

AGREEMENT BETWEEN THE CITY OF SEATTLE AND SEATTLE ARENA COMPANY, LLC FOR DESIGNING AND CONSTRUCTING TRANSIT IMPROVEMENTS FOR THE SEATTLE CENTER ARENA PROJECT

This agreement (the “Agreement”), entered into this ____ day of _____, 2020, between the City of Seattle (“City”) through its Seattle Department of Transportation (“SDOT”) and Seattle Arena Company, LLC (“ArenaCo”) (collectively the “Parties”), is for the purpose of coordinating the design and constructing certain transit, channelization, and Protected Bicycle Lane design upgrades for the improvements on Queen Anne Ave N and 1st Ave N, described in this Agreement.

WHEREAS, ArenaCo and the City entered into a long-term lease and development agreement as approved by City Council in Ordinance 125669, authorizing ArenaCo to redevelop the existing arena at Seattle Center into a world-class venue for professional hockey, basketball, and live entertainment (the “Project”);

WHEREAS, on September 21, 2018, the City issued ArenaCo a Master Use Permit for the Project, numbers 3032560-LU and 3032552-LU (“MUP”), as referenced in SDCI MUP permits 3032560-LU and 3032552-LU, in which the City requires ArenaCo to perform certain acts to mitigate the Project’s transportation impacts;

WHEREAS, condition 9 of the MUP requires ArenaCo to pay a proportional share payment of \$594,000 for three projects: converting a travel lane on 1st Ave. N. to a bus-only lane between Denny Way and Republican St; installing a transit queue jump at 1st Ave N and Republican St; and converting a travel lane on Queen Anne Ave N to a bus-only lane from Mercer St to John St. (collectively the “Transit Improvements”);

WHEREAS, other improvements related to the project that ArenaCo will install for SDOT when the Transit Improvements are installed allow for project efficiencies, and such additional improvements as are described on Exhibit A (collectively the “Additional Improvements”);

WHEREAS, the Director of Transportation may grant an exception from paying street use fees, and the Director may also credit street use fees from an individual project in exchange for transportation improvements, per SMC 15.04.100, and as provided in Ordinance XXXXX;

WHEREAS, completing the Transit Improvements and Additional Improvements before completing and opening the Project would provide a benefit to the public by improving transit service, better managing transportation flow for all modes and reducing congestion, and completing the Transit Improvements and the Additional Improvements concurrent with other street improvements required in the MUP would minimize impacts to the surrounding neighborhood;

NOW THEREFORE, in consideration of the terms in this Agreement and the documents attached and incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the following is agreed to by the Parties:

TERMS

1. Purpose and Incorporation of Recitals.

- 1.1 This Agreement is executed to establish the Parties' roles, rights, and responsibilities during design, permitting, materials supply, and construction of the Transit Improvements, Additional Improvements, and MUP conditions in a manner that benefits the public and the Parties. The recitals are incorporated into this Agreement.

2. Design; Construction.

- 2.1 ArenaCo shall incorporate the Transit Improvements and Additional Improvements into the Seattle Arena Renovation Street Improvement Permit (“SIP”) #362705 - 334 1st Ave N. The Transit Improvements and Additional Improvements will be designed by an engineer of ArenaCo's choosing, and the engineer shall design all improvements consistent with the plans shown in the referenced plans in SPU Vault #792-103, SIP #362705 documents, and in accordance with applicable law, for approval by SDOT. SDOT is solely and fully responsible for identifying and specifying its requirements for the Transit Improvements and Additional Improvements with the assistance of ArenaCo's engineer or other consultants. ArenaCo expressly disclaims any representation or warranty that the plans are suited for the City's intended uses or purposes. SDOT expressly acknowledges that it has not relied in any way on ArenaCo to identify and specify its requirements for the Transit Improvements and Additional Improvements. The Parties agree that the extent and configuration of the Transit Improvements and Additional Improvements, as referenced in SPU Vault #792-103, SIP #362705 and Exhibit A, represents the limit of what ArenaCo is required to design, permit, and construct.
- 2.2 In addition to those items described in Section 2.1, the SIP shall include those improvements required to be constructed by ArenaCo as described in the mitigation measures in the MUP, as referenced SDCI MUP permits 3032560-LU and 3032552-LU. Should the Parties dispute whether the MUP requires ArenaCo to construct certain improvements, including disputes as to specific design elements of improvements required by the MUP, the Parties will resolve the dispute according to Section 9, below.
- 2.3 ArenaCo shall construct the Transit Improvements and Additional Improvements consistent with the designs approved under Section 2.1, the approved SIP, and applicable law. Construction shall occur in conjunction with the other street improvements that the MUP requires ArenaCo to complete.
- 2.4 SDOT bears the sole responsibility for coordinating with the King County Metro Transit Department (“Metro”) to ensure that ArenaCo obtains all necessary approvals and coordination from Metro in a timely manner. Upon SDOT's

request, ArenaCo will promptly provide SDOT with information necessary to obtain the approvals and coordination from Metro.

