

ARENA PROJECT FUNDING AGREEMENT

between

CITY OF FORT WORTH

and

EVENT FACILITIES FORT WORTH, INC.

dated as of _____, 2016

LIST OF EXHIBITS

Exhibit A – Definitions

Exhibit B – Depiction of Project Site, including City Land, City Licensed Land, Arena Group Facility Land, Arena Group Garage Land, Arena Group Surface Parking, and other Arena Group owned land

Exhibit C – Anticipated Cash Flow Schedule

ARENA PROJECT FUNDING AGREEMENT

This ARENA PROJECT FUNDING AGREEMENT is entered into as of the Effective 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.

RECITALS

A. 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.

B. 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.

C. The Arena Group is a non-profit corporation that supports the Southwestern Exposition and Livestock Show d/b/a Fort Worth Stock Show & Rodeo and that, as a charitable contribution to the fine residents of the City, has committed to raising fifty percent of the Arena Project Budget as well as Overruns.

D. Pursuant to the authority granted to the City in the Act, and in consideration of the undertakings of the Arena Group contained herein and the other agreements described herein and of the continuing economic benefits to be derived therefrom by the City and its citizens, the City, as authorized by its citizens at the Election, has agreed to join with the Arena Group in the financing and development of the Arena Project and to a Public Contribution.

E. Pursuant to the Election, the qualified voters of the City authorized the Arena Project and designated methods of financing in accordance with the Act and authorized the City to levy and collect certain taxes within the City in order to generate 334 Revenues, which will be used in connection with providing the Public Contribution in payment of a portion of the Project Costs, and the City intends to issue Arena Complex Bonds for said purposes.

F. As of the Effective Date, Arena Group has contributed the Prior Arena Group Contribution Amount, and City has contributed the Prior Public Contribution Amount.

G. As contemplated by the Master Agreement, the City and the Arena Group will negotiate and agree to the terms and provisions of the Project Documents, and, to that end, the parties have agreed to waive any requirement set forth or implied in the Master Agreement regarding the Project Documents being fully agreed to on or before December 31, 2015, and further, upon satisfaction of the respective funding commitments of the parties in accordance with the terms hereof, and the satisfaction of all other conditions set forth herein, the parties have agreed to concurrently execute and deliver the Project Documents and to place into effect the transactions contemplated thereby, all to be accomplished in concurrent transactions.

H. The parties intend hereby to set forth the terms and conditions of their respective funding commitments with respect to the Arena Complex, and to provide the terms and conditions of and for the Arena Project Closing, with certain of the provisions hereof surviving the closing and continuing in effect and enforceable thereafter.

NOW, THEREFORE, as a specific inducement to the City to fund the Public Contribution and as a specific inducement to the Arena Group to fund the Arena Group Contribution, each of such inducements being subject to the terms hereof, and further, in consideration of the mutual covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which consideration are acknowledged and confessed by each of the parties hereto, the parties hereto do hereby agree as follows:

ARTICLE I

General Provisions and Definitions

Section 1.1 General Provisions.

(a) Those certain provisions of this Agreement that, according to the terms and provisions hereof, will have effect from and after the Arena Project Closing shall survive the Arena Project Closing and shall continue to be in full force and effect and binding on the parties.

(b) On, from, and after the Effective Date of this Agreement, (i) this Agreement, (ii) the other Project Documents, and (iii) those provisions of the Master Agreement not specifically superseded by this Agreement or the other Project Documents together constitute the entire understanding of the City and the Arena Group with respect to the subject matter hereof and contain all the covenants and agreements of the parties with respect thereto, and any provision in this Agreement that conflicts with or contradicts any provision in the Master Agreement shall automatically supersede such provision in the Master Agreement, and such provisions of the Master Agreement shall automatically terminate and be deemed to have been fully performed by both the City and the Arena Group.

Section 1.2 Definitions.

(a) Unless the context otherwise requires, capitalized terms appearing in this Agreement, including in the Recitals hereto, that are included as defined terms in the Master Agreement and that are not specifically and otherwise defined herein, shall have the meanings assigned to them in the Master Agreement.

(b) Unless the context otherwise requires, capitalized terms appearing in this Agreement, including in the Recitals hereto, that are not defined terms in the Master Agreement or that are defined herein in a manner that differs from the Master Agreement shall have the meanings assigned to them in Exhibit A to this Agreement.

ARTICLE II

Funding of Project Costs

Section 2.1 City Project Costs Funding Commitment and Funding Sources.

