

COMMUNITY GRANT AGREEMENT

THIS AGREEMENT is made as of the 5th day of October, 2023.

BETWEEN:

CALGARY FLAMES FOUNDATION, a registered charity incorporated under the laws of Alberta (the "**Foundation**")

-and-

THE CITY OF CALGARY, a municipal corporation in the province of Alberta ("**The City**")

(the Foundation and The City are each a "**Party**" and together, the "**Parties**")

WHEREAS at the April 25, 2023 Regular Meeting of Council, the municipal council of The City acknowledged the authority of the person appointed to the position of chief administrative officer of The City pursuant to the *Municipal Government Act* (Alberta), or such person's designate from time to time, under the Execution of Contracts Bylaw 43M99, to negotiate and execute various definitive agreements which are necessary or desirable to deliver the Event Centre Project and related district-wide improvements as generally outlined in Report C2023-0482 including the attachments thereto;

AND WHEREAS The City and CSE Real Estate Corporation, as general partner for and on behalf of CSE Real Estate Limited Partnership ("**CSERELP**") entered into a management and lease agreement (the "**Management and Lease Agreement**") dated October 5, 2023, in which The City agreed to retain CSERELP to carry out the management, operation and maintenance of the Event Centre to be constructed in the Rivers District of Calgary. In furtherance of the foregoing, The City has also agreed to grant to CSERELP a lease to use and occupy the Event Centre and a right to sub-lease and/or sub-license others to use the Event Centre, all subject to and in accordance with the terms and conditions set out therein;

AND WHEREAS CSERELP, in its capacity as manager of the Event Centre, intends to permit the Foundation to conduct certain fund-raising activities at the Event Centre;

AND WHEREAS the Foundation wishes to ensure that a certain amount of the funds raised through these fund-raising pursuits are granted to Qualified Donees in Calgary involved in promoting life-long active living, health and wellness programs in support of the Foundation's mandate of improving the lives of southern Albertans through support of health and wellness, education and grassroots programming (the "**Purpose**");

AND WHEREAS in furtherance of the Purpose, the Foundation intends, in consultation with The City of Calgary, to grant funds to certain Qualified Donees;

NOW THEREFORE, for the consideration of the terms and conditions contained herein (the receipt and sufficiency of which are hereby acknowledged), the Parties confirm their mutual understanding as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) "**Agreement**" means this agreement, including the Schedules to this agreement, as amended or supplemented from time to time;
- (b) "**Canada Agreement**" means the agreement dated July 29, 1994 between the Saddledome Foundation, Her Majesty the Queen in Right of Canada (as represented by

the Minister of Canadian Heritage), Calgary Olympic Development Association, Hockey Canada and The City, whereby the Saddledome Foundation agreed to provide certain grants to community organizations on an annual basis;

- (c) **“Confidential Information”** has the meaning ascribed to it in Section 8.2;
- (d) **“CSERELP”** has the meaning ascribed to it in the Preamble to this Agreement;
- (e) **“Disclosing Party”** has the meaning ascribed to it in Section 8.2;
- (f) **“Effective Date”** means the Event Centre Opening Date;
- (g) **“Event Centre”** means the approximately 18,000 seat primary event centre facility to be constructed on the Lands, along with a community rink, an event centre parkade, an outdoor plaza, an indoor plaza and other improvements to be constructed on the Lands;
- (h) **“Event Centre Opening Date”** means the date the Event Centre opens to the public for use;
- (i) **“FOIP”** has the meaning ascribed to it in Section 8.1;
- (j) **“Foundation”** means the Calgary Flames Foundation;
- (k) **“Funding Term”** has the meaning ascribed to it in Section 3.1;
- (l) **“Grantor Marks”** has the meaning ascribed to it in Section 5.1;
- (m) **“Grants”** means the Initial Contribution and the Subsequent Contributions;
- (n) **“Initial Contribution”** has the meaning ascribed to it in Section 2.1;
- (o) **“Initial Recipients”** has the meaning ascribed to it in Section 3.2;
- (p) **“Lands”** has the meaning ascribed to that term in the Management and Lease Agreement;
- (q) **“Management and Lease Agreement”** has the meaning ascribed to it in the Preamble to this Agreement;
- (r) **“Purpose”** has the meaning ascribed to it in the Preamble to this Agreement;
- (s) **“Receiving Party”** has the meaning ascribed to that term in Section 8.2;
- (t) **“Subsequent Contribution”** has the meaning ascribed to it in Section 2.2;
- (u) **“Successor Recipients”** has the meaning ascribed to it in Section 3.3;
- (v) **“Term”** has the meaning ascribed to it in Section 4.1.
- (w) **“Termination Date”** means the date of expiry or termination of the Management and Lease Agreement, including any extension thereof as currently provided for in the Management and Lease Agreement and any further extension or renewal of the Management and Lease Agreement as may be mutually agreed upon by The City and CSERELP;
- (x) **“The City”** means The City of Calgary;