3. Costs

- 3.1. ArenaCo shall be responsible for a maximum of \$594,000 in costs, including, but not limited to administrative costs (such as project management, design and engineering costs, taxes, and other similar administrative costs), associated with designing, permitting, and constructing the Transit Improvements. SDOT shall be responsible for all costs related to the Transit Improvements that exceed \$594,000.
- 3.2. In addition to SDOT's responsibility for any Transit Improvement costs beyond \$594,000, as described in Section 3.1, SDOT shall credit ArenaCo \$396,000 in street use fees associated with the Project and the Transit Improvements, and all credited fees shall be used by ArenaCo to design and construct the street improvement obligations as detailed in the SIP.
- 3.3. SDOT shall be responsible for all costs, including, but not limited to administrative costs (such as project management, design and engineering costs, taxes, and other similar administrative costs) caused by the design, permitting, and construction of the Additional Improvements, provided that such street use fee credit shall be used by ArenaCo exclusively for the design and construction of the street improvement obligations as detailed in the SIP.
- 3.4. For the purposes of the street use fee credits, ArenaCo shall provide SDOT with a statement of costs incurred by ArenaCo in carrying out the obligations of this Agreement with respect to the Transit Improvements and Additional Improvements. SDOT shall provide evidence of a credit of use fees equal to the expenses incurred by ArenaCo for the Project, including the MUP, and Transit Improvements or, and Additional Improvements. Under no circumstances shall SDOT remit a cash payment of funds to ArenaCo for the work.
- 3.5. Notwithstanding Sections 3.1, 3.2, 3.3 and 3.4, SDOT's maximum financial obligation to ArenaCo under this Agreement shall not exceed the total amount of street use fees incurred by ArenaCo for the Project (including the MUP street improvements, the Transit Improvements, and the Additional Improvements). SDOT's sole method of satisfying the financial obligations described in this

Agreement shall be through crediting street use fees.

4. Materials Contribution and Responsibilities

- 4.1 ArenaCo is responsible for procuring all materials necessary to construct the Transit Improvements and Additional Improvements.
- 4.2 Upon completing the Transit Improvements and Additional Improvements, SDOT reserves the right to inspect the Transit Improvements and Additional Improvements to confirm compliance with the approved SIP and applicable law.

5. Ownership and Maintenance of Completed Improvements

- 5.1. This Agreement shall not modify the rights and obligations of the City and SDOT regarding ownership and maintenance of the public right-of-way as provided for in the Seattle Municipal Code and shall not impose any responsibility on ArenaCo for maintaining the Transit Improvements or Additional Improvements.
- 5.2. This Agreement shall not modify the rights and obligations of private owners along 1st Ave N and Queen Anne Ave N regarding maintenance of private property as provided for in the Seattle Municipal Code.
- 5.3. This Agreement shall not be interpreted or construed to grant ArenaCo any interest in or any right to use related the improvements described in the MUP, including the Transit Improvements or Additional Improvements, except in common with other members of the general public.

6. Effective Date and Term of Agreement

This Agreement shall take effect on the latest date one of the Parties signs the Agreement and shall continue unless terminated according to the terms of this Agreement until the Transit Improvements and Additional Improvements have been fully installed and a final inspection approving the installation has been made by SDOT.

7. Termination

Any of the Parties may terminate this Agreement if the other Party materially breaches the Agreement. Written notice of a material breach and a description of the breach shall be given by certified mail, and the Party alleged to be in breach shall have 60 days, or longer, if reasonably necessary, to cure the breach. If the breaching Party fails to cure within the time for cure, the Agreement is immediately terminated. Upon termination, the Parties shall

determine final costs and payments to be made by each Party, and each Party may pursue all remedies available.

8. Notification and Identification of Project Contacts Notice.

Any notice or communication required or permitted to be given according to this Agreement shall be in writing and shall be delivered through the U.S. Postal Service with postage prepaid, to the contact persons and addresses as follows, unless otherwise indicated by the Parties in writing.

City:

Seattle Department of Transportation
P.O. Box 34996
Seattle, WA 98124-4996
Phone: (206) 684-7945
ATTN: Elizabeth Sheldon

Seattle Arena Company, LLC:

Seattle Arena Company, LLC
16 W. Harrison St., Ste. 200
Seattle, WA 98119
ATTN: Hewan Teshome

9. Dispute Resolution

The Parties through their designated representatives shall use their best efforts to resolve any disputes pertaining to this Agreement that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the responsible Project directors of the Parties shall review the matter and attempt to resolve it. The Parties agree to exhaust these procedural steps before seeking to resolve disputes in a court of law or any other forum.

10. Compliance With Applicable Laws

- 10.1. The Parties agree to comply with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to nondiscrimination; and agree to require the same of any subcontractors providing services or performing any work related to the Project or using funds provided under this Agreement.
- 10.2. During the performance of this Agreement, neither ArenaCo nor any party subcontracting under the authority of this Agreement shall unlawfully discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification in the administration or delivery of services or any other

benefits under this Agreement.