The City shall use its reasonable and best efforts to obtain funds from the issuance, sale, and delivery of one or more series of Arena Complex Bonds in an amount that is net after providing for the payment of issuance costs, the creation of reserves, and the deposit of capitalized interest, and upon terms and conditions that conform to applicable law, and that are satisfactory to the City, equal to \$225,000,000 less the Prior Public Contribution Amount (not including delayed bond issuance, if any, as permitted by Section 2.7(d) of the Master Agreement).

Section 2.2 Arena Group's Project Costs Funding Commitment and Funding Sources.

The Arena Group shall use its reasonable and best efforts to obtain funds equal to the Adjusted Arena Group Contribution Amount from commercial and private sources, including cash, equity, personal or permanent seat license revenues, or third party contributions or financing upon reasonable terms and conditions that are acceptable to Arena Group, provided, however, that sources may not be used that would compromise or conflict with the non-profit status of Arena Group or its Assignees or that would adversely affect the tax-exempt status of any Arena Complex Bonds.

ARTICLE III

Creation and Control of Funds, Payment of Project Costs

Section 3.1 City's Statutory and Other Funds.

(a) City has established the Venue Project Fund pursuant to City Resolution 4387-12-2014 as required by the Act, and shall maintain the same at its lawful depository bank, separate and apart from all other accounts of City. Money on deposit in the Venue Project Fund may be invested in accordance with applicable law. The Venue Project Fund shall be divided into such separate and distinct accounts as may be required to identify the specific sources and amounts of funds on deposit therein at all times. When and as required by the terms of this Agreement, funds on deposit in the Venue Project Fund shall be deposited and/or transferred to various accounts therein or to other funds and accounts in order to assure the timely payment of the Arena Complex Bonds, and to provide for the payment of the City's share (as determined in accordance with Section 3.3(h)) of each installment payment of Project Costs that becomes due and payable, in accordance with the Schedule of Projected Project Cost Expenditures.

(b) In connection with the sale of the Arena Complex Bonds, the City shall establish such funds and accounts (including, without limitation, the Public Project Cost Account) as are necessary or desirable or as may be required by underwriters, investors, rating agencies, credit providers, or the Attorney General of the State of Texas, to the extent permitted by and consistent with the Act and other applicable law, to facilitate timely and economic issuance and repayment of the Arena Complex Bonds. The City acknowledges that any funds in the Public

Project Cost Account shall be dedicated solely to the payment of Project Costs.

Section 3.2 Arena Group's Project Costs Fund.

Arena Group shall establish and maintain the Arena Group Project Cost Account, at a depository institution to be mutually agreed by the Arena Group and the City, and shall maintain the same separate and apart from all other accounts of the Arena Group. Arena Group shall periodically make deposits of money into the Arena Group Project Cost Account at times and in amounts as will enable it to pay its share (as determined in accordance with Section 3.3(h)) of each installment payment of Project Costs that becomes due and payable in accordance with the Schedule of Projected Project Cost Expenditures. The Arena Group acknowledges that any funds in the Arena Group Project Cost Account shall be dedicated solely to the payment of Project Costs.

Section 3.3 Creation, Administration, and Funding of Disbursement Account.

(a) In connection with the sale of the Arena Complex Bonds, Arena Group and City will jointly create, and will thereafter keep and maintain, the Disbursement Account at a mutually selected and approved banking institution. Money deposited in the Disbursement Account may be invested, at the direction of City and Arena Group, only in such obligations of types and having ratings that are authorized for public funds under the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended, in accordance with an investment policy agreed to by Arena Group and City. If necessary, City, Arena Group and the banking institution selected for the Disbursement Account will enter into a disbursement agreement memorializing the relevant provisions of Sections 3.3 and 3.4 of this Agreement.

(b) The Disbursement Account shall be the account from which invoices for the payment of Project Costs will be made on presentation of a Payment Certificate complying with Section 3.4 of this Agreement.

(c) The parties acknowledge that the Disbursement Account is a trust account and shall be dedicated solely to the payment of Project Costs, and expenditures and withdrawals of money from this fund for any other purpose is strictly prohibited unless such expenditure or withdrawal is specifically approved by both City and Arena Group in the manner provided in Section 3.4 of this Agreement.

(d) The Disbursement Account shall not be commingled with any other City or Arena Group funds. The Disbursement Account shall be administered and controlled (including signatory authority) by Arena Group.

(e) Any amounts remaining on deposit in the Disbursement Account at the beginning of a month may be applied to reduce the amounts that otherwise would be required to be deposited therein for succeeding months.

(f) From and after the date upon which City has deposited to the Public Project Cost Account the full amount of the Adjusted Public Contribution Amount, no further deposits from City into the Public Project Cost Account shall be required from any other funds or revenues of City. City shall cause funds to be transferred from the Public Project Cost Account to the

Disbursement Account as and when needed to pay current, accruing, and unpaid Project Costs attributable to the City under subsection (h) of this section.

