

**EVENT CENTRE  
DEVELOPMENT MANAGEMENT AGREEMENT**

**THE CITY OF CALGARY**

- and -

**CSE REAL ESTATE CORPORATION, in its capacity as general partner for and on behalf  
of CSE REAL ESTATE LIMITED PARTNERSHIP**

- and -

**CALGARY SPORTS AND ENTERTAINMENT CORPORATION, in its capacity as general  
partner for and on behalf of CALGARY FLAMES LIMITED PARTNERSHIP**

- and -

**CSE DEVELOPMENT MANAGEMENT CORPORATION**

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**MADE AS OF JULY 30, 2021**

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**THIS DEVELOPMENT MANAGEMENT AGREEMENT** made as of the 30<sup>th</sup> day of July, 2021 (the “**Effective Date**”).

AMONG

**THE CITY OF CALGARY**

(hereinafter referred to as the “**City**”),

- and -

**CSE REAL ESTATE CORPORATION, in its capacity  
as general partner for and on behalf of CSE REAL  
ESTATE LIMITED PARTNERSHIP**

(hereinafter referred to as “**CSERELP**”),

- and -

**CALGARY SPORTS AND ENTERTAINMENT  
CORPORATION, in its capacity as general partner  
for and on behalf of CALGARY FLAMES LIMITED  
PARTNERSHIP**

(hereinafter referred to as “**CSEC**”),

- and -

**CSE DEVELOPMENT MANAGEMENT  
CORPORATION**

(hereinafter referred to as “**Development Manager**”).

**WHEREAS** the City and CSERELP desire to collaborate in and fund the design, permitting, construction and development of a new event centre that will be located on the Lands owned by the City;

**AND WHEREAS** CSERELP will participate in funding the new event centre for purposes of acquiring a leasehold interest therein pursuant to the Management and Lease Agreement;

**AND WHEREAS** the Parties acknowledge that various agreements are necessary to develop and construct a new event centre;

**AND WHEREAS** at the July 29, 2019 Combined Meeting of Council, Council directed City Administration to negotiate and execute all definitive documents and agreements and take all actions required to conclude the agreements, arrangements and transactions contemplated in Report C2019-0964 and the attachments thereto;

**AND WHEREAS** the City, CSEC and CSERELP previously entered into that certain Project Framework Agreement dated the 5<sup>th</sup> day of December 2019 pursuant to which the City and CSERELP agreed to contribute funds that will be used to design, permit, construct, and

develop the Project on the terms and conditions set out therein (the “**Initial Project Framework Agreement**”);

**AND WHEREAS** the City, CSERELP, CSEC and CMLC previously entered into that certain Development Management Agreement dated the 5<sup>th</sup> day of December 2019 whereby both the City and CSERELP agreed to contribute funds to be used to design, permit, construct, and develop the Project and CMLC agreed to undertake development of the Project, all on the terms and conditions set out therein (the “**Initial Development Management Agreement**”);

**AND WHEREAS** at the June 21, 2021 Combined Meeting of Council, Council directed City Administration to reconsider the deal terms relating to the development management set out in Report C2019 - 0964 and directed City Administration to bring forward a revised development management framework on July 5, 2021 (subsequently deferred to July 26, 2021 Combined Meeting of Council);

**AND WHEREAS** at the July 26, 2021 Combined Meeting of Council, Council directed City Administration to negotiate and execute all definitive documents and agreements and take all actions required to conclude the agreements, arrangements and transactions contemplated in Report C2021-1164 and the attachments thereto;

**AND WHEREAS** the City’s Contribution will be used to design, permit, construct and develop the Event Centre, which the City will own, and CSERELP’s Contribution is to acquire a leasehold interest in the Event Centre from the City pursuant to the Management and Lease Agreement, which contribution will be used by the Development Manager to fund the design, permitting, construction and development of the Event Centre;

**AND WHEREAS** Development Manager has the necessary expertise to act as development manager for the Project and to complete the Project on a timely basis for the mutual benefit of the City and CSERELP;

**AND WHEREAS** the City and CSERELP desire to terminate the Initial Development Management Agreement and enter into this Agreement with the Development Manager with respect to the development of the Project;

**AND WHEREAS** CSEC has agreed to provide a guarantee of the obligations of CSERELP and Development Manager hereunder in accordance with Article 20 of this Agreement;

**THIS AGREEMENT WITNESSES THAT** in consideration of the respective covenants, agreements, representations, warranties and indemnities of the Parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party hereto), the Parties hereby agree as follows:

## **ARTICLE 1** **INTERPRETATION**

### **1.1 Definitions**

The following definitions shall apply in the interpretation of this Agreement and in the Recitals and the Schedules hereto (provided that where a word or term is defined in a Schedule

hereto, the word or term as defined in such Schedule shall apply in the interpretation of the Schedule and in this Agreement):

**“Advance”** means an advance contribution by the City and CSERELP to fund Project Costs in accordance with Article 10;

**“Advance Date”** has the meaning ascribed thereto in Section 10.2(a);

**“Affiliate”** of any Person means any Person that, directly or indirectly, Controls, is Controlled by or under common Control with such Person including:

- (a) an “affiliate” within the meaning of the Business Corporations Act (Alberta);
- (b) a partnership, the majority of whose partnership interests are directly or indirectly held by such Person or an Affiliate of such Person and such majority is sufficient to Control the affairs of such partnership; or
- (c) a trust, the majority of whose beneficial interests are directly or indirectly held by such Person or an Affiliate of such Person or of which such Person or an Affiliate of such Person is, directly or indirectly, a trustee or manager which directs the management or policies of the trust;

**“Agreement”, “this Agreement”, “the Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder”** and similar expressions mean or refer to this Agreement as amended from time to time and any agreement or instrument supplemental hereto and the expressions **“Article”, “Section”, “Subsection”** and **“Schedule”** followed by a number or letter mean and refer to the specified Article, Section, Subsection or Schedule of or attached to this Agreement;

**“Applicable Laws”** means, with respect to any Person, property, agreement, transaction or event, all applicable present and future laws, statutes, bylaws, codes, ordinances, decrees, rules, regulations, treaties, City Policies, federal or provincial policies or guidelines and judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards, general principles of common law and conditions of any grant of approval, permission, authority, licence or registration of any federal or provincial court, statutory body, regulatory authority, agency, commission, tribunal, board, department of any government, or any other Governmental Authority, including any self-regulatory organization recognized by such Governmental Authority;

**“Approval Form”** means a request for the Approval of the Steering Committee submitted to the Steering Committee by Development Manager in the form attached as Schedule E to this Agreement, or such other form agreed by the Parties;

**“Approved”, “Approval”, “Approved by the Steering Committee”** or **“Approval of the Steering Committee”** has the meaning ascribed thereto in the Project Framework Agreement;

**“Approving Authorities”** or **“Approving Authority”** means the municipal and regulatory authorities having jurisdiction over the Permit applications, or any of them as the context requires;



**“Arbitration Court”** has the meaning ascribed thereto in Section 15.5(b);

**“Arbitration Notice”** has the meaning ascribed thereto in Section 15.5(a);

**“Award”** has the meaning ascribed thereto in Section 15.5(f);

**“Architect”** means either a professional architect that is registered as a member in good standing with the Alberta Association of Architects or an architectural firm employing such professional architects;

**“Bank Rate”** means the prime rate of interest per annum published by Royal Bank of Canada, from time to time, as may be in effect on the first day of each month as its reference rate of interest used to determine rates of interest for commercial loans in Canada in Canadian funds, expressed as an annual rate;

**“Business Day”** means any day which is not a Saturday, Sunday or a day observed as a holiday under the laws of the Province of Alberta or the federal laws of Canada applicable therein;

**“Certificate of Substantial Completion”** means a certificate issued by the Project Architect or independent certifier, as applicable, that Substantial Completion has been achieved, in a form satisfactory to the Steering Committee and consistent with industry standards;

**“Change in Control”** means any transaction or series of transactions including any transfer, assignment, conveyance or other disposition of all or part of the equity interests, securities, partnership interest or other ownership interests of a Person by operation of law or otherwise which results in a change in the effective Control of such Person and includes any merger, amalgamation or other similar corporate reorganization of a Person, a change in any one or more partners of a general partnership or a change in one or more limited partners of a limited partnership or a change in the general partner of a limited partnership to an entity that is not Controlled by: (i) one or more of the current holders (as of the Effective Date) of the equity interests or other security interests of such limited partnership; or (ii) an approved assignee, where approval is required under this Agreement, of the holders of the equity interests or other security interests of such limited partnership;

**“Change Order”** has the meaning ascribed thereto in Section 6.1(a);

**“City”** means The City of Calgary and any successor thereto;

**“City Additional Costs”** has the meaning ascribed thereto in the Project Framework Agreement;

**“City Administration”** means administration staff of the City;

**“City’s Contribution”** has the meaning ascribed thereto in Section 8.1(a);

**“City Event of Default”** has the meaning ascribed thereto in Section 13.3;

**“City Manager”** means 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;

**“City Maximum Contribution Amount”** means the maximum amount required to be contributed by the City for Eligible Costs incurred in connection with the Project, such amount being **\$287,500,000**, exclusive of GST, which amount, for greater certainty, does not include amounts contributed in respect of Ineligible Costs, City Additional Costs or CSERELP Additional Costs, as applicable;

**“City Policies”** means those policies of the City of Calgary, in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement, which are listed in Schedule G hereto (to the extent such policies are applicable to the Project), and such amendments thereto or such other policies of the City of Calgary in such capacity as, in either case, may be Approved by the Steering Committee from time to time as applying to the Project;

**“City Representative”** means the individual or individuals designated by City from time to time for purposes of proposing concepts, strategies, and policies, and providing input, to Development Manager in respect of the Project, and otherwise acting as a representative of the City, all as contemplated hereunder;

**“Claim”** means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever;

**“CMLC”** means Calgary Municipal Land Corporation and its successors and permitted assigns;

**“CMLC Agreement”** has the meaning ascribed thereto in the Project Framework Agreement;

**“Communications Activities”** has the meaning ascribed thereto in Section 16.1;

**“Communications Protocol”** has the meaning ascribed thereto in Section 16.1;

**“Comparable Event Centres”** means Little Caesars Arena in Detroit, T-Mobile Arena in Las Vegas, Rogers Place in Edmonton, Nationwide Arena in Columbus, and Xcel Energy Center in St. Paul;

**“Completion”** means when all of the following have occurred:

- (a) Substantial Completion has been achieved;
- (b) the Project (including all Servicing) is ready for Turnover in the condition required by, and in accordance with, the Permits, the Project Requirements, the Design Plans, and this Agreement, and in compliance with Applicable Laws and City Policies subject only to the Minor Deficiencies List items established pursuant to Section 4.11(g);

- (c) an occupancy permit has been issued for the Event Centre by The City of Calgary, in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement; and
- (d) all Overall Commissioning has been completed in accordance with the Overall Commissioning Program;

as all of the foregoing is evidenced by a Turnover Certificate;

