

FIRST AMENDMENT TO MASTER AGREEMENT REGARDING
MULTIPURPOSE ARENA AND ADJACENT SUPPORT FACILITIES

This FIRST AMENDMENT TO MASTER AGREEMENT REGARDING MULTIPURPOSE ARENA AND ADJACENT SUPPORT FACILITIES is entered into as of the ___ day of December 2016 (“Amendment Date”), by and between the CITY OF FORT WORTH, TEXAS, a duly incorporated home rule city of the State of Texas, and EVENT FACILITIES FORT WORTH, INC., a Texas non-profit corporation and its successors or assigns. All capitalized terms used herein which are not otherwise defined have the meaning assigned to them in the Master Agreement.

R E C I T A L S

WHEREAS, on and as of November 11, 2015, the City and the Arena Group entered into that certain Master Agreement Regarding Multipurpose Arena and Adjacent Support Facilities, the same being Fort Worth City Secretary Contract No. 47218 (the “Master Agreement”); and

WHEREAS, under the Master Agreement, the City, subject to applicable law, and the Arena Group agreed that they would share in the costs of designing, constructing, and equipping the Arena Complex, to be owned by the City and leased to the Arena Group, or to an entity designated by the Arena Group to serve as the lessee, operator and tenant of such project, under and subject to the terms and provisions of a written lease agreement; and

WHEREAS, to allow Arena Group to fulfill its obligations related to the planning, design, development, construction, completion, and making operational of the Arena Complex, the Arena Group requires a legal right to enter on and to use certain City property; and

WHEREAS, the parties wish to amend the Master Agreement to provide the necessary authority to the Arena Group; to address other matters related to the planning, design, development, construction, completion, and making operational of the Arena Complex; and to reflect that the majority of the Project Documents will be agreed to on or before December 31, 2016.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each of the parties hereto, the City and the Arena Group have agreed and do hereby agree as follows:

1.

That the twenty-second “Whereas” clause of the Master Agreement is deleted in its entirety and replaced with the following:

WHEREAS, in the event that the Project Documents, other than the Parking Agreements and Sign Agreement, have not been agreed to by the City and the Arena

Group on or before December 31, 2016, then either party shall have the right to terminate this Agreement, in which event, neither party shall have any further liability to the other on account thereof; and

2.

That Article I, "The Arena Complex Development," of the Master Agreement is revised and amended to delete the first sentence of Section 1.3(a) and replace it with the following:

Subject to Sections 1.11.1(d) and 3.4(d), the City shall own the Arena Complex on City Land for public purposes as provided herein and as set forth in the Act, and the Arena Group shall own the Arena Group Surface Parking.

3.

That Article I, "The Arena Complex Development," of the Master Agreement is revised and amended to delete the first sentence of Section 1.9 and replace it with the following:

The Arena Group shall contractually obligate the General Contractor to provide the following assurances to protect the City and the Arena Group during and after construction: (i) procedures to ensure payment to and performance by the General Contractor's subcontractors, including subcontractor default insurance, (ii) indemnification (which shall include commitments to defend and hold harmless) consistent with indemnification provisions customarily provided by prime contractors for City-owned construction projects with a scope similar to that of the Arena Complex, and (iii) insurance, including, but not limited to, commercial liability, all-risks builders risks, workers compensation, errors and omissions/professional liability insurance for any engineering or design work (if applicable), auto liability and excess umbrella coverage, each in form and substance not less than is customary for a City-owned construction project with a scope similar to that of the Arena Complex.

4.

That Article I, "The Arena Complex Development," of the Master Agreement is revised and amended to add a new Section 1.11.1 to read as follows:

Section 1.11.1 Additional Requirements.

(a) By execution of this Agreement and effective as of the Amendment Date, the City licenses to the Arena Group the land shown in Exhibit D for the purpose of planning, designing, developing, constructing, completing, and making operational the Arena Complex, with the period of such license to continue until the later of (i) the Commencement Date of the Arena Complex Lease between the City and Multipurpose Arena Fort Worth or (ii) the date on which title to the Arena Group Facility Land is transferred to the City under Section 3.2. The City acknowledges and agrees that Arena Group shall file a lien on the land licensed by the City to Arena Group, Arena Group Facility Land and other Arena Group owned land.

(b) Arena Group shall ensure the construction of the Arena Complex in accordance with the terms of this Agreement.

(c) Arena Group retains ownership of the Arena Group Facility Land and the Arena

Facility during construction. The City shall at all times retain its ownership and other rights in the land shown in Exhibit D.