- (y) **“Qualified Donee”** has the meaning ascribed to it under the *Income Tax Act* (Canada); and
- (z) **“Year”** means the period from July 1 in a given year to June 30 of the next year.

1.2 Headings

The inclusion of headings in this Agreement is for convenience of reference only and will not affect the construction or interpretation of this Agreement.

1.3 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders or the neuter, and words importing the neuter include all genders.

1.4 Currency

All amounts in this Agreement are stated and will be paid in Canadian currency.

2. GRANTS

- 2.1 The Foundation will grant to the Initial Recipients an aggregate monetary amount of one million five hundred thousand dollars (\$1,500,000) (the **“Initial Contribution”**) on or before the first June 30^h following the later of: (i) the one-year anniversary date of the last payment made by the Saddledome Foundation under the Canada Agreement prior to termination of the Canada Agreement; or (ii) the Event Centre Opening Date. In no event shall the Foundation be obligated to grant the Initial Contribution in a given Year if such payment would result in a duplication of the grant provided by the Saddledome Foundation under the Canada Agreement for that same Year.
- 2.2 During the Term, in each Year of operation of the Event Centre following the Year in which the Initial Contribution was made, the Foundation will provide, on or before June 30^h of each such Year, to the Initial Recipients or the Successor Recipients, as the case may be, an aggregate monetary amount of one million five hundred thousand dollars (\$1,500,000) (each such annual contribution being a **“Subsequent Contribution”** and all such annual contributions being the **“Subsequent Contributions”**). The last Subsequent Contribution shall be made on or before the last June 30th immediately prior to the Termination Date.
- 2.3 The proportion of funds from the Initial Contribution and the Subsequent Contribution during the initial Funding Term that each Initial Recipient receives shall be one third (1/3) of the Initial Contribution and Subsequent Contributions and the Subsequent Contributions that each Successor Recipient receives during a Funding Period shall be determined by the Foundation, in consultation with The City.
- 2.4 The Parties acknowledge that upon:
 - (a) payment in full of the Initial Contribution or Subsequent Contribution pursuant to Section 2.1 or Section 2.2, as the case may be; and
 - (b) providing The City with written confirmation evidencing such payment,the Foundation will have fully satisfied its commitments under this Agreement with respect to such Year.

3. RECIPIENTS

- 3.1 In ascertaining which community organizations and/or community projects to fund initially and for each subsequent five-year period (each 5-year period a "**Funding Term**") and to ensure the best value is achieved for both The City and the Foundation, the Parties will take into account the criteria established in Schedule A.
- 3.2 Based on these criteria, The Foundation has determined, in consultation with The City, that the three Calgary community organizations to be the initial beneficiaries of the Grants for the initial Funding Term shall be those recipients listed in Schedule B to this Agreement (the "**Initial Recipients**").
- 3.3 At least six (6) months prior to the end of each Funding Term, the Foundation will commence consultations with The City to determine the successor recipients ("**Successor Recipients**") to receive funding and support from the Grants provided by the Foundation for the next ensuing Funding Term. Nothing will prevent the Foundation, in consultation with The City, from determining to continue funding one or more of the Initial Recipients or varying the allocation of Subsequent Contributions thereto.

4. TERM

- 4.1 The term of this Agreement (the "**Term**") will commence on the Effective Date and end on the Termination Date.

5. LICENSES

5.1 Use of Grantor Marks

For the sole purpose of identifying the Foundation as a grantor, the Foundation hereby grants to The City, during the Term, a non-transferable, non-exclusive, royalty-free licence to use, copy and display the name of the Foundation and the trademarks, registered and unregistered, of the Foundation (the "**Grantor Marks**").