**"Confidential Information"** means information considered proprietary by a Party that is delivered or disclosed pursuant to this Agreement (and, for certainty, shall not include this Agreement) and identified as such, and includes any and all material, data and information (regardless of form and whether or not patentable or protectable by copyright and whether or not identified as confidential or proprietary) that is not available to the public or required to be disclosed by Applicable Laws such as technical and business information, financial plans and records, Construction Data, marketing plans, business strategies, trade secrets, present and proposed products, customer lists and information regarding customers and suppliers;

**"Construction Contracts"** means the General Construction Contract and any other agreement or contract, purchase order, or other written commitment entered into by Development Manager as agent for and on behalf of the Contributing Parties with a Contractor;

**"Construction Data"** means electronic versions of all of the following documents:

- (a) as-built drawings of the Project and documentation in respect of all Warranties obtained, detailed operational and maintenance manual with list of contractors, product data sheets, test and balance reports, a complete list of all Permits and certificates obtained as part of the Project (including copies of the Permits and certificates), including certificates of occupancy, final inspection certifications and signed off Permits, geotechnical reports, energy models, building information models, sustainability documentation to satisfy City Policies, building systems and envelope commissioning plans and reports, operations and maintenance manuals, and other similar information;
- (b) drawings, authenticated record drawings, shop drawings, diagrams, illustrations, schedules, performance charts, progress reports, and other data provided by Development Manager, any Consultant, a Contractor or a Subcontractor to illustrate details of portions of work undertaken in connection with the Project;
- (c) updated plans, shop drawings, drawings, diagrams, illustrations, technical details, and other data provided with and included in any Construction Contracts incorporating all Approved changes and modifications authorized during the construction period that provide a complete record of the Project as built, including copies of all design calculations where applicable; and
- (d) all final versions of the Reviewable Design Data;

**"Construction Phase Commencement Date"** means December 31, 2021, subject to any extension in accordance with the Project Framework Agreement;

**“Construction Phase Design Plans”** means Design Plans completed to such design stage as is reasonably sufficient to allow the commencement of work under the General Construction Contract in respect of the construction and completion of the Event Centre, and which Design Plans shall be determined in accordance with Section 4.4(a) and shall reflect the cumulative design decisions Approved to the date of completion of such Design Plans;

**“Construction Phase Project Budget”** means a Project Budget which: (a) is based on the final Project Requirements, the Construction Phase Design Plans, and the Construction Phase Project Schedule; and (b) includes all labour and material costs, and all final contingencies and allowances, and which Project Budget shall be determined in accordance with Section 4.6(a);

**“Construction Phase Project Schedule”** means the Project Schedule which is based on the final Project Requirements, the Construction Phase Design Plans, and the General Construction Contract, and which Project Schedule shall be determined in accordance with Section 4.5(a);

**“Consultant”** means any Architects (including the Project Architect), Engineers, Sport Development Manager, professionals, experts, advisors, accountants, consultants, inspection and testing firms, and surveyors named or engaged by Development Manager (as agent for and on behalf of the Contributing Parties) from time to time in respect of the Project, but excluding any Contractors;

**“Consulting Contracts”** means any agreement or contract, purchase order or other written commitment entered into by Development Manager (as agent for and on behalf of the Contributing Parties) with a Consultant;

**“Contractor”** means any Person retained by Development Manager as agent for and on behalf of the Contributing Parties with respect to the provision of services or materials or both to or in respect of the Lands or the construction of the Project or both, but excluding the Consultants.

**“Contributing Parties”** means the City and CSERELP, and **“Contributing Party”** means either of them, as the context requires;

**“Contributing Party Delay”** has the meaning ascribed thereto in Section 4.12(a);

**“Control”** or **“Controlled”** means: (a) with respect to any Person that is a corporation, incorporated or unincorporated association, incorporated or unincorporated syndicate, or other incorporated or unincorporated organization, trust or other legal entity that has issued voting securities, the ownership in the aggregate, directly or indirectly, of voting securities of such Person carrying 50% or more of the votes for the election of directors (or individuals performing a similar function or occupying a similar position, including the trustees of a trust); (b) with respect to any Person that is a trust that has not issued voting securities, control by the trustees of such trust; or a Person who Controls each trustee of such trust and in each case, ownership in the aggregate, directly or indirectly of 50% or more of the beneficial interests in such trust held by Persons that are not charities; (c) with respect to any Person that is a partnership that does not have directors (or Persons performing a similar function or occupying a similar position) (other than a limited partnership), the ownership in the aggregate directly or indirectly of 50% or more of the

interests in such partnership; or (d) with respect to any Person that is a limited partnership, the Control of each general partner of such limited partnership and the ownership in the aggregate directly or indirectly of 50% or more of the limited partnership interests in such limited partnership; and a Person is Controlled (within the meaning of paragraphs (a) to (d) of this definition) by a Person when one or more of such first-mentioned Persons are directly or indirectly Controlled (within the meaning of paragraphs (a) to (d) of this definition) by the second-mentioned Person, and the terms "**Controlling**", "**Controlled by**" and "**under common Control with**" will have corresponding meanings;

"**Council**" means the municipal council of the City;

"**Council Event Centre Approvals**" means all approvals, directions and policies of Council respecting the Event Centre made as of the Effective Date, and such other approvals, directions and policies of Council respecting the Event Centre from time to time after the Effective Date;

"**CP Indemnity Beneficiaries**" means the City, CSERELP, CSEC and each of their respective directors, officers, employees and agents, and, in the case of the City, City elected officials;

"**CSEC**" means Calgary Flames Limited Partnership (by its general partner Calgary Sports and Entertainment Corporation) and its successors and permitted assigns;

"**CSERELP**" means CSE Real Estate Limited Partnership (by its general partner CSE Real Estate Corporation) and its successors and permitted assigns;

"**CSERELP Additional Costs**" has the meaning ascribed thereto in the Project Framework Agreement;

"**CSERELP Board**" means the board of directors of CSERELP;

"**CSERELP's Contribution**" has the meaning ascribed thereto in Section 8.1(b);

"**CSERELP Event of Default**" has the meaning ascribed thereto in Section 13.4;

"**CSERELP Representative**" means the individual or individuals designated by CSERELP from time to time as its representative for purposes of proposing concepts, strategies, and policies, and providing input, to Development Manager in respect of the Project, and otherwise acting as a representative of the CSERELP, all as contemplated hereunder;

"**Deadlock**" has the meaning ascribed thereto in the Project Framework Agreement;

"**Design Baseline**" has the meaning ascribed thereto in the Project Framework Agreement;

"**Design Development Report**" has the meaning ascribed thereto in the Project Framework Agreement;

"**Design Plans**" has the meaning ascribed thereto in Section 4.4(a);

**“Design Review”** means the design review process in respect of the Reviewable Design Data which is established by the Parties and Approved by the Steering Committee;

**“Development Manager”** means CSE Development Management Corporation and its successors and permitted assigns.

**“Development Manager Event of Default”** has the meaning ascribed thereto in Section 13.2;

**“Development Manager Fee”** has the meaning ascribed thereto in Section 10.4;

**“Development Manager Indemnity Beneficiaries”** means Development Manager and its directors, officers, employees and agents;

**“Development Manager Material Adverse Change”** means in respect of Development Manager any change or event that materially impairs Development Manager’s ability to timely and fully perform its obligations under this Agreement, or its obligations on behalf of the Contributing Parties under any Construction Contract;

**“Dialog”** means Dialog Alberta Architecture, Engineering, Interior Design, Planning Inc.;

**“Disposition”** has the meaning ascribed thereto in Section 21.3(b);

**“Dispute”** has the meaning ascribed thereto in Section 15.1;

**“Dispute Notice”** has the meaning ascribed thereto in Section 15.1;

**“Effective Date”** has the meaning ascribed thereto on the first page of this Agreement;

**“Eligible Cost Overrun”** has the meaning ascribed thereto in Section 8.2;

**“Eligible Costs”** has the meaning ascribed thereto in Schedule B;

**“Eligible Costs Limit”** means \$608,500,000, exclusive of GST;

**“Engineer”** means either a professional engineer licensed by the Association of Professional Engineers and Geoscientists of Alberta (APEGA) with a valid permit to practice issued by APEGA, or an engineering firm employing such professional engineers;

**“Excess Site Remediation Costs”** means all Site Remediation Costs in excess of the Initial Site Remediation Costs and the Shared Site Remediation Costs;

**“Event Centre”** means the new event centre being developed by the Parties, which includes the Interior Facility and all associated on-site parking (whether below, at, or above grade), all as more particularly described in Schedule A2; and also including, upon finalization and Approval of any Project Plans, any other components of the Event Centre as may be set out such Project Plans;

**“Event Centre Equipment”** means all furniture, furnishings, equipment, fixtures, apparatus and other personal property used in, held in storage for use in, or required in connection with the use or operation of the Project;

**“Event Centre Site”** means, at any time and from time to time, that portion or those portions of the Lands, on, in or above which Development Manager, the Contractors or any Subcontractors are engaged in the performance of the work for the Project;

**“Event of Insolvency”** means with respect to a Person the occurrence of any one of the following events:

- (a) if such Person shall:
  - (i) be wound up, dissolved, or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act (Canada)*, as amended or re-enacted from time to time, or have its existence terminated or have any resolution passed therefor, unless, in any such case it forms part of a bona fide corporate reorganization or a merger or amalgamation not forming part of any relief being sought under any present or future law relative to bankruptcy, insolvency or other relief for debtors, provided that it shall not be an Event of Insolvency if the Person, being a corporation, is dissolved involuntarily pursuant to its governing legislation and the Person is revived within forty-five (45) Business Days of any of the directors or officers of such corporation at the time of its dissolution becoming aware of such dissolution; or
  - (ii) make a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act (Canada)* as amended or re-enacted from time to time, or shall be declared bankrupt or insolvent by a court of competent jurisdiction; or
  - (iii) propose a compromise or arrangement under the *Companies’ Creditors Arrangement Act (Canada)* or any similar legislation, as amended or re-enacted from time to time, or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relative to bankruptcy, insolvency or other relief for debtors; or
  - (iv) become insolvent within the meaning of the *Bankruptcy and Insolvency Act (Canada)*; or
- (b) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such Person seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether consecutive or not) from the day of entry thereof; or if any trustee in bankruptcy, receiver or receiver and manager, liquidator, monitor or any other officer with similar powers shall be appointed for such Person or of all or any substantial part of its property with the consent or acquiescence of such Person, or such appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive);

**“Expert”** has the meaning ascribed thereto in Section 15.3;

**“Expert Notice”** has the meaning ascribed thereto in Section 15.3;

**“Final Completion”** means when all of the following have occurred:

- (a) Substantial Completion and Completion has been achieved;
- (b) all Minor Deficiencies and all other outstanding defects or deficiencies have been completed and rectified;
- (c) all lien periods have expired in respect of work or materials supplied to the Project and all lien holdbacks in respect thereof have been released in accordance with all Applicable Laws;
- (d) a “close out book” as contemplated in Section 4.11(i) has been delivered to the Contributing Parties;
- (e) Event Centre Equipment has been delivered to the Contributing Parties;
- (f) Development Manager has delivered all records required pursuant to Section 4.11 of this Agreement and provided a final accounting with respect to all Project Costs as set forth in Section 4.15; and
- (g) all delivery obligations of Development Manager in respect of the Project have been fully completed in accordance with this Agreement subject only to the management and enforcement of Warranties;