(d) Arena Group covenants and agrees that on completion of the construction of the Arena Complex and deposit of the Available Bond Proceeds in the Public Project Cost Account, Arena Group shall take all actions necessary to vest title in the City in the Arena Complex and the Arena Group Facility Land, subject to Section 3.2 of this Agreement. In the event the Available Bond Proceeds have not been deposited in the Public Project Cost Account by December 31, 2017, the Arena Group may elect, in its sole discretion, to retain ownership of the Arena Group Facility Land and the Arena Facility, and the parties agree to negotiate in good faith regarding the operation of the Arena Complex and any associated ground lease or similar arrangement, if required.

(e) Arena Group shall ensure that its General Contractor and subcontractors diligently pursue the work necessary to reach substantial completion of the Arena Complex in accordance with the construction schedule agreed to by and between the City and Arena Group. In the event of a delay or other change to the agreed construction schedule, Arena Group shall ensure that the City is timely provided with a revised schedule indicating when the General Contractor expects to reach substantial completion of the work.

5.

That Article I, "The Arena Complex Development," of the Master Agreement is revised and amended to delete Section 1.12 in its entirety and replace it with the following:

Section 1.12 Naming Rights, Sponsors and Signage.

The Arena Group and its Assignees shall have all authority, control and rights in selecting the name or names of the Arena Complex, as well as the sponsor or sponsors for which the various portions of the Arena Complex will be named from time to time, and all signage (subject to generally applicable limitations in the City Code), branding, service, concession, seat license, pouring or other rights, including without limitation, the right to retain all proceeds therefrom. Any naming or sponsorship agreements entered into by the Arena Group or an Assignee that involve affixing permanent or semi-permanent signage to the Arena Complex or any substantial portion thereof shall be subject to the City's approval, such approval not to be unreasonably withheld, conditioned, or delayed. Such rights, licenses and sponsorships shall be structured in a manner that they will not adversely affect the tax-exempt status of the City's Arena Complex Bonds.

6.

That Article II, "Costs and Financing of the Arena Project," of the Master Agreement is revised and amended to delete the second sentence of Section 2.6(b) and replace it with the following:

The City anticipates the City Council passing an ordinance or resolution on or before March 31, 2017, providing authority to issue the Arena Complex Bonds.

7.

That Article III, "The Land," of the Master Agreement is revised and amended to add a sentence to the end of Section 3.2 to read as follows:

Arena Group shall transfer and convey the Arena Group Facility Land and Arena Group Garage Land to the City as described in this section without unreasonable delay and in any event no later than one year after the date of issuance of a certificate of occupancy for the Arena Complex.

8.

That Article IV, "Lease Matters," of the Master Agreement is revised and amended to add a new Section 4.1(k) to read as follows:

Prior to the Commencement Date of the Arena Group Lease, the parties shall negotiate and agree to a Sign Agreement or other appropriate vehicle containing mutually acceptable terms governing signage needs in, around, and in the vicinity of the Arena Complex in a manner that complies with applicable City Code and that will not unduly restrict the Arena Group's ability to properly and completely publicize the Arena Complex and to maximize revenues from that source.

9.

That Article VI, "Termination," of the Master Agreement is revised to delete Section 6.1(b) in its entirety and replace it with the following:

(b) By the Arena Group if official City Council action authorizing the issuance of the Arena Complex Bonds has not been taken by March 31, 2017;

10.

That Exhibit A, "Definitions," of the Master Agreement is revised and amended to delete the definition "Project Documents" and replace it with the following:

"Project Documents" means, collectively, the Funding Agreement, the Arena Group Lease, and such other agreements as the City and the Arena Group parties may mutually agree to, execute and deliver.

11.

That Exhibit C, "Financing Model," of the Master Agreement is deleted in its entirety and replaced with a revised Exhibit C, "Updated Financing Model," which is attached hereto and incorporated herein.

12.

That all other terms and provisions of the Master Agreement shall remain in full force and effect except as specifically amended herein.

This Agreement has been executed and delivered as of the date first written above.

CITY OF FORT WORTH:

EVENT FACILITIES FORT WORTH, INC.
a Texas non-profit corporation

By: _____
Susan Alanis
Assistant City Manager

By: _____
Mike Groomer
President & CEO

Date: _____

Date: _____

**APPROVED AS TO FORM AND
LEGALITY:**

By: _____
Peter Vaky, Deputy City Attorney

Contract Authorization: M&C C- _____

ATTEST:

By: _____
Mary J. Kayser, City Secretary

INSERT EXHIBIT C – “Updated Financing Model”

INSERT EXHIBIT D - Map of land being licensed for construction/development of Arena Complex