as well as the City Costs, will be funded through the collection of a Ticket Surcharge on all Tickets to Arena Events and NHL Events held at the Arena during the term of the Lease Agreement;
- D. City of Edmonton Bylaw No. 16481 imposes a Ticket Surcharge on all Tickets for Arena Events and NHL Events held at the Arena;
- E. City of Edmonton Bylaw No. 10841 imposes a Ticket Surcharge on all Tickets for Rexall Events held at Rexall Place;
- F. City of Edmonton Bylaw No. 10841 and City of Edmonton Bylaw No. 16481 authorize the City Manager to establish the Ticket Surcharge; and
- G. City of Edmonton Bylaw No. 16481 and City of Edmonton Bylaw No. 10841 authorize the City Manager to approve and enter into agreements with vendors of Tickets in respect of the collection and remittance of the Ticket Surcharge, including related audit and accounting matters.

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

1. DEFINITIONS

In this Agreement all capitalized words and terms not expressly defined herein shall have the same meaning ascribed to such words and terms in the Master Agreement. In addition, as used in this Agreement, the following terms have the following meanings:

- 1.1 "Affiliate" means a corporation that directly or indirectly controls, is controlled by or is under common control with a party as the concept of control is used in the *Business Corporations Act* (Alberta), RSA 2000, c B-9, (as amended from time to time). In respect of a partnership or joint venture, "Affiliate" means a partnership or joint venture in which a party holds a majority of the partnership or joint venture interests;

- 1.2 "Agreement" means this agreement, together with all schedules attached to this Agreement, as amended or replaced by the Parties from time to time;
- 1.3 "Arena Event" means any event, program or activity, other than a NHL Event, held at the Arena;
- 1.4 "Carrying Costs" means:
- (a) The aggregate principal and interest payments notionally required during the period commencing on the Construction Borrowing Commencement Date and ending on the Lease Commencement Date to repay the Ticket Surcharge Borrowing amortized over 35 years with interest thereon at the City's Blended Rate (see Schedule B); plus
 - (b) Interest at the rate of 6% per annum, amortized over 35 years, calculated on each notional payment pursuant to subsection (a) above from the date notionally made until the Lease Commencement Date (the "Carrying Costs Interest").
- 1.5 "City Costs" is defined in the Lease Agreement;
- 1.6 "City's Blended Rate" means the blended interest rate calculated in accordance with Schedule A and based on the weighted average of the lowest 35 year borrowing rate available from and confirmed by the City's Lender every quarter, with the maximum amount attributable to the weighting in any given quarter being the amount of the Debenture deemed to be issued at that time;
- 1.7 "City Borrowing" means \$404,203,408;
- 1.8 "City Manager" means the chief administrative officer of the City or delegate;
- 1.9 "Debenture" is defined in Section 3.1;
- 1.10 "Lease Term" means the term of the Lease Agreement;
- 1.11 "Master Agreement" means the agreement between the City and EAC dated August 29, 2013;
- 1.12 "NHL Event" means a National Hockey League game, National Hockey League practice, or other National Hockey League hockey event held at the Arena;
- 1.13 "Patron Rights" means suite rights or other similar patron rights as designated by the City Manager, including rights to attend Arena Events or NHL Events combined with other amenities or benefits;
- 1.14 "Percentage" means 31%, calculated as the proportion that the Ticket Surcharge Borrowing bears to the City Borrowing;