For greater certainty, Final Completion shall not require the completion of any items of work undertaken directly by a Contributing Party and outside of Development Manager’s responsibilities under this Agreement;

**“Fit Up Costs”** means any costs pertaining to improvements and fit up work in respect of the retail components of the Event Centre;

**“Flood Mitigation Costs”** means any capital costs of design or construction that are incremental and directly attributable to flood mitigation for the Event Centre as a result of the construction of the Event Centre in the Rivers District;

**“Force Majeure”** means any act, event, cause or condition beyond the control of a Party (other than as a result of financial incapacity or financial inability of such Party, which, for greater certainty, shall not be considered an event beyond the control of a Party) and not caused by an act or omission of such Party and which by the exercise of reasonable diligence and at a commercially reasonable cost such Party is unable to prevent or control, in the nature of:

- (a) a lack of or an inability to obtain materials, goods, equipment, services, utilities or labour or reasonable substitutes;
- (b) any new Applicable Law passed or made or coming into effect after the date of this Agreement;



- (c) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used commercially reasonable efforts to oppose said order, judgment, legislation, ruling or direction;
- (d) an inability to obtain or delay in obtaining any licence, Permit, permission or authority in respect of the Project from an entity beyond time periods typical for the City of Calgary (in its capacity as a Governmental Authority and not in its capacity as a party to this Agreement) or other Approving Authority, despite using commercially reasonable efforts to obtain;
- (e) a strike, labour dispute, work stoppage, lockout, slow-down or other combined action of workers that provide labour or services to the Project;
- (f) fire, explosions, unavoidable casualties, natural disasters such as floods, earthquakes, tornadoes, hurricanes and other adverse weather conditions (including rain and snow), provided that the affected Party or Contractor or Subcontractor is precluded or materially limited from carrying out the Project as a result of such adverse weather condition;
- (g) an act of terrorism, civil commotion, war, invasion, embargo, insurrection, rebellion, sabotage (other than by the Parties), riot, violence, malicious mischief (other than by the Parties), act of public enemy, or extortion;
- (h) local, regional or national states of emergency; or
- (i) an act of God;

and which in any such case shall cause such Party to be unable to fulfil or to be delayed or restricted in the fulfilment of any obligation hereunder;

**“Fundamental Principles”** has the meaning ascribed thereto in the Project Framework Agreement;

**“General Construction Contract”** means the Construction Management Contract – for Services and Construction dated July 2<sup>nd</sup>, 2020 between CMLC and the General Contractor, as amended, supplemented, substituted or replaced in accordance with this Agreement (for clarity, the General Construction Contract will be assigned by CMLC to the Development Manager on or around the date hereof);

**“General Contractor”** means CANA Management Ltd., and any replacement or successor general contractor or construction manager under the General Construction Contract;

**“Good Industry Practice”** means those good, sound and professional practices, methods and acts engaged in or approved by a significant proportion of the industry in Canada and the United States of America which is involved in developing, designing, engineering, permitting, constructing, or operating and maintaining a facility similar (in terms of size, age, and nature of use) to the Event Centre or undertaking and performing work and services similar to the work and services hereunder, or any other practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time

the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with Applicable Laws, reliability, safety and expedition; provided that "Good Industry Practice" is not restricted to the optimum practice or course of action to the exclusion of all others, but rather to a spectrum of recognized acceptable practices, methods and acts;

**"Governmental Authorities"** or **"Governmental Authority"** means any: (a) federal, provincial, municipal, local or other governmental or public department, central bank, court, utility, commission, board, bureau, agency or instrumentality, domestic or foreign, having jurisdiction over the Project or the Parties; (b) any subdivision or authority of any of the foregoing, including the subdivision authority, development authority, municipal planning commission and subdivision and development appeal board of The City of Calgary (in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement), including the Approving Authorities; and (c) any professional body or quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing or regulating professional standards for any of the Consultants, Contractors or Subcontractors engaged in connection with the Project;

**"Gross Negligence"** means a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct and reckless disregard for harmful, foreseeable and avoidable consequences;

**"GST"** means the tax imposed under Part IX of the *Excise Tax Act* (Canada), or any tax replacing such imposition and any similar tax that may hereafter be imposed under the laws of the Province of Alberta or Canada, including in any such case any interest thereon and penalties relating thereto;

**"Guaranteed Obligations"** has the meaning ascribed thereto in Section 20.1(a);

**"Guaranteed Obligor"** has the meaning ascribed thereto in Section 20.1(a);

**"Ineligible Costs"** has the meaning ascribed thereto in Schedule B;

**"Initial Development Management Agreement"** has the meaning ascribed thereto in the Recitals to this Agreement;

**"Initial Fit Up Costs"** means the first one million dollars (\$1,000,000) of Fit Up Costs incurred in respect of the retail components of the Event Centre;

**"Initial Site Remediation Costs"** means the first Site Remediation Costs up to one million dollars (\$1,000,000) incurred in respect of the Event Centre;

**"Initiating Party"** has the meaning ascribed thereto in Section 15.5(a);

**"Intellectual Property"** means all intellectual property, works, reports, data, compilations of information, computer programs, written presentations, memoranda, research, drawings, sketches, layouts, commercial material, working papers, documents, copy, ideas, photographs and negatives, films, videotapes, video, audio and audio-visual productions and other materials in all forms and however fixed, stored, expressed or

embodied, created, developed, generated, authored or produced by either Party in performance of this Agreement;

**"Intellectual Property Rights"** means all intellectual and industrial property rights including, but not limited to, all copyright, all copyright applications, trademarks, patents, inventions, patent applications, industrial designs, trade secrets and rights in Intellectual Property;

**"Interior Facility"** means the approximate 18,000 seat, and maximum 19,000 seat, primary event centre facility to be constructed on the Lands including the arena bowl; seating; concourses; suites, loge seating, lounges, and clubs; amenities related to the use of the arena bowl; interior office space; media rooms or areas; dressing rooms, referee or officials rooms and emergency rooms; mechanical, electrical, boiler, fire protection, and information technology rooms; interior concessions; retail premises; ticket offices; and all Event Centre Equipment contained therein;

**"Joint Communications"** means all Communications Activities that are to be jointly developed and/or undertaken by the Contributing Parties and, where applicable, Development Manager;

**"Jointly Developed Material"** has the meaning ascribed thereto in Section 18.2(a);

**"Lands"** means the lands legally described as Plan 2110110, Block 4, Lot 1, Excepting thereout all mines and minerals, and as shown for reference purposes in heavy black outline on the plan attached as Schedule A1 hereto;

**"Lien Act"** means the *Builders' Lien Act* (Alberta), any successor legislation thereto, including the *Prompt Payment and Construction Lien Act* (once proclaimed);

**"Major Decision"** means:

- (a) the Ordinary Decisions; and
- (b) the Mutual Decisions;

**"Management and Lease Agreement"** means the management and lease agreement among the City, CSERELP and CSEC dated December 5, 2019, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

**"Milestone Dates"** has the meaning ascribed thereto in Section 4.5(b);

**"Minimum Reporting Requirements"** means the reporting and status update requirements of Development Manager to the City and CSERELP for the duration of the Project, as described in Schedule D;

**"Minor Deficiencies"** means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Final Completion and which would not materially impair the City's or CSERELP's use and enjoyment of the Event Centre;

**"Minor Deficiencies List"** has the meaning ascribed thereto in Section 4.11(g);

**“Mutual Decision”** has the meaning ascribed thereto in the Project Framework Agreement;

**“Obligated Party”** has the meaning ascribed thereto in Section 20.2;

**“Offsite Servicing Costs”** means the costs to be incurred to install or expand any servicing infrastructure outside of the boundary of the Lands which will provide the necessary services infrastructure for the Event Centre;

**“Ordinary Decision”** has the meaning ascribed thereto in the Project Framework Agreement;

**“Overall Commissioning”** means all the building commissioning activities, testing, and completion of documentation to be undertaken, performed and delivered by the Contractors, Subcontractors and Development Manager prior to the Turnover Date, including building commissioning and handover activities, in accordance with the Overall Commissioning Program, including:

- (a) the supply, installation, start-up, testing, adjustment and cleaning of each item of Event Centre Equipment and building systems provided as part of the Project, including bringing each item of such Event Centre Equipment and building system to normal operating condition, all in accordance with Good Industry Practice;
- (b) the delivery to the Contributing Parties of each of the following plans or programs, as Approved by the Steering Committee, in respect of the Event Centre: (i) a building condition assessment and asset management plan; (ii) a security and technology plan; (iii) a master key plan; (iv) a Warranty identification and process plan; and (v) an operations management plan;
- (c) support by Development Manager of the transition of Contractors from the Project into operational matters;
- (d) transition of utilities;
- (e) the completion of all required training of personnel and representatives of the Contributing Parties in respect of all Event Centre Equipment and building systems;
- (f) the preparation and finalization of all documents required by Section 18.1(a)(v) and (vi) of the Management and Lease Agreement; and
- (g) the completion and delivery of all pre-Turnover on-site support by the Contractors and Subcontractors;

**“Overall Commissioning Program”** means the plan and program to be jointly developed and agreed to by the Parties for Overall Commissioning in accordance with Section 4.11(c);

**“Parties”** means the City, CSERELP and Development Manager, and **“Party”** means any of them;

**“Permits”** has the meaning ascribed thereto in Section 4.4(b);

**“Permitted Entrant”** has the meaning ascribed thereto in Section 5.4;

**“Person”** or **“person”** means any individual, partnership, corporation, joint venture, association, society, joint stock company, trust, unincorporated organization or a Governmental Authority, and “corporation” shall include “company” and vice versa;

**“Phase 1 & 2 Report”** has the meaning ascribed thereto in Section 4.9(a);

**“Phase 1 & 2 Report Costs”** has the meaning ascribed thereto in Section 4.9(a).

**“Preliminary Design Baseline”** has the meaning ascribed thereto in the Project Framework Agreement;

**“Preliminary Project Budget”** has the meaning ascribed thereto in the Project Framework Agreement;

**“Preliminary Project Schedule”** has the meaning ascribed thereto in the Project Framework Agreement;

**“Procurement Plan Requirements”** means the requirements to be included in the Project Procurement Plan, as described in Schedule C;

**“Project”** means the planning, design, development, pre-construction, construction and post-construction (including warranty, follow-up and final documentation) of the Event Centre and any associated infrastructure and improvements, and the fit up work that is necessary to complete the Event Centre in accordance with this Agreement and as further described in Schedule A2;

**“Project Account”** has the meaning ascribed thereto in Section 10.1;

**“Project Architect”** means Dialog, and any successor or replacement independent Architect and/or Engineer, who has been engaged by Development Manager as agent for and on behalf of the Contributing Parties to: prepare the Project Requirements and Design Plans or any other plans and specifications relating to the Project; oversee the construction of the Project or any architectural and engineering aspect of it; and conduct field reviews of the Project; and includes any subconsultants retained by the Project Architect;

**“Project Books”** has the meaning ascribed thereto in Subsection 4.14(a);

**“Project Budget”** has the meaning ascribed thereto in Section 4.6;

**“Project Costs”** means all Eligible Costs, City Additional Costs and CSERELP Additional Costs;

**“Project Framework Agreement”** means the amended and restated project framework agreement dated July 30, 2021 between the City, CSERELP and CSEC, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

**“Project Management Plan”** has the meaning ascribed thereto in Section 4.2(d)(ii);

**“Project Plans”** means, collectively, the Design Baseline, the Risk Mitigation Plan, the Project Management Plan, the Project Procurement Plan, the Design Plans, the Project Schedule, and the Project Budget.