(g) The parties acknowledge and agree that the Arena Group intends to provide a Financial Assurance as evidence of the availability and dedication of funds for some portion of the Adjusted Arena Group Contribution Amount. No later than March 31, 2017, the Arena Group will provide a Financial Assurance for an amount equal to 100% of the Adjusted Arena Group Contribution Amount. Arena Group shall (1) make additional deposits to the Arena Group Project Cost Account as and when needed to pay current, accruing, and unpaid Project Costs attributable to the Arena Group under subsection (h) of this section, and (2) be required to deposit funds to the Arena Group Project Cost Account in excess of the Adjusted Arena Group Contribution Amount from time to time to the extent necessary to pay any Project Costs consisting of Overruns.

(h) The Financial Assurance shall be in a form that (i) verifies the Arena Group's available funds are equal to the then-outstanding Adjusted Arena Group Contribution Amount, (ii) evidences such funds are dedicated to the Arena Project, and (iii) contains appropriate controls to ensure such funds shall only be used for the purposes intended herein. The allocation and order of payment for unpaid Project Costs as between the City and Arena Group shall be contingent on whether the form and substance of the Financial Assurance is reasonably acceptable to the City.

- (I) *If the Financial Assurance provided by Arena Group by March 31, 2017 is reasonably acceptable to the City, then upon the sale of the Arena Complex Bonds and the deposit of the proceeds thereof in the Public Project Cost Account, the City shall fund one hundred percent (100%) of the Project Costs until such time as the expended public funds equal the funds expended by the Arena Group on Project Costs prior to such date. At such time as the amounts expended from both City and Arena Group sources are equal, the Arena Group and the City shall cause the Disbursement Account to be funded equally and on a timely basis from the Arena Group Project Cost Account and the Public Project Cost Account, respectively, upon presentation of a Payment Certificate in compliance with Section 3.4 herein, until such time as each party has expended a total of \$225,000,000.00 less an amount equal to the estimated retainage under the Arena Facility construction agreement, which the parties anticipate to be between \$40,000,000 and \$50,000,000. Thereafter, the Arena Group shall fund one hundred percent (100%) of the Project Costs and Overruns until such time as the retainage becomes due and payable under the Arena Facility construction agreement, at which time the City shall cause the withheld retainage amount to be transferred to the Disbursement Account.*
- (II) *If the Financial Assurance by Arena Group by March 31, 2017 is not reasonably acceptable to the City, then upon the sale of the Arena Complex Bonds and the deposit of the proceeds thereof in the Public Project Cost Account, the City shall fund only that portion of the Project Costs as is necessary to ensure that a sufficient portion of the proceeds from the Arena Complex Bonds is timely spent*

in order to comply with federal regulations regarding overissuance of debt. Thereafter, the Arena Group shall fund one hundred percent (100%) of the Project Costs and Overruns until such time as the only amount that remains unpaid for the combined Overruns and Arena Project Budget is the unexpended portion of the City's \$225,000,000.00 funding commitment, at which point the City shall fund one hundred percent (100%) of the Project Costs until such time as the City's expenditures for Project Costs equal \$225,000,000.00.

- (III) *If Financial Assurance reasonably acceptable to the City is provided after March 31, 2017, but prior to the time when Arena Group has expended one hundred percent (100%) of the Adjusted Arena Group Contribution Amount, then the City shall promptly commence funding the Project Costs pursuant to Section 3.3(h)(I).*

Section 3.4 Payment of Project Costs.

(a) The Arena Group shall promptly disburse funds from the Disbursement Account to pay each Project Cost, provided that a Payment Certificate executed by the Arena Group and by the City authorizing such payment is duly completed in the manner described herein, and provided further that the funding of the Disbursement Account is subject to the provisions set forth in Sections 3.3(f), (g) and (h).

(b) “*Payment Certificate*” means a written certificate prepared and executed by the Arena Group:

- (i) which (A) reasonably identifies and represents that the identified Project Costs are due and owing and authorized to be paid pursuant to such payment certificate, (B) certifies that the amounts payable do not include contract retentions (other than those that are due) and (C) identifies the portion of such amount (if any) to be transferred to the Disbursement Account from the Public Project Cost Account and the portion of such amount (if any) to be transferred to the Disbursement Account from the Arena Group Project Cost Account;
- (ii) which has attached to it a copy of an invoice(s) relating to such Project Costs which reasonably identifies the payee (or payees), the goods, services and/or materials provided by such payee (or payees) and the total amount due and owing with respect to such goods, services and/or materials;
- (iii) (A) which, in the case of any Project Cost covered by such payment certificate that was incurred in connection with services, goods or materials provided by the General Contractor or any other contractor, has been executed by the Architect for the purpose of confirming that such services, goods or materials have been satisfactorily delivered or completed as the case may be; or
- (B) which, in the case of any Project Cost associated with a reasonable general or administrative expense of a party under Project Costs (xviii) has

been executed by the Independent Auditor; and

- (iv) which has been executed by Arena Group or its designee to certify that the fees, costs, expenses and other charges reflected on the payment certificate constitute Project Costs and are due and owing.