The Foundation will provide The City with any standards or guidelines regarding the use of the Grantor Marks and The City will comply with such standards and guidelines in the use of the Grantor Marks under this Agreement.

5.2 No Interest in Grantor Marks

The City agrees that it has no right, title or interest in the Grantor Marks except the use of the Grantor Marks as set out in this Agreement. The City agrees that the benefit and goodwill associated with the Grantor Marks will enure entirely to the Foundation.

5.3 Protection of Reputation

The City will not knowingly assist, permit or encourage any person or entity within its authority to do anything or omit to do anything that is likely to:

- (a) impair, jeopardize, violate or infringe the Grantor Marks or the Foundation's interest in the Grantor Marks; or
- (b) compromise or reflect unfavourably on the good name, goodwill, reputation or image of the Foundation,

and the Foundation will not knowingly assist, permit or encourage any person or entity within their authority to do anything or omit to do anything that is likely to:

- (c) impair, jeopardize, violate or infringe any trademarks, registered or unregistered, of The City or The City's interest in such trademarks; or
- (d) compromise or reflect unfavourably on the good name, goodwill, reputation or image of The City.

6. GRANTOR PROMOTIONS

- 6.1 The City hereby grants to the Foundation a non-exclusive, royalty-free and non-assignable license to copy, use or display the name, trademarks and logos of The City during the Term in connection with any advertising and promotion the Foundation may undertake, and to identify itself as a grantor on its website and in other promotional materials. In doing so, the Foundation will comply with any applicable policy of the City from time to time, including the City's *Corporate Brand Identity and Identifiers* (GN-023) policy.

7. INDEMNITIES

7.1 Indemnity by Foundation

The Foundation will indemnify and hold harmless The City, its affiliates and its respective directors, officers, employees and representatives from and against any and all claims, actions, liabilities, damages, losses, suits, judgments, costs and expenses (including reasonable legal fees on a solicitor and own client basis) brought or caused by third parties based on a claim that the City's reproduction, use or display of the Grantor Marks permitted pursuant to Section 5.1 infringes, violates or misappropriates any third party's intellectual property rights, provided The City has complied with any standards or guidelines provided by the Foundation in relation to such use.

7.2 Indemnity by The City

The City will indemnify and hold harmless the Foundation, its affiliates and its respective directors, officers, employees and representatives from and against any and all claims, actions, liabilities, damages, losses, suits, judgments, costs and expenses (including reasonable legal fees on a solicitor and own client basis) brought or caused by third parties based on a claim that the Foundation's reproduction, use or display of the name, trademarks or logos permitted pursuant to Section 6.1 infringes, violates or misappropriates any third party's intellectual property rights, provided the Foundation has complied with any applicable policy of the City, including the City's *Corporate Brand Identity and Identifiers* (GN-023) policy in relation to such use.

7.3 Limitations

No Party will be liable to any other Party for indirect, incidental, consequential, special or exemplary damages (even if that Party has been advised of the possibility of such damages), arising from any provision of this Agreement, including loss of revenue or anticipated profits or lost business. In no event will either Party be liable to the other Party in relation to this Agreement for any amount exceeding the Grants.

8. CONFIDENTIAL INFORMATION

- 8.1 The Parties acknowledge that The City is subject to the *Freedom of Information and Protection of Privacy Act* (Alberta), R.S.A. 2000, Chapter F-25 ("**FOIP**"), as amended, revised or substituted from time to time and, notwithstanding anything contained in this Agreement, that information submitted to it and in the possession of The City is governed by FOIP and may be eligible for disclosure in

accordance with the requirements of same. In each case, if The City at any time receives a request for access to any CSEC information pursuant to FOIP, The City shall, unless prohibited by applicable law, withhold any CSEC information as required by FOIP. For clarity, the Parties acknowledge that this Agreement shall be made public.