**“Project Procurement Plan”** has the meaning ascribed thereto in Section 4.2(d)(iii);

**“Project Representatives”** means the CSERELP Representative and the City Representative, and **“Project Representative”** means any of them, as the context requires;

**“Project Requirements”** means all of the functional requirements related to the design, performance and technical specifications of the Event Centre which are specified in this Agreement and are developed by the Contributing Parties in accordance with Section 4.2(c), including, functional program requirements, special equipment and facility needs, constraints, space needs and relationships, site requirements, specifications and criteria and which requirements shall include any items, components or specifications of the Project that:

- (a) are required by Applicable Laws, or any Governmental Authority;
- (b) are required to comply with Council Event Centre Approvals;
- (c) are required to meet the requirements of a multi-purpose event facility and to meet the standards required to host and sustain a National Hockey League franchise; or
- (d) are elements which are required to satisfy the City’s obligation to provide public space or facility for the benefit of the public or that arise out of the public engagement process;

**“Project Schedule”** has the meaning ascribed thereto in Section 4.5(a);

**“Recommended Change Order”** has the meaning given to it in Section 6.1(a).

**“Request for Advance”** means the request for an Advance to fund Project Costs pursuant to Section 10.1, the form of which is attached hereto in Schedule F;

**“Required Change Order”** has the meaning ascribed thereto in Section 6.1(a);

**“Responding Parties”** has the meaning ascribed thereto in Section 15.5;

**“Reviewable Design Data”** means, in respect of any Design Plan for a stage of design or development which requires Steering Committee Approval, all relevant documentation (including, without limitation, a design development report) which is required to be submitted to the Steering Committee for Design Review and which is necessary for the Steering Committee to make informed decisions in respect of the Design Plans in respect of such stage recommended by Development Manager;

**“Risk Mitigation Plan”** has the meaning ascribed thereto in Section 4.2(d)(i);

**“Rivers District”** means the City of Calgary Rivers District community revitalization levy area established pursuant to section 3 of *Alberta Regulation 232/2006*;

**“Scheduled Substantial Completion Date”** means August 31, 2024;

**“Services”** means the duties, services and functions to be performed by Development Manager hereunder;

**“Servicing”** means the construction of the infrastructure required to develop the Lands for the purposes of the Project including: roads, curbs, curb cuts, street lighting, cable/internet wiring, watermains, gas pipes, electricity service, storm and sanitary sewers, grading and other infrastructure amenities and services required by development agreements and permits mandated by Governmental Authorities, and **“Servicing”** is understood to be included and considered as one component within the definition of the Project; and for greater certainty, **“Servicing”** shall specifically exclude the construction (and costs) of any infrastructure developed or constructed exclusively for any property other than the Lands;

**“Shared Site Remediation Costs”** means up to one million dollars (\$1,000,000) of Site Remediation Costs in excess of the Initial Site Remediation Costs, incurred in respect of the Event Centre;

**“Site Remediation Costs”** means all incremental construction and regulatory costs and expenses (in excess of costs and expenses which would have been incurred if the Lands were in a clean state) incurred in respect of:

- (a) the excavation and disposal of materials (such as existing foundations, structures and demolition materials) located on or under the Lands which result from the Lands not being in a clean state (including incremental handling and tipping fees in respect of excavated materials which result from the existence of any hazardous or other materials in, at, on or under the Lands); and
- (b) environmental reclamation and remediation of the Lands (including cleanup costs in respect of the hazardous materials located at or within the Lands) in accordance with the Site Remediation Program;

which in either case is undertaken in preparation for the installation of improvements and facilities on the Lands;

**“Site Remediation Program”** has the meaning ascribed thereto in Section 4.9;

**“Sole Cost Item”** means any design feature, functional component, other specification or Change Order included in the Project Requirements, Design Baseline, or Construction Phase Design Plans or otherwise incorporated in or implemented in respect of the Event Centre at the sole cost of one of the Contributing Parties, as determined in accordance with the Project Framework Agreement;

**“Sports Development Manager”** means a Consultant to be retained by Development Manager as agent for the City and CSERELP to assist in the design and construction of the portions of the Event Centre;

**“Standard of Performance”** means those obligations assumed by Development Manager pursuant to Section 2.3(a);

**“Steering Committee”** means the committee formed under the Project Framework Agreement to approve Major Decisions and give instructions and directions on behalf of the Contributing Parties;

**“Steering Committee Change Order”** has the meaning ascribed thereto in Section 6.1(a);

**“Subcontractors”** means any Person that enters into a contract with a Construction Contractor for the provision of labour, materials or services in relation to the Project, including sub-subcontractors of any tier;

**“Substantial Completion”** means that all work required to achieve “substantial performance” of the General Construction Contract, has been completed, giving to the term “substantial performance” the meaning of substantial performance of a contract under the Lien Act, as is evidenced by the issuance of a Certificate of Substantial Completion;

**“Turnover”** means the grant of possession of the Event Centre to CSERELP;

**“Turnover Certificate”** means a certificate, in a form satisfactory to the Steering Committee and issued by the Project Architect or independent certifier, as applicable, certifying that in the opinion of the Project Architect or independent certifier, as applicable, all conditions for satisfaction of Completion have been satisfied and the Event Centre is ready for Turnover, along with a list of all outstanding Minor Deficiencies (if any);

**“Turnover Date”** means the date upon which Turnover occurs;

**“Warranties”** has the ascribed thereto in Section 4.13; and

**“Working Capital”** has the meaning ascribed thereto in Section 10.2.

## 1.2 **Accounting Terms**

The accounting terms used herein unless otherwise defined, shall have the meaning accorded thereto from time to time by Canadian generally accepted accounting principles.

## 1.3 **Extended Meanings**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Whenever a statement or provision in this Agreement is followed by words denoting inclusions or examples (such as “including” or “such as” or “by way of example”) and then a list of, or reference to, specific matters or items, such list or reference shall not be read as to limit or restrict the generality of such statement or provision, even though words such as “without limitation” or “without limiting the generality of the foregoing” or “but not limited to” do not precede such list or reference.



#### **1.4 Business Days**

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

#### **1.5 Calculation of Interest**

In calculating interest payable under this Agreement for any period of time, the first day of such period shall be included and the last day of such period shall be excluded. Interest shall accrue from day to day on the basis of a 365 day year, for the actual number of days elapsed and shall be calculated semi-annually. Where the calendar year of calculation contains 366 days, each rate of interest herein shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) as such rate multiplied by 366 and divided by 365.

#### **1.6 Statute References**

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

#### **1.7 Schedules**

The Schedules attached to this Agreement and listed below shall have the same force and effect as if the information contained therein were contained in the body of this Agreement:

Schedule A1	–	Lands
Schedule A2	–	Project Description
Schedule B	–	Eligible Costs and Ineligible Costs
Schedule C	–	Procurement Plan Requirements
Schedule D	–	Minimum Reporting Requirements
Schedule E	–	Approval Form
Schedule F	–	Request for Advance Form
Schedule G	–	City Policies
Schedule H	–	Duties of Development Manager

#### **1.8 Currency**

All references to money herein are references to lawful money of Canada.

#### **1.9 Headings**

The table of contents hereto and the headings of any article, section or part thereof are inserted for purposes of convenience only and do not form part hereof.

#### **1.10 Interpretation**

The interpretation of this Agreement shall not permit a revenue, expense, liability, recovery, receipt, payment, reserve or reimbursement to be duplicated.

**ARTICLE 2**  
**APPOINTMENT OF DEVELOPMENT MANAGER**

**2.1 Appointment of Development Manager**

The City and CSERELP hereby jointly appoint and retain Development Manager to act as the sole and exclusive development manager in connection with the design, permitting, construction and development of the Project. Such appointment shall continue from the Effective Date through until the second anniversary of Completion, and the Services to be undertaken and performed by Development Manager in respect thereof shall include selecting, hiring and overseeing all Contractors and Consultants. Development Manager shall undertake and perform Services in respect of such appointment in accordance with the terms and conditions of this Agreement, and subject to the Approval of the Steering Committee with respect to each Major Decision.

**2.2 Acceptance**

Development Manager hereby accepts its appointment to act as development manager in connection with the design, permitting, construction and development of the Project through to the second anniversary of Completion, and agrees to perform the Services to be performed by it under this Agreement, including those Services outlined in Schedule H, in accordance with the terms and conditions of this Agreement, and subject, where applicable, to the Approval of the Steering Committee with respect to each Major Decision.

**2.3 Standard of Performance**

(a) Development Manager shall:

- (i) perform the Services to be performed by it hereunder; and
- (ii) use commercially reasonable efforts to ensure all work and services performed by the Contractors and all Subcontractors and Consultants will be performed;

in each case, in a professional, competent, diligent, efficient and safe manner in accordance with: (a) Good Industry Practice; (b) Applicable Laws; (c) Permits; and (d) the terms of this Agreement. Development Manager shall exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent person who is experienced in performing similar duties, services and functions for projects of similar size, quality and use as the Project.

(b) Where in this Agreement Development Manager is required to use commercially reasonable efforts to achieve an outcome, Development Manager shall only be required to expend funds that it has received from the Contributing Parties and which it has determined are reasonable in nature and amount in the context of the desired outcome to be achieved, provided that in all cases Development Manager may seek direction from the Steering Committee on a course of action to constitute “commercially reasonable efforts”, and any course of action Approved or recommended by the Steering Committee as such shall be deemed to constitute “commercially reasonable efforts” for purposes of this Agreement.

## **2.4 Development Manager an Independent Contractor**

Except as expressly set forth herein, including in Sections 4.3 and 4.8 regarding the appointment of Development Manager as agent for and on behalf of the Contributing Parties in respect of the Consulting Contracts and Construction Contracts, the duties to be performed and the obligations assumed by Development Manager as development manager under this Agreement shall be performed and assumed by it as an independent contractor and not as agent or in any other way as a representative of the City or CSERELP. Nothing in this Agreement shall be construed as or shall constitute a partnership or joint venture between Development Manager and the Contributing Parties or either of them and for greater certainty, the rights and obligations of the Contributing Parties under this Agreement shall in every case be several and not joint or joint and several.