(c) If a Payment Certificate is otherwise completed and executed in accordance with Section 3.4(b) (i)-(iv) and is submitted to the Director, then Director shall promptly, and in no event later than ten (10) days after City's receipt of the Payment Certificate, (1) execute the Payment Certificate on behalf of City to evidence City's approval of payment from the Disbursement Account of all portions of the Payment Certificate that are not disapproved or questioned as provided below, and (2) return the Payment Certificate to Arena Group. City shall cause the Director to respond promptly and expeditiously, and in no event later than ten (10) days after receipt thereof, to all requests by Arena Group relating to Payment Certificates. If the Director disapproves or questions the correctness or authenticity of any portion of the Payment Certificate, he or she shall notify Arena Group, and payment with respect to the disputed portion of the Payment Certificate shall not be made until Arena Group and the Director have jointly settled such dispute and such Payment Certificate is executed by the Arena Group and by the City.

(d) Within ten (10) days of City's approval of the Payment Certificate or any approved portion thereof, Director shall cause the City's portion (as determined in accordance with Section 3.3(h)) of the corresponding amount of funds to be transferred from the Public Project Cost Account to the Disbursement Account.

(e) Within ten (10) days of City's approval of the Payment Certificate or any approved portion thereof, the Arena Group shall cause the Arena Group's portion (as determined in accordance with Section 3.3(h)) of the corresponding amount of funds to be transferred from the Arena Group Project Cost Account to the Disbursement Account.

Section 3.5 Rights to Audit.

(a) The Arena Group and the City shall each have the right to audit, upon reasonable notice and at each party's respective expense, all expenditures and financial records related to the Arena Project, including the records related to the Project Accounts.

(b) Arena Group shall have the right to audit, at its sole cost and expense and subject to the terms of this paragraph, the Public Project Cost Account. Upon written request by Arena Group, City shall give Arena Group access to all records controlled by, or in the direct or indirect possession of City (other than records subject to legitimate claims of attorney-client privilege) relating to the Public Project Cost Account and any subaccounts therein, and permit Arena Group to review such records in connection with conducting a reasonable audit of such account.

(c) City shall have the right to audit, at its sole cost and expense and subject to the terms of this paragraph, the Arena Group Project Cost Account. Upon written request by City, Arena Group shall give City access to those certain records controlled by, or in the direct or

indirect possession of Arena Group (other than records subject to legitimate claims of attorney-client privilege) relating to the Arena Group Project Cost Account and the Disbursement Account, and permit City to review such records in connection with conducting a reasonable audit of such fund and account.

(d) City and Arena Group shall reasonably cooperate with the assigned independent auditors (internal or external) with respect to this Section 3.5, and shall retain and maintain all such records for at least five (5) years from the date of completion of the Arena Complex.

ARTICLE IV

Conditions to Arena Project Closing

Section 4.1 Conditions to Arena Group's Participation in Arena Project Closing.

If any of the following Closing Conditions have not been satisfied prior to the specified date, then Arena Group shall have the right and option to terminate this Agreement and to cancel the Arena Project Closing, to-wit:

(a) By the Effective Date, Arena Group must have received an independent professional cost analysis, prepared by an analyst selected by Arena Group, estimating that the Project Costs will not exceed \$ [REDACTED] (which amount consists of \$450,000,000.00 plus Overruns, the amount of which is acceptable to Arena Group).

(b) The Fort Worth City Council must have authorized issuance of the Arena Complex Bonds by March 31, 2017.

(c) By March 31, 2017, Arena Group must have received and approved acceptable assurances from reputable investment banking firms, municipal bond underwriters, or nationally recognized financial advisors selected by City of City's ability to market and sell on a timely basis Arena Complex Bonds in an amount that will provide, together with moneys previously contributed by the City, at least \$225,000,000 of net funds to pay Project Costs.

(d) By March 31, 2017, Arena Group must have received and approved acceptable assurances from reputable investment banking firms, municipal bond underwriters, or nationally recognized financial advisors selected by City that City's financing plans will assure that City will receive funds on a timely basis in order to comply with the Public Contribution funding requirements of Section 3.3(f) of this Agreement.

(e) By July 1, 2017, the City shall have sold the Arena Complex Bonds.