- 10.3. **Nondiscrimination.** During the performance of this Agreement, ArenaCo for itself, its assignees, and successors in interest, agrees to comply with nondiscrimination laws of the United States, the state of Washington, and the City of Seattle, including, but not limited to, SMC Chapters 14.04, 14.10, and 20.42, as they may be amended from time to time, and the rules, regulations, orders, and directives of the associated administrative agencies and their officers.

11. Force Majeure

If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of a Force Majeure Event, the affected Party, upon giving notice to the other Party, shall be excused from the performance to the extent of and for the duration of such prevention, restriction, or interference. The affected Party shall use its reasonable efforts to avoid or remove the causes of nonperformance and shall continue performance under this Agreement whenever the causes are removed. “Force Majeure Event” means any event or circumstance or combination thereof and the continuing effects of any event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that delays or prevents performance by a Party of any of its obligations under this Agreement, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the affected Party; and only to the extent that the affected Party has taken commercially reasonable measures to avoid the effect of the event or circumstance on the affected Party’s ability to perform its obligations under this Agreement and to mitigate the consequences of the event. A Force Majeure event shall include, but not be limited to, the following, to the extent also satisfying the criteria specified above: (a) acts of nature, including flood, earthquake, drought, climate change, storm, fire, lightning, epidemics, pandemics, and other natural catastrophes; (b) acts of public enemies, terrorism, war, insurrection, or sabotage; (c) any form of compulsory government action or change in law; (d) accidents or other casualties causing damage, loss, or delay; (e) labor disturbances, strikes, lock-outs, or other industrial actions affecting the Parties or any of their contractors, subcontractors, agents, or employees; and (f) delay in obtaining or the denial of any regulatory consents or approvals. A Force Majeure Event shall only extend for so long as the event or circumstance is beyond the reasonable control of the affected Party; and only to the extent that the affected Party has taken commercially reasonable measures to avoid the effect of the event or circumstance on the affected Party’s ability to perform its obligations under this Agreement and to mitigate the consequences of the event.

12. Entire Agreement and Amendments

- 12.1. **Amendments.** No amendment, variation, or alteration to this Agreement shall be valid unless made in writing and signed by the Parties’ authorized representatives in advance of implementing the amendment.
- 12.2. **Entire Agreement.** This Agreement embodies the Parties' entire understanding and agreement on the issues covered by it, except as may be amended under Section 12.1,

and to the extent of any conflict or inconsistency, this Agreement supersedes any prior negotiations, representations, or draft agreements on this matter, either written or oral.

13. Miscellaneous; Legal Relations

- 13.1. **No Partnership or Joint Venture.** No joint venture, agent-principal relationship or partnership is formed by this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other Parties.
- 13.2. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and gives no right to any other person or entity.
- 13.3. **Assignment.** Neither this Agreement nor any interest in this Agreement may be assigned by either Party without the prior written consent of the other Parties that shall not be unreasonable withheld, conditioned, or delayed.
- 13.4. **Binding on Successors and Assigns.** This Agreement and all of its terms, provisions, conditions, and covenants, together with any exhibits and attachments now or hereafter made a part of the Agreement, shall be binding on the Parties and their respective successors and assigns.
- 13.5. **Mutual Negotiation and Construction.** This Agreement and each of the terms and provisions shall be deemed to have been explicitly negotiated between and mutually drafted by the Parties.
- 13.6. **Waiver of Default.** Waiver of any default shall not be deemed to be a waiver of any subsequent default; as such, failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of any other provision. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by duly authorized representatives of the Parties, and attached to the original Agreement.
- 13.7. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 13.8. **Jurisdiction and Venue.** Any dispute arising under this Agreement requiring legal adjudication shall be brought before the United States District Court for the Western District of Washington or the King County Superior Court.
- 13.9. **Rights and Remedies.** The Parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

13.10. **Severability.** If any provisions of this Agreement are held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected, provided that upon a determination that any term provision, condition or portion of this Agreement is invalid, the Parties shall negotiate in good faith to modify this Agreement so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligation of the Parties under this Agreement are fulfilled to the greatest extent possible.

13.11. **Survival.** Each of the provisions of this Section 13, Legal Relations, shall survive any expiration or termination of this Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date indicated next to their signatures.

SEATTLE ARENA COMPANY, LLC

(name)

Date

SEATTLE DEPARTMENT OF TRANSPORTATION

Sam Zimbabwe, Director
Seattle Department of Transportation

Date

**EXHIBIT A
ADDITIONAL IMPROVEMENTS**

Additional Improvements		ArenaCo Obligation	SDOT Use Fees Credited*
	Raised driveways for protected bike lanes	\$ -	\$445k
	Concrete barriers for protected bike lanes		
	Thomas St. bike and signal improvements		
	Green bike boxes		
	New signage at unsignalized intersections		
	Curb extension at NW corner of Thomas/1st Ave N		

* Subject to legislative approval - it is estimated \$3.5M in use fees likely due, prior to crediting.