## **2.5 Limitation of Scope of Services**

Notwithstanding anything to the contrary in this Agreement, the Contractors and Consultants engaged in respect of the Project, whether engaged directly by the Contributing Parties or by Development Manager as agent for and on behalf of the Contributing Parties or by Development Manager in its own name, are responsible to the Contributing Parties for providing: (a) services and advice regarding construction means, methods, sequences or techniques, and (b) other services performed by an Engineer or Architect. The Contributing Parties understand and agree that Development Manager, subject to Section 12.1: (i) shall not be responsible for or liable to the Contributing Parties with respect to such services and advice; (ii) shall not be liable for any failure of performance of any Contractors, Subcontractors, Project Architect or Consultant; and (iii) shall not be liable to the Contributing Parties for any defects in the Project Plans or any materials or workmanship, and the Contributing Parties shall be required to pursue (or may require Development Manager to pursue) all Claims in respect of such matters directly against the relevant Contractor, relevant Subcontractor, Project Architect or Consultant. Development Manager will employ commercially reasonable efforts to assist any Contributing Party in pursuing all such Claims. Development Manager shall not be responsible for any delay, loss or damage caused by a delay by any Person other than Development Manager (including due to a Contributing Party Delay or delay by any Contractor, Subcontractor or Consultant) and Development Manager will not be responsible for matters involving the expenditure of Project Costs that are not made available to Development Manager by the Contributing Parties.

## **2.6 Non-Arms Length Contracts**

- (a) Development Manager will not enter into any contract, agreement or legally binding arrangement in respect of the Project, including in connection with the furnishing of goods or services to the Project, if any Person to such contract, agreement or legally binding arrangement is an Affiliate of Development Manager or if Development Manager does not deal at arm's length with such Person, unless Development Manager has first obtained the Approval of the Steering Committee after specific disclosure to the Steering Committee of the non-arm's length relationship. For the purposes of this Section 2.6, any question as to whether someone is dealing at arm's length will be determined in accordance with section 251 of the *Income Tax Act* (Canada) as at the date hereof.
- (b) Each Contributing Party shall cause each of its Affiliates and other Persons such Contributing Party does not deal with at arm's length to notify Development Manager of their relationship to the Contributing Party prior to such Person

expressing any interest to Development Manager in entering into any contract, agreement or legally binding arrangement in respect of the Project, including in connection with the furnishing of goods or services to the Project. Following receipt of any such notice, Development Manager shall obtain the Approval of the Steering Committee to proceed with consideration of such Person after specific disclosure to the Steering Committee of the non-arm's length relationship prior to proceeding with such Person.

## **2.7 Employees of Development Manager**

Development Manager covenants to employ at all times such number of experienced personnel as may be necessary to perform its duties hereunder. All matters pertaining to the employment, supervision, compensation, promotion and discharge of the employees comprising such personnel will be the sole responsibility of Development Manager, which is in all respects the employer of such employees; provided that the Contributing Parties may jointly direct Development Manager to reassign or replace personnel that the Contributing Parties, acting reasonably, determine to be unqualified or otherwise unsatisfactory with respect to performance of Development Manager's duties hereunder. Development Manager will negotiate with any union lawfully entitled to represent any such employees and may execute in its own name, and not as agent for the Contributing Parties, collective bargaining agreements or labour contracts. Development Manager covenants to comply fully with all Applicable Laws relating to workers' compensation, social security, unemployment insurance, hours of labour, wages, working conditions and other employer-employee related subjects.

## **2.8 Contributing Parties' Obligations**

- (a) Project Information. The Contributing Parties shall provide full information to Development Manager regarding the Contributing Parties' requirements for the Project, including the Contributing Parties' objectives, schedule, constraints, special equipment and facility needs, functional program requirements, space and operational needs and relationships, site requirements and criteria throughout the development of the Project, all as required or requested by Development Manager from time to time. The Contributing Parties shall cause the Steering Committee to promptly review all material submitted to it and make decisions and provide direction to Development Manager in a timely manner to facilitate Development Manager satisfying the Contributing Parties' budget, schedule and other objectives.
- (b) Coordination through Development Manager. The Contributing Parties acknowledge and agree that all instructions from the Contributing Parties to the Project Architect, Consultants, the Contractors and Subcontractors in connection with the Project shall be coordinated solely through Development Manager to ensure consistent instructions and communications to such Persons. Notwithstanding the foregoing, each of the Project Representatives shall be permitted to be involved in all discussions and meetings between Development Manager and such Consultants, Contractors and Subcontractors, and to provide input to Development Manager with respect to such instructions. Neither the Project Representatives nor any other representative of the Contributing Parties or CSEC shall be permitted to issue approvals, waivers, change orders or any other instruction or direction to any Consultants, Contractors and Subcontractors (which,

for greater certainty, shall be solely issued by Development Manager in accordance with this Agreement).

- (c) Project Funding. The Contributing Parties shall contribute funding for the Project and shall pay all Advances in accordance with the terms and conditions of this Agreement.
- (d) Project Decisions. CSERELP and the City shall: (i) cause their respective representatives on the Steering Committee to make all decisions required or requested by Development Manager in respect of Major Decisions or other matters submitted to the Steering Committee for Approval; and (ii) cause their respective Project Representatives to make all decisions required or requested by Development Manager in respect of matters relating to proposals and recommendations to go before the Steering Committee; in either case subject to Development Manager providing proper, timely and accurate information to such representatives so that informed decisions may be made; provided that, for clarity, the Development Manager shall be entitled to rely on, and proceed based on, decisions of the member of the Steering Committee appointed by CSERELP unless the decision or other matter is a Mutual Decision. CSERELP and the City shall ensure that such decisions are made and communicated to Development Manager in a timely manner and in accordance with the terms and conditions of this Agreement.

### **ARTICLE 3** **INFORMATION, APPROVALS, REPORTING**

#### **3.1 Information**

Development Manager shall keep the Steering Committee fully informed of all material events and developments pertaining to the design, permitting, construction and development of the Project and will provide the Steering Committee with all such information and advice as they reasonably require from time to time for the purpose of assessing the progress or status of the development and construction of the Project or for the purpose of enabling the Steering Committee to make informed decisions concerning the Project. Development Manager shall use commercially reasonable efforts to cause a Contractor or Consultant to facilitate and maintain an electronic platform for the sharing of information acceptable to the Parties and such Persons designated or identified by each of them.

#### **3.2 Steering Committee**

Development Manager shall appoint a representative to attend all Steering Committee meetings, provided that such Development Manager representative shall not be entitled to vote at any meeting of the Steering Committee or otherwise participate in providing Approvals of the Steering Committee. For regularly scheduled monthly meetings of the Steering Committee, Development Manager will circulate to the Steering Committee members and supporting representatives, the following documents not less than 5 Business Days prior to the applicable Steering Committee meeting:

- (a) the meeting agenda;

- (b) the minutes from the previous meeting;
- (c) the monthly written status report advising on progress against key milestones in accordance with the reporting requirements set out in this Agreement or any update thereto in the event that it is a supplemental meeting; and
- (d) to the extent known, matters to be addressed at the next scheduled Steering Committee meeting.

Development Manager will be responsible for developing minutes from each Steering Committee meeting, together with instruments evidencing all written resolutions of the Steering Committee, which will create a permanent record of decisions and action items. A copy of such minutes and instruments will be sent to each member of the Steering Committee upon request to Development Manager. Any failure to send minutes of a meeting to each member of the Steering Committee within the aforesaid period shall not affect the validity of any decision made at the meeting. If any decision or determination of the Steering Committee is made by written instrument in lieu of a meeting of the Steering Committee pursuant to Section 6.11(c)(ii) of the Project Framework Agreement, then the Development Manager shall promptly deliver a copy of such written instrument to the member of the Steering Committee appointed by the City, and shall thereafter provide such additional information and supporting documentation in respect of such decision or determination as the member of the Steering Committee appointed by the City may reasonably request.

### **3.3 Approval of Major Decisions**

- (a) All Major Decisions with respect to the Project are subject to Approval by the Steering Committee. In respect of each Major Decision which is a Mutual Decision, Development Manager shall collaborate with the Project Representatives to develop Development Manager's recommendation for Approval by the Steering Committee. Each such recommendation shall take into account any concepts, strategies, or input proposed by the Project Representatives.
- (b) In order to obtain Approval from the Steering Committee in respect of any Major Decision, Development Manager shall either: (a) submit to the Steering Committee an Approval Form, in the form attached hereto as Schedule E, as modified to reflect the character of the Major Decision or other matter submitted for Approval; or (b) prepare and present a resolution for Approval at a Steering Committee meeting. The Approval Form or resolution shall be accompanied by appropriate supporting information and documentation in relation to the Major Decision being submitted for Approval.
- (c) The Contributing Parties shall cause the Steering Committee to exercise diligent efforts to respond to any request for Approval in respect of a Major Decision as soon as reasonably practicable and in any event within 5 Business Days following receipt by both of the Approval Form (or resolutions) and accompanying materials, unless the Approval Form (or resolutions) specifies an alternate response period or a Contributing Party's representative on the Steering Committee, acting reasonably, requests additional time to respond. Failure by the Steering Committee to: (i) respond within such period, or (ii) request additional time, shall be deemed to constitute non-approval of the recommendation in respect of the relevant Major Decision or other matter by Steering Committee. If: (x) in respect

of a Mutual Decision, the Steering Committee unanimously agrees with the recommendation for Approval, such recommendation shall be Approved and (y) in respect of any Ordinary Decision, the member of the Steering Committee appointed by CSERELP agrees with the recommendation for Approval, such recommendation shall be Approved. If: (A) in respect of a Mutual Decision, the Steering Committee does not unanimously agree with the recommendation for Approval or (B) in respect of any Ordinary Decision, the member of the Steering Committee appointed by CSERELP does not agree with the recommendation, then: (I) such recommendation shall not be Approved; (II) the Steering Committee may, but shall not be obligated to, provide direction to Development Manager to revise and resubmit the recommendation for Approval; (III) in the absence of any express direction from the Steering Committee, or any contractual obligation hereunder to obtain an Approval from the Steering Committee with respect to the subject matter of the recommendation, Development Manager may elect whether or not to revise and resubmit the recommendation for Approval; and (IV) if a Deadlock is submitted by the Steering Committee to dispute resolution pursuant to the Project Framework Agreement and during any such dispute resolution process Development Manager shall make commercially reasonable efforts to mitigate the impact of the delay in Approval on the Project.

- (d) Any direction or instruction of the Steering Committee:
- (i) must, in respect of a Mutual Decision, be provided unanimously by all members of the Steering Committee, failing which such direction or instruction shall constitute input by such Contributing Party's representative;
  - (ii) may, in respect of any Ordinary Decision, be provided solely by the member of the Steering Committee appointed by CSERELP; and
  - (iii) may in respect of any matter other than the matters specified in Sections 3.3(d)(i) and 3.3(d)(ii), be provided solely by the member of the Steering Committee appointed by CSERELP, subject to Section 3.4.

### **3.4 Approval of Other Decisions**

Save and except as otherwise specifically provided for in this Agreement, the Development Manager, in accordance with the Standard of Performance, shall have the authority to make all decisions other than Major Decisions with respect to the design, permitting, construction, development and management of the Project. Notwithstanding the foregoing, if a decision with respect to any matter or item in connection with the construction, development or management of the Project arises that is not otherwise addressed or covered in the lists of items comprising a Mutual Decision or an Ordinary Decision and such decision may have a material impact on the construction, development or management of the Project, Development Manager agrees to refer such matter or item to the Steering Committee for determination as to whether such decision is a Mutual Decision and subject to the Approval of the Steering Committee, and Development Manager shall in any event treat any such decision as a Mutual Decision unless otherwise so directed by the Steering Committee.