8.2 As used herein, “**Confidential Information**” means any and all information that is or may in any way be related to the assets, business or affairs of one Party (in each case, a “**Disclosing Party**”), and includes personal information (as defined in FOIP) that may be furnished by a Disclosing Party to, or otherwise obtained by, another Party or any of its representatives pursuant to this Agreement (in each case, a “**Receiving Party**”). Notwithstanding the foregoing, however, the term Confidential Information does not include:

- (a) information that was already known to the Receiving Party at the time such information is received from the Disclosing Party provided such information is not known to the Receiving Party to be subject to any confidentiality obligation in respect of such information;
- (b) information that is developed by the Receiving Party without reference to any Confidential Information disclosed by or relating to the Disclosing Party;
- (c) information that is or has become or hereafter becomes publicly known or available, provided that such public disclosure was not due to: (i) the fault of or a breach of confidence by the Receiving Party, or (ii) a breach of confidentiality obligations, including those of a third person;
- (d) information that is approved for release in writing by the Disclosing Party; and
- (e) this Agreement.

8.3 Each of the Parties hereby agrees to maintain the confidentiality of any Confidential Information of the other Parties, and will not make use of any such Confidential Information or release it to its employees, officials, officers, representatives or advisors or consultants; or release or disclose the Confidential Information to any unauthorized third party.

Notwithstanding the foregoing, the Parties may use, release and disclose Confidential Information:

- (a) to the extent required for the performance of this Agreement;
- (b) to the extent required by applicable law or court order; and/or
- (c) to the Party's directors, professional advisors, consultants and employees, to the extent necessary to enable the Party to perform its obligations or enforce its rights under this Agreement;
- (d) to the extent necessary to address questions or issues relating to this Agreement and/or the Grants,

provided in each case that, if and to the extent required by FOIP and/or the *Personal Information Protection Act* (Alberta), any relevant notice or consent has been provided and/or obtained.

8.4 The duties and obligations to protect the Confidential Information survive termination of this Agreement and must continue until the Party originally claiming information to be confidential releases that claim by deed or action.

9. TERMINATION

9.1 Termination for Cause

- (a) The Foundation may terminate this Agreement upon notice to The City if at any time during the Term The City:
- (i) fails to observe or perform any material covenant, agreement or obligation undertaken hereunder; or
 - (ii) breaches Section 5.3(a) or (b) of this Agreement,
- and The City does not cure such default within thirty (30) days after receipt by The City of written notice from the Foundation specifying the default, provided that the Foundation may only exercise such termination right if the Foundation delivers the default notice to The City promptly following the Foundation's discovery of the applicable default.
- (b) The City may terminate this Agreement upon notice to the Foundation if at any time during the Term the Foundation:
- (i) fails to observe or perform any material covenant, agreement or obligation undertaken hereunder; or
 - (ii) breaches Section 5.3(c) or (d) of this Agreement,
- and the Foundation does not cure such default within thirty (30) days after receipt by the Foundation of written notice from The City specifying the default, provided that The City may only exercise such termination right if The City delivers the default notice to the Foundation promptly following The City's discovery of the applicable default.
- (c) A Party may terminate this Agreement immediately on written notice to the other Party if any Party becomes unable to pay its liabilities when due, makes any assignment for the benefit of creditors or files a voluntary petition for bankruptcy or insolvency.

9.2 Termination by Mutual Agreement

The Parties may mutually agree in writing to terminate this Agreement at any time during the Term.

10. REPRESENTATIONS AND WARRANTIES

10.1 Each Party represents and warrants to the other Party, in respect of itself that:

- (a) it has the requisite capacity to enter into and be bound by this Agreement and to fulfill its obligations on the terms and conditions of this Agreement;
- (b) the carrying out of this Agreement will not breach or interfere with any other agreement by which it is bound; and
- (c) it will not enter into another agreement or do or fail to do any act that would interfere with its ability to fulfill its obligations on the terms and conditions of this Agreement.

10.2 The Foundation represents and warrants to The City that the Grantor Marks do not violate the intellectual property rights of any third party.

11. ENTIRE AGREEMENT

11.1 The Parties agree that this Agreement, including any attached Schedules, contains the entire agreement between the Parties with respect to the Grants to be provided by the Foundation and the other matters addressed herein and that the terms of this Agreement are contractual and not a mere recital.

12. GOVERNING LAW

12.1 This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. The Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Alberta.

13. SEVERABILITY

13.1 In the event that any particular provision or provisions of this Agreement is deemed to be unenforceable or void by a court of competent jurisdiction, such provision or provisions will be deemed to be severable and such determination will solely affect the severed provision or provisions and will not impair or render void or unenforceable the remaining provisions of this Agreement.