- 1.15 "Required Ticket Surcharge" means quarterly payments consisting of the aggregate of the following amounts, without duplication:
- (a) The Ticket Surcharge Borrowing (less the aggregate notional principal included in the Carrying Costs) and interest thereon at City's Blended Rate, amortized over 35 years (the "Ticket Surcharge Borrowing Payment");
 - (b) The Carrying Costs and Carrying Costs Interest thereon at 6% per annum amortized over 35 years (the "Carrying Costs Payments");
 - (c) \$375,000, to fund the City Costs; and
 - (d) Applicable Sales Tax on the foregoing.
- 1.16 "Rexall Event" means any event, program or activity held at Rexall Place, but does not include any event held at Rexall Place during the summer festival called "K-Days" (or such other name as may be designated from time to time) for which the admission fee is included in the general admission fee for K-Days;
- 1.17 "Rexall Place Ticket Surcharge Bylaw" means City of Edmonton Bylaw No. 10841, including all amendments and any bylaw enacted in replacement thereof;
- 1.18 "Ticket" means a license, ticket, or admission granted to a person in exchange for a fee thereby entitling that person to admittance to either an Arena Event or NHL Event but does not include the right to park a vehicle or Patron Rights;
- 1.19 "Ticket Price" means the actual amount paid by the initial purchaser of a Ticket, exclusive of any applicable tax;
- 1.20 "Ticket Sales Report" is defined in Section 6.1;
- 1.21 "Ticket Surcharge" means the fee for the use of the Arena imposed on a Ticket for an Arena Event or NHL Event or the fee for the use of Rexall Place imposed on a Ticket for a Rexall Event, as the context requires, pursuant to the applicable Ticket Surcharge bylaw;
- 1.22 "Ticket Surcharge Borrowing" means the principal amount of \$125,000,000; and
- 1.23 "Ticket Surcharge Bylaws" means City of Edmonton Bylaw No. 16481 and City of Edmonton Bylaw No. 10841.

2. TERM

- 2.1 The term of this Agreement commences on the date of execution of this Agreement and continues for the duration of the Lease Term. This Agreement shall terminate on the earliest of:
- (a) Termination of the Master Agreement;

- (b) Termination or expiry of the Lease Agreement.

3. TICKET SURCHARGE BORROWING PAYMENT CALCULATION

- 3.1 For the purpose of calculating the Ticket Surcharge Borrowing Payments and the Carrying Costs Payments:
- (a) After (i) the passage of a borrowing bylaw by the Municipal Council for the City as contemplated by Section 17 of the Master Agreement, and (ii) finalization and approval of the GMP in accordance with Section 20 of the Master Agreement, on a quarterly basis, the City will be deemed to borrow the funds required to fund the Project Costs estimated to be paid in that quarter pursuant to a debenture ("Debenture").
 - (b) For the purpose of calculating the City's Blended Rate,
 - (i) An amount equal to the Percentage of the Debentures referred to in subsection (a) will be deemed to constitute the borrowing of a portion of the principal of the Ticket Surcharge Borrowing (to a maximum of \$125,000,000); and
 - (ii) At the time of each deemed borrowing referred to in subsection (a), the 35 year borrowing rate confirmed by the City's Lender shall be ascertained and communicated by the City to EAC.
- 3.2 Schedule B provides an illustration of the calculation of the Ticket Surcharge Borrowing Payments and the Carrying Costs Payments. Within 8 months following the Lease Commencement Date, the Parties agree to amend Schedule B to reflect the actual City's Blended Rate and the resulting changes to the calculations of the quarterly payments to be made pursuant to this Agreement. If the Parties cannot agree on a revised Schedule B, the matter shall be submitted for dispute resolution pursuant to section 26 of the Master Agreement, which section is hereby incorporated by reference.

4. TICKET SURCHARGE

- 4.1 EAC acknowledges that the City has duly passed City of Edmonton Bylaw No. 16481 imposing a Ticket Surcharge on all Arena Events and NHL Events, and that such surcharge will remain in effect for the duration of the Lease Term.
- 4.2 EAC hereby consents to City of Edmonton Bylaw No. 16481 and acknowledges that the City has full authority to charge fees for the use of its property by bylaw. EAC agrees not to take any steps or participate in or support any action or other proceeding to quash or invalidate City of Edmonton Bylaw No. 16481.
- 4.3 Pursuant to the Ticket Surcharge Bylaws, the City Manager has the authority, on behalf of the City, to determine the Ticket Surcharge.
- 4.4 The Ticket Surcharge for Arena Events and NHL Events must be sufficient to generate funds for EAC to make quarterly payments to the City of the Required Ticket Surcharge.