## **ARTICLE 4**

### **CONSTRUCTION AND DEVELOPMENT**

#### **4.1 General Development Duties**

Subject at all times to the Steering Committee's Approval of Major Decisions and any directions received from the Steering Committee from time to time in accordance with Section 3.3(d), the Contributing Parties hereby authorize Development Manager to, and Development Manager hereby covenants and agrees that it shall have primary responsibility for and shall, in accordance with the Standard of Performance, do all such acts and things as are necessary or desirable to supervise, administer and manage the development, Completion, Turnover and Final Completion of the Project, including those items set out in Schedule H. Further, Development Manager shall use commercially reasonable efforts (and shall, in each case as applicable, contractually require the Consultants and Contractors) to cause the design, development, construction and management of the Project to proceed in all material respects in accordance with, the Project Requirements and the Project Plans.

#### **4.2 Project Requirements, Preliminary Design Baseline and Project Execution Plans**

- (a) Project Architect. The Parties acknowledge and agree that the Project Architect has been engaged to administer, program, design, document, oversee and conduct field reviews of the Project.
- (b) Preliminary Design Baseline. The Parties acknowledge and agree that the Preliminary Design Baseline has been prepared pursuant to the Initial Development Management Agreement, which baseline: (i) establishes the preliminary design criteria, concept, outline specifications, and concept drawings for the Project; (ii) adequately accounts for the results of any and all community engagement programs conducted in respect of the Event Centre; and (iii) has been Approved by the Steering Committee.
- (c) Project Requirements. The Parties acknowledge and agree that the Preliminary Design Baseline includes preliminary Project Requirements. Development Manager shall coordinate, schedule and conduct meetings among Development Manager, the Project Representatives, the Project Architect, and the Project design team to discuss and agree upon a final determination of the Project Requirements, which final Project Requirements will be subject to the Approval of the Steering Committee. The Parties acknowledge and agree that the Fundamental Principles set forth in the Project Framework Agreement shall be considered in determining the final determination of the Project Requirements. Any amendments to the Project Requirements pursuant to this provision shall be subject to the Approval of the Steering Committee.
- (d) Project Execution Plans.
  - (i) Risk Mitigation Plan: The Parties acknowledge that, pursuant to the Initial Development Management Agreement, CMLC commissioned a full risk analysis and produced a detailed risk matrix which was Approved by the Steering Committee (such strategy and plan, as initially Approved by the Steering Committee, and as amended from time to time by Approval of the Steering Committee, the "**Risk Mitigation Plan**");



- (ii) Project Management and Implementation Plan: The Parties acknowledge that, pursuant to the Initial Development Management Agreement, CMLC developed a detailed project management, implementation, and execution plan and strategy for the Project which was Approved by the Steering Committee (such plan, as initially Approved by the Steering Committee, and as amended from time to time by Approval of the Steering Committee, the “**Project Management Plan**”); and
- (iii) Project Procurement Plan: The Parties acknowledge that, pursuant to the Initial Development Management Agreement, CMLC developed a procurement plan for the Project which was Approved by the Steering Committee (such plan, as initially Approved by the Steering Committee, and as amended from time to time by Approval of the Steering Committee, the “**Project Procurement Plan**”).
- (e) Development Manager shall use commercially reasonable efforts to implement and adhere to such plans.
- (f) The Contributing Parties agree to provide Development Manager with a copy of the Project Framework Agreement upon execution and any amendments made thereto within five (5) Business Days of such amendment.

#### **4.3 Consulting Contracts**

Pursuant to the Initial Development Management Agreement, CMLC entered into certain Consulting Contracts as agent for and on behalf of the Contributing Parties and not in its own name and Development Manager shall enter into each additional Consulting Contract as agent for and on behalf of the Contributing Parties and not in its own name, unless otherwise agreed by the Parties. With respect to each Consulting Contract that CMLC or Development Manager has entered into as agent for and on behalf of the Contributing Parties, such Consulting Contract shall be binding upon the Contributing Parties, each as to its several proportionate interest, as if each Contributing Party had executed and delivered such Consulting Contract itself. Development Manager shall not have the authority to enter into a Consulting Contract as agent for and on behalf of the Contributing Parties unless it has first obtained the Approval of the Steering Committee to do so; provided that, Steering Committee Approval shall not be required for the Development Manager to enter into a Consulting Contract as agent for the Contributing Parties if the fees and other amounts to be paid under such contract are reasonably expected to be \$250,000 or less or if Development Manager is otherwise permitted to enter into such contract without the consent of the Contributing Parties pursuant to the Project Procurement Plan. Development Manager shall not be required to enter into any Consulting Contract in its own name, unless agreed to by Development Manager.

The City and CSERELP acknowledge that Development Manager intends to forthwith initiate an RFP in order to retain the Sports Development Manager. The City agrees that such RFP process may be by way of a process similar to the process used by CMLC to engage the General Contractor.

#### 4.4 Planning and Design Phase

- (a) Design Plans. To the extent not already completed pursuant to the Initial Development Management Agreement, Development Manager shall in accordance with the Design Review, prepare, or cause to be prepared, the Reviewable Design Data at each of the reviewable design and development stages set out in the Design Review. Development Manager shall submit the applicable Reviewable Design Data for each applicable design and development stage to the Steering Committee for Approval (such Reviewable Design Data, as Approved by the Steering Committee for such development stage, the “**Design Plans**”). Once Design Plans have been Approved by the Steering Committee for a reviewable design stage, any material changes thereto will require the further Approval of the Steering Committee. The Parties acknowledge that following the issuance of “issued for construction” drawings, no changes to the Approved Design Plans may be made except pursuant to a Change Order in accordance with Article 6 of this Agreement. All working drawings, plans and specifications and copies thereof and all models with respect to the Project shall be and remain the property of the Contributing Parties to the extent same are not the property of the Consultant who prepared them.
- (b) Permits. Development Manager shall in a timely manner apply for and submit the Design Plans and all other required applications and documents to the Approving Authorities and all other required Governmental Authorities, including any and all public utility companies or departments of transportation having jurisdiction over components of the Project, to obtain all required permits, licenses, variances, consents and approvals for the Project and in order to achieve Completion of the Project and to occupy the Event Centre, including (to the extent applicable):
- (i) permits and approvals relating or pertaining to demolition, excavation, grading and Servicing;
  - (ii) site plan approvals, engineering permits, traffic and department of transportation permits and approvals, sewer permits, parking variances, any required land plan amendments, whether to the Rivers District Master Plan, the Beltline Area Redevelopment Plan or otherwise, or any zoning or land use redesignations;
  - (iii) building permits, development permits, development completion permits, and occupancy permits;
  - (iv) environmental permits and approvals;
  - (v) other permits or approvals relating to the Project that must be issued or obtained in order for a building permit and a certificate of occupancy to be issued for the Event Centre; and
  - (vi) approvals necessary for the completion, occupancy and use of the Project;
- (collectively, the “**Permits**”). Development Manager shall use commercially reasonable efforts to negotiate any required agreement with any Governmental Authority in respect of the Permits; provided that any such agreements shall be

subject to the Approval of the Steering Committee. Development Manager will use commercially reasonable efforts to obtain or cause to be obtained all Permits and related agreements as are necessary in order to ensure that the development, construction and proposed use and occupancy of the Project and any phasing thereof will comply with all Applicable Laws and Development Manager will use commercially reasonable efforts to obtain all such Permits as promptly as practicable and in sufficient time to comply with the Project Schedule. Any negotiations with any Governmental Authority that are necessary in order to obtain such Permits will be carried out by Development Manager.

#### 4.5 **Project Schedule**

- (a) The Parties acknowledge that the Preliminary Project Schedule was developed pursuant to the Initial Development Management Agreement and Approved by the Steering Committee. Development Manager shall update (or cause a qualified Consultant to update) such schedule from time to time, in the normal course of its development activities and shall submit any such updates to the Steering Committee for Approval (such schedule, as initially Approved by the Steering Committee, and as amended from time to time by Approval of the Steering Committee, the “**Project Schedule**”).
- (b) The Project Schedule shall include milestone dates on which various phases of the design and construction of the Project should be completed, including major design and construction decisions that must be made in order to achieve such dates and other material dates and timelines contemplated in this Agreement (collectively, the “**Milestone Dates**”).
- (c) Upon learning of any event or series of events that results in any Milestone Date or Development Manager’s or the Contractor’s achievement of any of those dates being, or likely to be, impacted, Development Manager shall promptly provide the Steering Committee with written notice of such impact or likely impact. Development Manager shall promptly notify the Steering Committee in accordance with Article 6 of such impact including, if applicable whether a change to the Project Schedule may be required.

#### 4.6 **Budget**

- (a) The Parties acknowledge that the Preliminary Project Budget was developed pursuant to the Initial Development Management Agreement and Approved by the Steering Committee. Development Manager shall update (or cause a qualified Consultant to update) such budget from time to time, in the normal course of its development activities and shall submit material updates to the Steering Committee for Approval (such budget, as initially Approved by the Steering Committee, and as amended from time to time by Approval of the Steering Committee, the “**Project Budget**”).
- (b) Development Manager will notify the Steering Committee if it reasonably expects that the Project Budget will be exceeded in respect of any line item by more than a specified threshold percentage or amount which will be established by the Steering Committee.

- (c) The Project Budget shall include reasonable allowances and contingencies as determined by the Steering Committee. Such allowances and contingencies may only be drawn upon, exceeded or reallocated in accordance with such policies and directives as may be Approved by the Steering Committee from time to time.

#### **4.7 Construction Phase**

Without limiting Development Manager's obligations under this Article 4, Development Manager shall perform all duties and obligations in connection with the construction of the Project, in accordance with the terms and conditions of this Agreement and subject at all times to the Approval of the Steering Committee with respect to all Major Decisions, and any direction received from the Steering Committee in accordance with Section 3.3(d) from time to time.

#### **4.8 Construction Contracts**

Pursuant to the Initial Development Management Agreement, CMLC entered into the General Construction Contract as agent for and on behalf of the Contributing Parties and not in its own name and Development Manager shall enter into each additional Construction Contract as agent for and on behalf of the Contributing Parties and not in its own name, unless otherwise agreed by the Parties. With respect to each Construction Contract that CMLC or Development Manager has entered into as agent for and on behalf of the Contributing Parties, such Construction Contract shall be binding upon the Contributing Parties, each as to its several proportionate interest, as if each Contributing Party had executed and delivered such Construction Contract itself. Development Manager shall not have the authority to enter into a Construction Contract as agent for and on behalf of the Contributing Parties unless it has first obtained the Approval of the Steering Committee to do so; provided that, Steering Committee Approval shall not be required for the Development Manager to enter into a Construction Contract as agent for the Contributing Parties if the fees and other amounts to be paid under such contract are reasonably expected to be \$250,000 or less or if Development Manager is otherwise permitted to enter into such contract without the consent of the Contributing Parties pursuant to the Project Procurement Plan. Development Manager shall not be required to enter into any Construction Contract in its own name, unless agreed to by Development Manager.