14. EXECUTION IN COUNTERPART

14.1 This Agreement may be executed in counterparts each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the date first above written. An executed copy of this Agreement may be delivered by either Party hereto by facsimile or other electronic means. In such event, such Party shall forthwith deliver to the other Party hereto a copy of the Agreement executed by such Party.

15. NOTICES

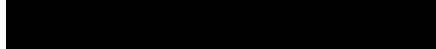
15.1 All notices, requests, approvals, consents and other communications required or permitted under this Agreement will be in writing and addressed as follows:

- (a) if to the Foundation:
Calgary Flames Foundation
555 Saddledome Rise SE
Calgary, AB T2G 2W1

Attention: John Bean
Facsimile: 
Email: 

with a copy to:

Norton Rose Fulbright Canada LLP
Suite 3700, 400 – 3rd Avenue SW
Calgary, Alberta T2P 4H2

Attention: Brad Havden
Facsimile: 
Email: 

(b) if to The City:
800 Macleod Trail SE
PO Box 2100, Station "M"
Calgary, AB T2P 2M5

Attention: City Treasurer
Facsimile: 403-268-2578
Email: treasury@calgary.ca

with a copy to:

The City of Calgary
12th Floor, 800 Macleod Trail SE
Calgary, Alberta T2G 2M3

Attention: City Solicitor
Facsimile: 403-268-4634
Email: law.reception@calgary.ca

A copy of any notice delivered by electronic transmission will also be sent on the date of such electronic transmission by registered express mail or courier with the capacity to verify receipt of delivery. Any Party may change its contact information for notification purposes by giving the other Party notice of the new contact information and the date upon which it will become effective in accordance with the terms of this Section 15.1. A notice will be deemed to have been received as of the next business day following receipt of delivery. If the Party sending a notice is or becomes aware, that the address and/or contact information of a Party is incorrect, including by reason of it being out of date, any notice sent to such address and/or contact information will nonetheless be effective as of the next business day following receipt of delivery; provided, however, that the Party sending such notice has used reasonable commercial efforts to determine the correct address and/or contact information of the Party to whom the notice is being sent and, if an updated address and/or contact information is determined, such notice has concurrently been sent to the updated address.

16. ASSIGNMENT AND AMENDMENT

16.1 Neither Party may assign or transfer this Agreement or any of its rights under this Agreement without the prior written consent of the other Party and any attempted assignment without such prior written consent will be void. No amendment to, or change, waiver or discharge of, any provision of this Agreement will be valid unless in writing and signed by authorized representatives of each Party.

17. GENERAL

17.1 Nothing in this Agreement makes any Party the partner, joint venture, agent, trustee, employee or legal representative of the other Party.

17.2 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by the Parties and is not a waiver of any other terms or any other breach.

17.3 This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

17.4 Each Party will comply with all applicable laws, regulations and orders in performing its obligations and exercising its rights under this Agreement.

17.5 Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first written above.

CALGARY FLAMES FOUNDATION

Per:

John Bean
Director

Per:

Cameron Olson
Director

THE CITY OF CALGARY

Per:

David Duckworth
City Manager

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first written above.

CALGARY FLAMES FOUNDATION

Per: _____
John Bean
Director

Per: _____
Cameron Olson
Director

THE CITY OF CALGARY

Per: _____

David Duckworth
City Manager

Schedule A
to the Community Grant Agreement
between the Calgary Flames Foundation and The City of Calgary dated the Effective Date

CRITERIA FOR SELECTING GRANT RECIPIENTS

Recipients of funding from Grants made by the Foundation pursuant to this Agreement will:

- Offer recreational, active living and/or healthy living programming in the City of Calgary
- Offer programming accessible to the public
- Have a track record of successful programming
- Have a demonstrated need for financial support
- Improve the lives of southern Albertans through support of health and wellness, education and grassroots programs

**Schedule B
to the Community Grant Agreement
between the Calgary Flames Foundation and The City of Calgary dated the Effective Date**

INITIAL RECIPIENTS

Based on consultation between The City and the Foundation, the following organizations will be the beneficiaries of the Grants for the initial Funding Term:

KidSport Canada

Calgary Olympic Development Association (doing business as WinSport)

Parks Foundation, Calgary

SUCCESSOR RECIPIENTS

To be determined by the Foundation, in consultation with The City, in accordance with the terms of this Agreement.