Section 4.2 Conditions to City's Participation in Arena Project Closing.

If the following Closing Condition has not been satisfied prior to the specified date, then City shall have the right and option to terminate this Agreement and to cancel the Arena Project Closing, to-wit:

By March 31, 2017, City must have received the Financial Assurance that the Arena

Group will be able to satisfy its funding requirements under this Agreement.

Section 4.3 Exercising Rights of Termination.

With the exception of termination on the basis of failure to comply with Section 4.1(e), any termination right granted in either Section 4.1 or Section 4.2 of this Agreement may be exercised by the party having the right to terminate delivering written notice to the other party by not later than March 31, 2017, whereupon both parties shall be released from this Agreement without further responsibility or liability.

In the event Arena Group chooses to terminate on the basis of failure to comply with Section 4.1(e), such termination right may be exercised by Arena Group delivering written notice to City by not later than the earlier of (i) the date of sale of the Arena Complex Bonds or (ii) July 1, 2017. Upon delivery of written notice in accordance with the preceding sentence, both parties shall be released from this Agreement without further responsibility or liability.

ARTICLE V

Closing Procedures

Section 5.1 Actions Required at Closing.

On the Arena Project Closing Date, the parties shall cause the following actions to occur:

(a) City will proceed in accordance with the Act and other applicable law to the closing and funding of such portion of the financing of the Public Contribution as has been approved by the parties according to the terms of this Agreement through the issuance of Arena Complex Bonds, and agreed to by the underwriters and credit providers;

(b) Arena Group will proceed to close such other prearranged financing arrangements of the Arena Group Contribution as may be required to conform to the funding requirements of this Agreement, and agreed to by the financial institutions or private parties who have agreed to provide such financing;

(c) City and Arena Group shall execute and deliver the Project Documents where required by their terms and provisions.

Section 5.2 Effectiveness of Actions.

Each and every one of the actions required to be taken on the Arena Complex Closing Date under the provisions of Section 5.1 and any and all substantive and procedural actions required in connection therewith, shall be deemed and conclusively presumed for all legal purposes to have been taken concurrently and simultaneously, irrespective of the actual time or date on which such actions were taken, and no such action shall be deemed to be final until all necessary actions have been taken and accomplished, failing which, the completed actions shall be null and void. Otherwise, if all appropriate and required actions are taken at the Arena Project Closing, the Project Documents shall be in full force and effect according to their terms.

ARTICLE VI

Issuance of Arena Complex Bonds, Parameters of 334 Revenues

Section 6.1 Issuance of Arena Complex Bonds.

City will issue one or more series of Arena Complex Bonds to pay any portion of the Project Costs and may issue one or more series of Arena Complex Bonds to pay a portion of eligible future addition, renovation, capital improvements, repairs or maintenance for the Arena Complex.

Section 6.2 Collection and Calculation of 334 Revenues.

(a) If City issues any Arena Complex Bonds that are secured by 334 Revenues, City shall levy and the parties shall work cooperatively to ensure the collection and remittance of the proceeds from the 334 Revenues as provided in the Act.

(b) Arena Group shall assist City and the users of the Arena Complex to calculate the 334 Revenues due and report to City in a format reasonably acceptable to City and from time to time as City may reasonably request.

Section 6.3 Continuation of 334 Revenues While Arena Complex Bonds are Outstanding.

The taxes generating the 334 Revenues shall be imposed and collected throughout the period during which any Arena Complex Bonds are outstanding and unpaid.

Section 6.4 Anticipated Cash Flow Schedule.

As required by the Master Agreement, attached hereto as Exhibit C is the anticipated cash flow schedule based on the Arena Project Budget to effect the payment of Project Costs.

Section 6.5 Refinancing or Restructuring.

City shall afford Arena Group a reasonable opportunity to review and offer input on any proposed refinancing or restructuring of the initial Arena Complex Bonds. In addition, because of the potential impact the admissions tax has on Arena Complex operations, to the extent any debt refinancing, restructuring, or new issuance involves expendable proceeds attributable primarily to the admissions tax, the City commits, for the duration of the lease and any extensions, to obtaining Arena Group review and approval regarding how such proceeds are to be expended, which approval shall not unreasonably be withheld. Notwithstanding the generality of the foregoing, under no circumstances shall Arena Group's consent be required to the extent a refunding or restructuring is required solely to preserve the tax-exempt status of the bonds. City shall reasonably consider any and all requests by the Arena Group to refinance or restructure the Arena Complex Bonds, provided, however, that any such refinancing or restructuring shall be subject to the mutual approval of Arena Group and City, which approval shall not be unreasonably withheld. No refinancing or restructuring of the Arena Complex Bonds shall be undertaken in a manner that would adversely affect the tax-exempt status of any Arena Complex Bonds or that would impair in any material respect the rights of City under this

Agreement or the Project Documents.