#### **4.9 Site Remediation**

- (a) The Parties acknowledge that, pursuant to the Initial Development Management Agreement, CMLC retained a qualified environmental consultant to undertake a phase 1 and phase 2 baseline environmental assessment of the Lands, and such environmental consultant prepared and delivered a report to the Steering Committee in respect of such testing dated January 2020, as amended February 2020 (the "**Phase 1 & 2 Report**"). The Parties acknowledge and agree that additional environmental testing and inspection of the Lands is required, and that Development Manager shall engage a qualified environmental Consultant to: (i) perform such additional testing and inspection as is reasonably required and (ii) prepare and deliver a report in respect of same. Following the delivery of such report to the Steering Committee, Development Manager shall (or shall cause a qualified Consultant to) develop and deliver to the Steering Committee for its Approval a remediation and monitoring program to the extent required under

Applicable Laws (the “**Site Remediation Program**”). Notwithstanding anything to the contrary in this Agreement, all costs in respect of such testing and such Phase 1 & 2 Report (the “**Phase 1 & 2 Report Costs**”), and all Initial Site Remediation Costs, shall be for the sole account of CMLC pursuant to the CMLC Agreement and shall be Ineligible Costs. The Shared Site Remediation Costs shall be Eligible Costs, and the Excess Site Remediation Costs shall be City Additional Costs.

- (b) At the conclusion of the Site Remediation Program, and following waiver or satisfaction of the Construction Conditions (as defined in the Project Framework Agreement), Development Manager will use commercially reasonable efforts to deliver a report signed and stamped by a qualified environmental Consultant stating that the Lands have been remediated in accordance with the scope of the Site Remediation Program. Development Manager shall use commercially reasonable efforts to undertake or cause to be undertaken all necessary or advisable environmental assessments, monitoring and follow-up programs, as required by the *Canadian Environmental Assessment Act*, *Environmental Protection and Enhancement Act* (Alberta) and regulations thereunder and any other Applicable Laws.

#### 4.10 **Liens**

- (a) Development Manager shall:
  - (i) be responsible for ensuring that all payments under the Construction Contracts and other contracts with respect to or relating to the Project and the disbursement all Project Costs are all in compliance with the Lien Act and any other applicable construction lien legislation, and for ensuring that all holdback provisions under such legislation are complied with for and on behalf of the Contributing Parties;
  - (ii) ensure that the Lands are protected from all liens arising from time to time at common law or under the provision of any statute (including liens for labour or materials under the Lien Act or similar legislation), which shall include, holding back from the amounts due and owing to any party the appropriate holdback required to be made pursuant to the Lien Act and only releasing such holdbacks upon the expiry of the applicable lien period;
  - (iii) indemnify and hold harmless the Contributing Parties from and against any and all manner of actions, suits, claims, executions and demands that may be brought against or made upon the Contributing Parties, or either of them, and of, from and against all loss, costs, charges, damages, liens and expenses (including legal fees and disbursements on a solicitor and client substantial indemnity basis) that may be sustained, incurred or paid by the Contributing Parties, or either of them, by reason of, or on account of, or in consequence of Development Manager failing to comply with all of the obligations of the Lien Act for and on behalf of the Contributing Parties (in their capacity as an “owner” under such legislation or otherwise) in connection with Development Manager’s obligations under this Agreement, including any failure to maintain all required holdbacks in the amounts required by the Lien Act;

- (iv) if requested by the Steering Committee, provide title searches concurrently with Requests for Advance;
  - (v) promptly take all steps required to discharge any lien or deal with any claim that is filed or registered against the Lands by reason or work supplied or claim to have been supplied for the Project and cause all such liens to be discharged, either by payment directly to the claimant or by payment into court (or posting security in lieu thereof) of an amount sufficient to obtain an order from such court discharging and vacating the said lien or by using commercially reasonable efforts to pursue any contractual obligation of a Contractor to discharge any lien or deal with any claim that is filed or registered against the Lands; and
  - (vi) be entitled to reimbursement of all third party costs (including legal fees on a full indemnity basis) incurred in connection with fulfilling its obligations under Section 4.10(a)(v) except where any lien or claim arises from a breach or non-performance of a Development Manager obligation under this Agreement, a negligent act or negligent omission by Development Manager or a failure by Development Manager to comply with all of the obligations of the Lien Act for and on behalf of the Contributing Parties (in their capacity as an "owner" under such legislation or otherwise), including any failure to maintain all required holdbacks in the amounts required by the Lien Act, in which case such costs shall be payable by Development Manager without reimbursement under this Agreement.
- (b) The City will advise Development Manager within 10 Business Days following receipt by the City of a notice of a lien filed or registered against the Lands and Development Manager will advise the Steering Committee forthwith upon becoming aware of the existence of any such liens.
  - (c) If Development Manager fails to promptly take all steps required to discharge any lien or deal with any claim filed or registered against the Lands, the Contributing Parties, without limiting any other rights or remedies they may have, may at their option (but without any obligation to) take any steps they deem necessary and appropriate to remove, vacate or discharge the lien or claim and, where Development Manager would not have been eligible for reimbursement as contemplated by Section 4.10(a)(vi), seek immediate recovery from Development Manager of the amount of payment and any associated costs, including legal costs (on a full indemnity basis), all of which will be payable on demand or set off against any amounts the Contributing Parties owes under this Agreement to Development Manager or otherwise due to Development Manager by the Contributing Parties.
  - (d) Unless otherwise Approved, Development Manager shall ensure that each Construction Contract provides that in the event a claim for a builders' or construction lien is registered against the title to the Lands for work or services provided under such Construction Contract and not due to any default of the Contributing Parties, unless the Contractor makes alternate arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the Steering Committee, acting reasonably, the Contributing Parties shall be entitled to withhold such portion of any payment otherwise due to such Contractor in an amount as would be required to satisfy the applicable lien claimant

and any costs and expenses associated therewith until such time as such claim has been satisfied or discharged from title.

#### **4.11 Completion, Overall Commissioning and Turnover**

- (a) Development Manager agrees that, subject to Force Majeure or a Contributing Party Delay and subject to delays arising as a result of any Change Order in accordance with Article 6, it shall use commercially reasonable efforts to achieve Substantial Completion on or before the Scheduled Substantial Completion Date. Development Manager shall appoint the Project Architect or such other independent certifier who will be responsible for the inspection and certification of the Substantial Completion contemplated and the determination of the achievement of Substantial Completion and to deliver a Certificate of Substantial Completion.
- (b) Development Manager agrees, subject to Force Majeure or a Contributing Party Delay, it shall use commercially reasonable efforts to achieve Turnover of the Project in accordance with the Project Schedule. Development Manager shall give the Steering Committee at least 30 days notice prior to the date upon which Development Manager anticipates all requirements for Completion shall be satisfied. Upon satisfaction of all requirements for Completion, Development Manager shall cause the Project Architect or independent certifier, as applicable, to issue the Turnover Certificate and Development Manager shall deliver the Turnover Certificate to the Steering Committee. If the Steering Committee disputes that all requirements for Completion have been satisfied, it shall deliver a notice within 10 days to the other Parties setting out the reasons as to why it considers that the Turnover Certificate should not be issued. Development Manager shall, or shall cause the Project Architect or independent certifier, as applicable, to promptly respond to the Steering Committee's notice setting out in detail a proposal to address all matters set out in such notice to the satisfaction of the Steering Committee. If the matters are not addressed to the satisfaction of Steering Committee, the Steering Committee may submit such matters to dispute resolution in accordance with Article 15.
- (c) Development Manager shall use commercially reasonable efforts to cause the Overall Commissioning to be performed, and shall facilitate the performance of all commissioning activities to be carried out by the City and CSERELP in accordance with the Overall Commissioning Program. Development Manager shall, in consultation with the Steering Committee, the Project Architect and all other appropriate Persons, prepare a draft Overall Commissioning Program and shall provide a copy thereof to the Steering Committee for the Approval of the Steering Committee.
- (d) The Parties acknowledge that CSERELP may perform its own commissioning activities both before and after the Turnover Date. Prior to the Turnover Date, Development Manager shall give CSERELP reasonable access to the Event Centre at such times as may be set out in the Overall Commissioning Program, and subject to the terms and conditions set out therein, to enable CSERELP to undertake its commissioning activities in accordance with the Overall Commissioning Program. CSERELP shall comply, and shall ensure all its employees, agents, contractors, consultants and subcontractors comply, with the

directions, procedures and safety guidelines established by the Contractor, the City and Development Manager for the Event Centre Site and shall avoid any material disruption to the performance of all other Overall Commissioning and the achievement of Turnover.

- (e) Development Manager shall cause to be delivered such training as may be required to render the City and CSERELP fully knowledgeable about the operation of the Event Centre post-Turnover.
- (f) Turnover shall occur within 5 days of issuance of the Turnover Certificate. The Event Centre shall be turned over to the City and CSERELP in a clean condition, free of construction debris and equipment, and free of encumbrances under the Lien Act which arise in connection with the Services provided by Development Manager hereunder, including in connection with any of the Construction Contracts or Consulting Contracts.
- (g) In the event that Minor Deficiencies exist when the Certificate of Substantial Completion is issued, the Project Architect or other independent certifier shall, in consultation with Development Manager and the Steering Committee, prepare a list of all Minor Deficiencies (the “**Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies. Development Manager shall withhold from payment to the General Contractor such amounts as may be required to complete and rectify all Minor Deficiencies. Development Manager shall in consultation with the Steering Committee, use commercially reasonable efforts to cause the completion and rectification of all Minor Deficiencies within the timeline established at the time of preparation of the Minor Deficiencies List and so as to minimize to the greatest extent possible, any disruption to the Completion of the Project or operations of the Event Centre. Development Manager may perform or cause the performance, of the completion and rectification of Minor Deficiencies before and after the Turnover Date. After the Turnover Date, CSERELP and the City shall give Development Manager, the Contractor and all Consultants and Subcontractors reasonable access to the Event Centre at such reasonable times to enable the completion and rectification of the Minor Deficiencies in accordance with the Minor Deficiencies List.
- (h) Should the Contractor fail to diligently complete the rectification or correction of all Minor Deficiencies:
  - (i) Within 75 days of the issuance of the Minor Deficiencies List where no time for rectification or completion has been specified by the Project Architect;  
or
  - (ii) Within 30 days after the time for completion and rectification of any Minor Deficiency where such time has been specified in the Minor Deficiencies List by the Project Architect;

then Development Manager, for and on behalf of the Contributing Parties, may, upon instructions from the Steering Committee, engage other Contractors to perform the work necessary to complete and rectify any such Minor Deficiencies, as an Eligible Cost.



- (i) Within 30 days after the date of Turnover, Development Manager shall deliver to each Contributing Party a “close out book” that shall include, but not be limited to the Construction Data.
- (j) Within 10 days after the date of Final Completion, Development Manager shall deliver to the Contributing Parties:
  - (i) a statutory declaration sworn by a duly authorized officer of Development Manager stating that: (A) Final Completion has been achieved, (B) the builders’ lien period has expired and there are no builders’ liens or similar encumbrances or liens registered against the Lands in respect of work completed in respect of the Project to date, and (C) all Contractors and Consultants have been paid in full for any and all work performed and material and equipment supplied by them on or for the Project; and certifying the total amount expended by Development Manager and the Contractor in respect of the Project; and
  - (ii) a clearance certificate issued under any workers’ compensation or similar workplace safety legislation in force in Alberta in respect of each Contractor that did work in connection with the Project.