- 4.5 The City Manager will establish the Ticket Surcharge for Arena Events and for NHL Events in accordance with the following procedures:
- (a) For the Arena Events and for NHL Events held during the period commencing on the Lease Commencement Date and ending June 30 of the following year:
 - (i) No later than 45 days before the commencement of the sale of Tickets for either Arena Events or NHL Events, EAC will advise the City Manager, in writing, of the proposed Ticket Surcharge for all Tickets that will be sold for such period. So long as the proposed Ticket Surcharge for Arena Events and for NHL Events are reasonably predicted to be sufficient to ensure the remittance of the Required Ticket Surcharge to the City for such period, the City Manager shall set the Ticket Surcharge for Arena Events and NHL Events as proposed by EAC.
 - (b) For the 12 month period commencing on July 1 following the Lease Commencement Date and every 12 month period thereafter:
 - (i) No later than February 1 of that year, EAC will advise the City Manager, in writing, of the proposed Ticket Surcharge for Arena Events and NHL Events for the 12 month period commencing July 1 of that year and ending June 30 of the following year. So long as the proposed Ticket Surcharge for Arena Events and for NHL Events are reasonably predicted to be sufficient to ensure the remittance of the Required Ticket Surcharge to the City within that 12 month period, the City Manager shall set the Ticket Surcharge for Arena Events and NHL Events as proposed by EAC.
 - (c) If there is a dispute between the Parties regarding whether the proposed Ticket Surcharge will be sufficient, the matter will be submitted for dispute resolution by the parties in accordance with section 26 of the Master Agreement. If the dispute resolution process determines that the Ticket Surcharge as proposed by EAC is insufficient, the arbitrator or arbitrators, as the case may be, shall determine an appropriate Ticket Surcharge. The City Manager shall then set the Ticket Surcharge for Arena Events and NHL Events in accordance with the final determination arising from the dispute resolution process. Pending the completion of the dispute resolution process, the City Manager will provisionally set the Ticket Surcharge as proposed by EAC, subject to the final determination of the dispute resolution process.
- 4.6 The necessity or sufficiency of the quarterly payment of \$375,000 to fund the City Costs will be reviewed by the Parties 15 years after the Lease Commencement Date. The City's reserve fund for the City Costs shall bear the interest rate of the Short Term Bond Rate for monies held for more than 1 year in this reserve fund and the Money Market Rate for monies held in this reserve fund for 1 year or less.
- 4.7 Regarding Patron Rights, at the same time EAC submits the proposed Ticket Surcharge in accordance with section 4.5, it will submit the number and description of admissions to Arena Events and NHL Events proposed to be designated as Patron Rights, and unless the City reasonably objects, the City Manager will so designate. If a dispute arises

regarding Patron Rights, the matter will be submitted for dispute resolution by the parties in accordance with section 26 of the Master Agreement.

5. COLLECTION AND REMITTANCE OF REQUIRED TICKET SURCHARGE

- 5.1 EAC shall collect the Ticket Surcharge as agent and trustee of the City for all Arena Events and NHL Events held at the Arena during the Lease Term (including, for greater certainty, on all Tickets sold prior to the Lease Commencement Date); provided however that the agency and trust relationship between EAC and the City is restricted solely to the collection and remittance of the Ticket Surcharge under this Agreement and is not intended for any other purpose. EAC may authorize its Affiliates to collect the Ticket Surcharge and remit it to the City on EAC's behalf.
- 5.2 EAC will remit the Ticket Surcharge collected by EAC as follows:
- (a) No later than the 15th day of each March, June, September and December of each year of the Lease Term, EAC will remit an amount equal to the total Ticket Surcharge collected in respect of Arena Events and NHL Events held during the preceding 3 month period ending the last day of February, May, August and November respectively (subject to subsection (b) below). The Parties acknowledge that the first remittance pursuant to this subsection following the Lease Commencement Date may be in respect of a preceding period that is less than 3 months.
 - (b) If the total Ticket Surcharge collected pursuant to subsection (a) for any 3 month period:
 - (i) Exceeds the Required Ticket Surcharge for that 3 month period, EAC may retain the excess amount for its own purposes and will not be required to remit this excess amount to the City; or
 - (ii) Is less than the Required Ticket Surcharge for that 3 month period, the deficiency is carried forward to the next quarterly payment date(s) and must be remitted to the City (on the next quarterly payment date(s)) before EAC can retain any excess Ticket Surcharge in accordance with subsection (i) above. If the deficiency of the Required Ticket Surcharge is carried forward for a period exceeding 6 months, then the deficiency shall bear interest at the Short Term Bond Rate, compounded annually.