ARTICLE VII

Miscellaneous

Section 7.1 Notices.

Any notice to be given or to be served in connection with this Agreement must be in writing, and may be given by (i) actual hand delivery by a commercial courier that obtains a written receipt from the receiving party, (ii) overnight delivery by a nationally recognized overnight courier service (such as FedEx or UPS) or (iii) certified or registered mail, return receipt requested, postage pre-paid and shall be deemed to have been given and received either (A) upon actual delivery (if delivered by subsection (i) or (ii) above) or (B) forty-eight (48) hours after a certified or registered letter containing such notice, properly addressed, with postage prepaid is deposited in the United States mail, addressed as follows:

If to the Arena Group:

Event Facilities Fort Worth, Inc.
115 West 2nd Street, Suite 210
Fort Worth, Texas 76102
Attn: Mike Groomer

If to the City:

City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102
Attn: City Manager

With copies to:

Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Attn: Darren J. Keyes

With copies to:

City Attorney
1000 Throckmorton
Fort Worth, Texas 76102

Section 7.2 Modifications. No subsequent agreement amending, supplementing, modifying, waiving or in any way relating to the subject matter of this Agreement shall be effective unless set forth in a written instrument making specific reference to this Agreement signed by City and Arena Group. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend any provision of this Agreement or as a waiver of any such breach in the future.

Section 7.3 Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 7.4 Partial Invalidity. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 7.5 Interpretation. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture or of any association between City and Arena Group, it being understood and agreed that none of the provisions contained herein or any acts of the City hereunder shall be deemed to create any relationship between City and Arena Group other than as specifically set forth in the Act.

Section 7.6 Third Parties. Nothing in this Agreement shall be construed in any manner to create a cause of action for the benefit of any person not a party to this Agreement or to create any rights not otherwise existing at law for the benefit of any person not a party to this Agreement. Nothing in this Agreement shall be deemed to constitute a waiver of any immunity or affirmative defense that may be asserted by the Arena Group or the City as to claims of any third party.

Section 7.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Electronically reproduced signatures transmitted by facsimile or electronic mail shall be treated as originals for all purposes hereof.

Section 7.8 Disclosure of Interested Parties. Prior to the execution of this Agreement, Arena Group shall evidence to City that Arena Group has made disclosure filings with the Texas Ethics Commission in accordance with Section 2252.908, Texas Government Code.

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: _____
David Cooke
City Manager

By: _____
Mike Groomer
President

Date: _____

Date: _____

APPROVED AS TO FORM AND
LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

Contract Authorization:

ATTEST:

By: _____
Mary J. Kayser
City Secretary

EXHIBIT A

DEFINITIONS

“*334 Election Ordinance*” means Ordinance No. 21374-08-2014 adopted by the City Council of the City on August 12, 2014, calling for and ordering a special election to be held on November 4, 2014 at which all qualified voters of the City would have the opportunity to vote for the purpose of approving and implementing Resolution No. 4327-07-2014.

“*334 Revenues*” means collectively: (i) an admissions tax on each ticket sold as admission to an event held at the Arena Complex, at a rate not to exceed ten percent (10%) of the price of the ticket; (ii) a livestock facility use tax on each stall or pen used or occupied by livestock during an event held on one or more consecutive days in which the Arena Complex is used, not to exceed twenty dollars (\$20.00) in the aggregate per stall or pen rental for any event; and (iii) a parking tax on each motor vehicle parking in a parking facility that is determined by the City to serve, or that will serve, the Arena Complex, not to exceed five dollars (\$5.00) for each motor vehicle.

“*Act*” means Chapter 334, Local Government Code, as amended.

“*Adjusted Arena Group Contribution Amount*” means (i) \$225,000,000.00 less (A) the Prior Arena Group Contribution Amount and (B) any additional Project Costs paid by the Arena Group between execution of this Agreement and the initial sale of the Arena Complex Bonds (not including the delayed bond issuance, if any, permitted by Section 2.7(d) of the Master Agreement), plus (ii) the costs of any Overruns incurred and recognized as of the closing date of such bonds. The amount of additional Project Costs paid by the Arena Group as of the initial sale of the bonds shall be memorialized in an addendum to this Agreement signed by the Arena Group Representative and the Director.

“*Adjusted Public Contribution Amount*” means \$225,000,000.00 less (A) the Prior Public Contribution Amount and (B) any additional Project Costs paid by the City between execution of this Agreement and the initial sale of the Arena Complex Bonds (not including the delayed bond issuance, if any, permitted by Section 2.7(d) of the Master Agreement). The amount of additional Project Costs paid by the City as of the initial sale of the bonds shall be memorialized in an addendum to this Agreement signed by the Arena Group and the Director.

“*Agreement*” means the “Arena Project Funding Agreement”, entered into as of the Effective Date, by and between the City and the Arena Group to establish the parties’ funding commitments and the schedule for contributions to each party’s Project Cost Account and to the Disbursement Account.

“*Architect*” means the “*architect*” as defined in *Section 1.5* of the Master Agreement.

“*Arena Complex*” means collectively, the Parking and the Arena Facility that are constructed for agricultural, sports, school, community, family and entertainment events.

“*Arena Complex Bonds*” means any issues of bonds or other obligations to be approved, authorized, and issued by the City, in one or more series, in accordance with the Act, as further set forth in this Agreement, that are secured and payable as from a senior or junior lien pledge of (A) 334 Revenues, (B) Local PFZ Funds, and (C) State PFZ Funds.

“*Arena Facility*” means collectively, a multipurpose arena, adjacent support facilities, and any related infrastructure located on the City Land.

“*Arena Garage*” means the parking garage being constructed in accordance with this Agreement.

“*Arena Group*” means Event Facilities Fort Worth, Inc., a Texas non-profit corporation, and its Assignees.

“*Arena Group Contribution*” means all payments of Project Costs by the Arena Group up to \$225,000,000 as described in *Section 2.2* of the Master Agreement less any expenditures made by the Arena Group prior to the Master Agreement effective date as shown on Schedule I of the Master Agreement.

“*Arena Group Deposit*” means deposits made to the Arena Group Project Cost Account pursuant to *Section 3.3(g)* of this Agreement.

“*Arena Group Facility Land*” means the land so identified on Exhibit B.

“*Arena Group Funding Payments*” means all payments the Arena Group obligates itself to pay to the City in addition to the Base Rent pursuant to *Section 2.8(d)* of the Master Agreement.

“*Arena Group Garage Land*” means the land so identified on Exhibit B.

“*Arena Group Land*” means collectively, the Arena Group Facility Land, the Arena Group Garage Land and other Arena Group owned land so identified on Exhibit B.

“*Arena Group Lease*” means the components of the Arena Complex located on the City Land and owned by the City and the Arena Group’s Leasehold Interest to be executed _____ by and between the City, as Landlord, and the Arena Group, as tenant.

“*Arena Group Project Cost Account*” means the account created pursuant to *Section 3.2*.

“*Arena Group Representative*” means Mike Groomer, or any subsequent individual, however designated by the Arena Group, who has full authority to administer the Agreement on

behalf of the Arena Group.

“*Arena Group Surface Parking*” means surface parking existing as of the effective date of the Master Agreement on Arena Group Land as identified on Exhibit B and anticipated to provide parking for the Arena Complex in accordance with the terms of the Parking Agreements.

“*Arena Group’s Leasehold Interest*” means Arena Group’s leasehold interest in the components of the Arena Complex located on the City Land and owned by the City, as further described in *Article IV* of the Master Agreement.

“*Arena Project*” means the Arena Complex, the Arena Group Surface Parking and related land and infrastructure; provided, however, the Arena Group and the City shall mutually agree as to the nature and scope of what constitutes related land and infrastructure.

“*Arena Project Budget*” means the written preliminary budget setting forth the aggregate amount of the Project Costs and identifying in reasonable detail each material cost item including the line items set forth in the document to be prepared and submitted by the Arena Group in accordance with the Master Agreement, subject to subsequent adjustments based on the ultimate land acquisition and preparation costs and the completion of final design and architectural plans and final construction costs for the Arena Project.

“*Arena Project Closing*” means the completion in concurrent events of (i) the fulfillment of the funding obligations of the City under and in accordance with this Agreement, (ii) the fulfillment of the funding obligations of the Arena Group under and in accordance with this Agreement, and (iii) the execution and delivery of each of the Project Documents by the City and the Arena Group.

“*Arena Project Closing Date*” means December 31, 2017, or such other date as the City and Arena Group shall mutually approve.

“*Assignee*” or “*Assignees*” means any non-profit corporation formed by one or more parties affiliated with the Arena Group for the purposes of lessening the burdens of the City and to encourage agricultural pursuits and that will seek federal income tax exemption under Section 501(c)(3) of the Code to which the Arena Group assigns any of its rights or obligations under this Agreement.

“*Base Rent*” means the payment due to the City pursuant to the Arena Group Lease.

“*City Land*” means the land so identified on Exhibit B and includes City Licensed Land.

“*City Licensed Land*” means the land identified on Exhibit B that is licensed by the City to the Arena Group in accordance with the Master Agreement.