Thus, any calculation of excess Ticket Surcharge pursuant to this subsection (b) must take into account any Required Ticket Surcharge deficiency and interest thereon carried forward from a previous remittance date.

6. VERIFICATION

- 6.1 For the limited purposes of assisting the City in determining the sufficiency of the Ticket Surcharge proposed by EAC and verifying the accuracy of the Ticket Surcharge remitted by EAC the City may, once in every 12 month period commencing on the Lease Commencement Date and on 30 days' written notice to EAC, request that EAC submit a

report ("Ticket Sales Report") which itemizes each of the following in respect of the preceding year of the Lease Term:

- (a) Number of Arena Events and NHL Events held;
- (b) For each Arena Event and NHL Event, the Ticket Price(s), the number of Tickets sold at each Ticket Price and the aggregate of the Ticket Prices collected;
- (c) The number and description of Patron Rights to attend Arena Events or NHL Events;
- (d) Aggregate Ticket Surcharge collected.

6.2

- (a) EAC agrees to maintain all records and documentation related to sales of Tickets, including records pertaining to Patron Rights, for a period of 5 years following the date of each Arena Event and NHL Event, and to produce such documentation to an independent auditor in order to comply with this section and this subsection shall survive the termination of this Agreement.
- (b) In addition to the Ticket Sales Report, the City may, on written notification to EAC, require EAC to obtain an independent audit verifying the accuracy of the information provided in the Ticket Sales Report and provide such audit report to the City. The cost of an independent audit will be paid by the City unless the independent audit report provided to the City reveals a discrepancy in any of the figures listed in the Ticket Sales Report that is equal to or greater than 3%, in which case EAC will be responsible for the full cost of the audit. This Section shall survive termination of this Agreement for a period of 24 months following the date of the last event (whether an Arena Event or a NHL Event) held at the Arena prior to termination of this Agreement.

- 6.3 The City acknowledges that the Ticket Sales Report provided by EAC, and any information obtained by the City as a result of an independent audit pursuant to this Agreement, is provided in confidence and that, if disclosed, the information would reveal commercial or financial information related to EAC that could reasonably be expected to significantly harm the competitive position or interfere with the negotiating position of EAC, or result in undue financial loss.

7. TICKET SURCHARGE FOR REXALL PLACE

- 7.1 The City will ensure that, at all times during the Lease Term, the Ticket Surcharge under the Rexall Place Ticket Surcharge Bylaw for Rexall Events and the Ticket Surcharge established for Arena Events correspond as follows:
- (a) If the Ticket Surcharge for Arena Events is less than or equal to 7% of the Ticket Price, the Ticket Surcharge for Rexall Events will equal the Ticket Surcharge for Arena Events; or

- (b) If the Ticket Surcharge for Arena Events is greater than 7% of the Ticket Price, the Ticket Surcharge for Rexall Events will be 7%.

8. USE OF TICKET SURCHARGE

- 8.1 All Ticket Surcharge collected and received by the City pursuant to Bylaw 10841 for Rexall Events after National Hockey League Hockey is no longer played at Rexall Place will be deposited into the City's general revenue and shall not be paid to Edmonton Northlands or be used for the direct benefit of Rexall Place.
- 8.2 The Ticket Surcharge collected and received by the City pursuant to the Ticket Surcharge Bylaw 16481 and this Agreement for Arena Events and NHL Events will be used by the City in accordance with this Agreement.

9. GST

- 9.1 EAC shall be responsible for collecting and remitting any applicable sales tax for all Tickets sold for Arena Events and NHL Events to the appropriate authority. For greater certainty, this includes any applicable sales tax related to the Ticket Surcharge, which EAC shall remit on behalf of the City as required. Without limiting section 10, EAC agrees to fully indemnify and save harmless the City for any tax assessments, levies, fines, or other cost or penalty incurred by the City as result of EAC's failure to fulfill this obligation. This Section shall survive termination of this Agreement for a period of 30 days after the expiration of the last applicable limitation period under any tax Applicable laws.

10. INDEMNIFICATION

- 10.1 EAC shall indemnify and save harmless the City, its officers, employees and agents from any and all liabilities, costs, damages, claims, suits, expenses, or actions arising out of any breach, violation or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of EAC or its Affiliates to be fulfilled, kept, observed and performed.
- 10.2 The City shall indemnify and save harmless the EAC, its Affiliates and their officers, employees and agents from any and all liabilities, costs, damages, claims, suits, expenses, or actions arising out of any breach, violation or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the City to be fulfilled, kept, observed and performed.
- 10.3 Sections 10.1 and 10.2 shall survive termination of this Agreement for a period of 3 years.