“*City*” means the City of Fort Worth, Texas, a duly incorporated home rule city of the

State of Texas.

“*Closing Conditions*” shall mean those certain conditions precedent to the City’s and the Arena Group’s obligations to execute the Project Documents, and to consummate the Arena Project Closing, which conditions are set forth in *Article IV* hereof.

“*Code*” means the Internal Revenue Code of 1986 as amended.

“*Director*” means a City department head or employee of the City designated by the City Manager.

“*Disbursement Account*” means the account created pursuant to *Section 3.3*.

“*Effective Date*” means the date on which the City and the Arena Group have both executed and delivered the Agreement.

“*Election*” means the special election held on November 4, 2014 held in accordance with the 334 Election Ordinance.

“*Financial Assurance*” means evidence of funds’ availability and the funds’ dedication for the benefit of the Project from a bank acceptable to City in the amount sufficient to meet the Arena Group Contribution funding requirements under this Agreement.

“*General Contractor*” means an individual satisfying the description in *Section 1.6* of the Master Agreement.

“*Independent Auditor*” means an independent certified public accountant or a firm of independent certified public accountants selected by the City Manager and approved by the Arena Group, which approval shall not be unreasonably withheld, for the purpose of confirming that the amount reflected in the invoices attached to a Payment Certificate with respect to any Project Cost associated with a reasonable general or administrative expense of a party under *Project Costs (xviii)* is consistent with the terms of the written contract pursuant to which such Project Cost was incurred.

“*Local PFZ Funds*” means incremental hotel-associated local tax revenue from the Zone.

“*Master Agreement*” means that certain Master Agreement Regarding Multipurpose Arena and Adjacent Support Facilities by and between the City and the Arena Group dated November 11, 2015.

“*Overruns*” means the payment of Project Costs in excess of the Arena Project Budget and after the Public Project Cost Account and Arena Group Project Cost Account are depleted pursuant to *Sections 2.8(b)* and *2.8(c)* of the Master Agreement.

“*Parking*” means the Arena Garage and additional surface parking serving the Arena Facility.

“*Parking Agreements*” means, collectively, agreements for interim construction parking and permanent parking at the Arena Complex, Arena Group Surface Parking and Will Rogers Memorial Center.

“*Payment Certificate*” shall have the meaning set forth in Section 3.4(g) of this Agreement.

“*Prior Arena Group Contribution Amount*” is the Arena Group contribution in the amount of \$ [REDACTED], which has been expended on Project Costs as of the Effective Date (this amount includes the amount from Schedule I of the Master Agreement).

“*Prior Public Contribution Amount*” is the City’s contribution in the amount of \$ [REDACTED], which has been expended on Project Costs as of the Effective Date (this amount includes the amount from Schedule II of the Master Agreement).

“*Project Account(s)*” means collectively, the Public Project Cost Account, the Arena Group Project Cost Account, and the Disbursement Account.

“*Project Costs*” means collectively, the costs of the Arena Project as set forth in *Section 2.1* of the Master Agreement.

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

“*Public Contribution*” means the amount payable by the City, from the net available proceeds of the Arena Complex Bonds and any other funding sources, for Project Costs of the Arena Project that does not exceed the lesser of (i) 50% of the actual Project Costs, or (ii) \$225,000,000 less any expenditures made by the City as shown on Schedule II of the Master Agreement.

“*Public Financing*” means the use of public funds in the Funding of the Arena Project.

“*Public Project Cost Account*” means an account into which the Public Contribution shall be deposited and out of which account funds shall be transferred to the Disbursement Account.

“*Schedule of Projected Project Cost Expenditures*” shall mean the schedule of estimated dates of payment and the amounts of Project Costs, as revised and adjusted from time to time, prepared by the Arena Group and reasonably approved by the City, in order to commence and complete the construction, and equip the Arena Complex.

“*Sign Agreement*” means the sign agreement or other similar document reflecting mutually agreeable terms negotiated by and between the City and the Arena Group as described in *Section 1.13* of the Master Agreement.

“*Venue Project Fund*” means the fund created pursuant to City of Fort Worth Resolution 4387-12-2014 as provided in the Act to be funded, in part, as provided in *Section 3.1* of this Agreement.

“*State PFZ Funds*” means incremental hotel-associated state tax revenue from the Zone.

“*Zone*” means the area designated as Project Financing Zone Number One, City of Fort Worth, Texas, according to Ordinance No. 21011-10-2013 as adopted by the City Council of the City on October 22, 2013.

EXHIBIT B

DEPICTION OF PROJECT SITE

[attached]

EXHIBIT C

ANTICIPATED CASH FLOW SCHEDULE

[attached]