11. GENERAL

- 11.1 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: Brad Gilewich

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

- 11.2 Schedules A and B are incorporated into and form part of this Agreement.
- 11.3 This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein.
- 11.4 EAC may not assign its rights or obligations under this Agreement without the prior written consent of the City.
- 11.5 The Agreement will be binding on the City and EAC and their representative heirs, executors, administrators, successors, including successors in title, and permitted assigns.
- 11.6 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.
- 11.7 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
- 11.8 An amendment of any term of this Agreement, including Schedules A and B, must be in writing and signed by the Parties.
- 11.9 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.

- 11.10 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.
- 11.11 Time is of the essence in this Agreement and no extension or variation of this Agreement operates as a waiver of this provision.
- 11.12 If there is a conflict between this Agreement and the Master Agreement, the provisions of this Agreement shall prevail.
- 11.13 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.
- 11.14 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:

THE CITY OF EDMONTON

Per: 

As represented by Simon
Farbrother City Manager

Approved by City Council
January 23, 2013
Item # 6.2

Legally Reviewed and
Approved as to Form:



Law Branch

**ANNE JARMAN, Q.C.
BARRISTER & SOLICITOR**

Approved as to Content:



EDMONTON ARENA CORP.

Per: 

John D. Karvellas, Director

SCHEDULE A

CALCULATION OF CITY'S BLENDED RATE

For the purpose of clarity, two examples of calculation of the City's Blended Rate are provided: one with a continually escalating interest rate and one with interest rates that rise and fall during the City Borrowing period.

Example one

Quarter for Borrowing	A		B		C
	Projected	Projected City	Projected		A x (B/\$125,000,000)
	City Borrowing	Borrowing per	Ticket Surcharge	Borrowing for	Weighted
	Rate	Quarter	Rate Calculation Only		Average Rate
					Formula
Mar-14	4.530%	\$ 58,083,172	\$ 58,083,172		2.10%
Jun-14	4.700%	\$ 22,199,914	\$ 22,199,914		0.83%
Sep-14	4.869%	\$ 31,432,391	\$ 31,432,391		1.22%
Dec-14	5.039%	\$ 38,052,271	\$ 13,284,523		0.54%
Mar-15	5.208%	\$ 41,574,492			
Jun-15	5.378%	\$ 42,451,312			
Sep-15	5.547%	\$ 38,808,497			
Dec-15	5.717%	\$ 35,176,081			
Mar-16	5.886%	\$ 30,120,448			
Jun-16	6.056%	\$ 21,657,348			
Sep-16	6.225%	\$ 41,282,358			
Dec-16	6.395%	\$ 3,365,124			
Total		\$ 404,203,408	\$ 125,000,000		
City's Blended Rate					4.70% Sum of C

Example two

Quarter for Borrowing	A		B		C
	Projected	Projected City	Projected		A x (B/\$125,000,000)
	City Borrowing	Borrowing per	Ticket Surcharge	Borrowing for	Weighted
	Rate	Quarter	Rate Calculation Only		Average Rate
					Formula
Mar-14	4.530%	\$ 58,083,172	\$ 58,083,172		2.10%
Jun-14	4.700%	\$ 22,199,914	\$ 22,199,914		0.83%
Sep-14	4.869%	\$ 31,432,391	\$ 31,432,391		1.22%
Dec-14	5.039%	\$ 38,052,271			
Mar-15	5.208%	\$ 41,574,492			
Jun-15	5.208%	\$ 42,451,312			
Sep-15	5.039%	\$ 38,808,497			
Dec-15	4.869%	\$ 35,176,081	\$ 13,284,523		0.52%
Mar-16	5.000%	\$ 30,120,448			
Jun-16	5.300%	\$ 21,657,348			
Sep-16	5.500%	\$ 41,282,358			
Dec-16	5.800%	\$ 3,365,124			
Total		\$ 404,203,408	\$ 125,000,000		
City's Blended Rate					4.68% Sum of C