#### **4.12 Construction Delays**

The time for achieving the Milestone Dates, the Scheduled Substantial Completion Date, Turnover and any other obligation of Development Manager under this Agreement shall be extended by the length of any delay in achieving same resulting from any Contributing Party Delay and any Force Majeure. Following a Contributing Party Delay or a Force Majeure that affects the Project Schedule, Development Manager shall modify the Project Schedule to reflect the adjusted dates as soon as reasonably practical and determinable. If a Contributing Party Delay or Force Majeure occur simultaneously (or two or more of either of them), the length of the simultaneous delays shall be deemed to be one period of delay.

- (a) **“Contributing Party Delay”** means any delay to the Project Schedule or in achieving a Milestone Date, the Scheduled Substantial Completion Date or Turnover in the Project Schedule or in the performance of Development Manager’s obligations under this Agreement that is caused by or contributed to by the Contributing Parties or either of them, including: (i) a Contributing Party’s failure to approve or provide requested changes to the Reviewable Design Data within the time periods set forth in the Design Review; (ii) any other matters specifically identified as a “Contributing Party Delay” in this Agreement; (iii) a Contributing Party’s failure to provide Approval, direction or instructions for any other matter relating to the Project that requires the Approval, direction or instructions of the Steering Committee within the time periods set forth in Section 3.3 or such other time period as may be expressly stated in this Agreement or in the Approval Form; (iv) Change Orders; (v) any unreasonable delay in responding to Development Manager’s request for cooperation or information in connection with Development Manager’s efforts to obtain all Permits; (vi) a Contributing Party’s or its contractors’, agents’, and employees’ interference with Development Manager’s performance and completion of the Project. Upon becoming aware of the occurrence of a Contributing Party Delay, Development Manager shall promptly (within 10 Business Days) notify the Steering Committee of such occurrence and specifying

the action or inaction by the Contributing Party that Development Manager contends constitutes the Contributing Party Delay and an estimate of the impact of such alleged delay on any line item costs included in the Project Budget. A Contributing Party Delay shall result in an equitable extension to the Milestone Date and, if applicable, Scheduled Substantial Completion Date and/or Turnover Date in the Project Schedule and in the performance of Development Manager's obligations under this Agreement. For purposes of calculating the length of any Contributing Party Delay, the Contributing Party Delay shall be deemed to have commenced on the start of such Contributing Party Delay and shall continue until such time that the cause of the Contributing Party Delay is cured. A delay shall not be a Contributing Party Delay to the extent it is also a Force Majeure.

- (b) If an event of Force Majeure shall occur, the Party wishing to claim the benefit of a Force Majeure delay shall give written notice of the underlying Force Majeure event to the other Parties promptly (within 10 Business Days) upon becoming aware of the occurrence of the Force Majeure event and that such occurrence will result in a delay in the performance of such Party's obligations under this Agreement. Provided the Party wishing to claim the benefit of a Force Majeure delay has timely notified the other Parties of a Force Majeure event as required by this Section, then the time for such Party's performance shall be extended on an equitable basis by the time of the delay actually caused by such Force Majeure event. If a Party fails to give such timely notice, the Party shall have the period of time to which it would otherwise be entitled to a Force Majeure delay (but for the late notice) reduced on a day for day basis for each day that the notice is late. The Party claiming the benefit of a Force Majeure delay must use commercially reasonable efforts to avoid or mitigate the impact of the Force Majeure and must reasonably demonstrate that, but for the occurrence of the applicable Force Majeure event, such Party would have been ready and able to timely perform the delayed obligations. For greater certainty, no event of Force Majeure shall excuse either Contributing Party from making a payment under this Agreement when due.

#### **4.13 Warranties**

Development Manager shall use commercially reasonable efforts to ensure that Construction Contracts and Consulting Contracts provide, for the benefit of the Contributing Parties, such construction, manufacturers and other warranties, guarantees, benefits and other performance commitments as required by the Steering Committee from the Contractor and Subcontractors (including manufacturers and suppliers) in relation to the construction of the Project (collectively, "**Warranties**"), all as will be further specified in the Project Procurement Plan. Development Manager shall, at the option of the Contributing Parties, administer, on behalf of the Contributing Parties, the enforcement of all Warranties obtained up until the second anniversary of Completion, in which case Development Manager shall use commercially reasonable efforts to: (i) enforce all Warranties, and (ii) cause the Contractor and all other providers of Warranties to promptly perform the repairs and replacements with respect to items covered by the Warranties.

#### **4.14 Accounts and Records**

- (a) Development Manager shall, and shall require the Contractors to, keep comprehensive, true, complete and accurate books, records, accounts, documents, reports, studies, tests, plans, drawings, permits, models, studies,

quotations, tenders, changes, instructions and other construction-related material with respect to the entire construction process, all funds received and disbursements made by Development Manager and all transactions pertaining to the foregoing (collectively, the “**Project Books**”). Notwithstanding the foregoing, no Contractor or Consultant shall be required to include in Project Books the build-up of any rates or prices for goods or services provided on a fixed price basis.

- (b) Development Manager shall provide such evidence as to the payment of Project Costs as the City or CSERELP shall reasonably require.
- (c) Each of the City’s and CSERELP’s authorized representatives, including its auditors, shall have full access to inspect the Project Books and to make extracts or copies and perform audits of the Project Books provided that the City and CSERELP do not unreasonably disrupt the management of the Project. Development Manager will at all times furnish correct information, accounts and statements to the Contributing Parties and their auditors concerning the Project and the assets, liabilities and contracts related thereto and all transactions pertaining to the Project without any concealment or suppression and will otherwise provide such co-operation as may be reasonably required in connection with any audit of the Project Books.
- (d) Development Manager shall ensure that prompt and timely corrective action is taken in response to any audit finding. Development Manager will submit to the Steering Committee, in a timely fashion, a report on follow-up actions taken to address any recommendations and the results of any audit. The cost of any audit conducted by a Contributing Party will be the responsibility of the Contributing Party conducting the audit.
- (e) CSERELP and Development Manager additionally agree to fully cooperate and provide full access to the City’s auditor to the Project Books and any and all agreement, plans, strategies, frameworks, studies and other documents and materials as may be required to satisfy any such City auditors requirements.

#### **4.15 Reconciliation upon Completion**

On or before the date that is ninety (90) days after Turnover, Development Manager shall provide to the Steering Committee a full accounting and reconciliation of the final actual expended Project Costs incurred in the Completion of the Project based on (i) the actual amounts expended or incurred for each of the line items set forth in the Project Budget, or as otherwise agreed to by the Steering Committee pursuant to the Change Order process set forth in this Agreement (including Change Order costs relating to a Sole Cost Item which constitute City Additional Costs or CSERELP Additional Costs, as the case may be, and are paid directly by the Contributing Parties pursuant to this Agreement) and including details of the allocation of any contingencies and allowances; plus (ii) as to items that were included in the Project Budget, but which may not be completed and paid for at the time that the actual expended Project Costs are calculated (for example, seasonal deficiencies), the price to complete the item in question. Except for amounts to be retained for items described in (ii) above and any other anticipated liabilities of the Contributing Parties with respect to the Project, to the extent there is a positive balance in the Project Account, Development Manager shall pay to each of the Contributing Parties (or as they may direct), to the extent of their respective interest and amount contributed, such excess funds.

#### **4.16 Reporting as a Civic Partner and on the Use of Public Funds**

- (a) As a 'Partner' under the *Investing in Partnerships Policy* (CP2017-01), each of CSERELP and Development Manager may be requested to participate in an annual corporate reporting process. If and to the extent so requested to participate, CSERELP and Development Manager shall participate as required.
- (b) Development Manager and CSERELP acknowledge that the City is accountable to the public for the use of public funds through an open and transparent process which identifies expected outcomes, measures performance, reports results to the public (through Council) and provides for follow up. As such, as and to the extent requested by the City, Development Manager and CSERELP each agree to cooperate with the City in meeting any accountability or audit requirements pertaining to the Project.

#### **4.17 Limited Agency**

Notwithstanding any other provision in this Agreement, to the extent that Development Manager enters into an agreement as agent for and on behalf of the Contributing Parties, including with respect to Consulting Agreements and Construction Agreements as set out in Sections 4.3 and 4.8, respectively, such agency exists for the purposes of: (a) ensuring that the Contributing Parties are liable for their share of the obligations of the Contributing Parties under such Consulting Agreements, Construction Agreements, or other agreements, as the case may be, and (b) allowing CSERELP to enforce performance of the relevant agreement in order to protect its leasehold interest acquired pursuant to the Management and Lease Agreement. For greater certainty, the City and CSERELP agree that neither the agency relationship between CSERELP and Development Manager nor the expenditures made under the Consulting Contracts, Construction Contracts, or other agreements, result in CSERELP having an ownership interest or title to the Lands or the Event Centre.

### **ARTICLE 5 ACCESS TO THE LANDS**

#### **5.1 Non-Exclusive Access**

The City hereby grants Development Manager non-exclusive and unimpaired access to the Lands for the purpose of performing its obligations under this Agreement. Such grant of access is subject to the temporary licence of occupation agreement between the City and Calgary Exhibition and Stampede Limited dated on or about January 15, 2021, which temporary licence of occupation agreement may be extended to September 30, 2021 provided it adequately provides for accommodation of the site remediation activities (including testing and inspection activities) contemplated in Section 4.9. Development Manager may, for any purpose in furtherance of the Project, grant a right of access to the Project Architect, Contractor, Subcontractors and any Consultant necessary to complete the Project and its agents and employees in respect of the Lands, but no such right of access shall have effect beyond the expiry or termination of this Agreement.

## **5.2 Title to Lands and Event Centre**

Development Manager acknowledges and agrees that Development Manager shall not acquire any estate, right, title or ownership interest in the Lands or the Event Centre pursuant to this Agreement or otherwise. CSERELP and CSEC acknowledge and agree that CSERELP and CSEC shall not acquire any estate, right, title or ownership interest in the Lands or the Event Centre pursuant to this Agreement. Notwithstanding any provision herein to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, and the Event Centre, shall at all times remain unencumbered by any interest of Development Manager, CSERELP or CSEC, other than as expressly permitted in writing by the City.

## **5.3 Acquisition of a Leasehold Interest**

Notwithstanding that CSERELP's Contribution will be used by Development Manager to fund the design, permitting, construction and development of the Event Centre, CSERELP's Contribution is to acquire a leasehold interest in the Event Centre from the City pursuant to the Management and Lease Agreement, and CSERELP is acquiring the lease for purpose of subleasing the Event Centre to Calgary Flames Limited Partnership. CSERELP acknowledges that no amount of CSERELP's Contribution is or will become refundable as a result of CSERELP failing to, at any time, exercise its option to renew the Management and Lease Agreement pursuant to its terms.

## **5.4 Permitted Entrants**

Development Manager shall accommodate any reasonable requests from any consultants or representatives of the City or CSERELP (the "**Permitted Entrant**") to enter upon the Event Centre Site for the purposes of inspecting and monitoring the completion of the Project, subject to the directions, procedures and safety guidelines of Development Manager and the "prime contractor" to ensure the safety for the Event Centre Site and the Project.

# **ARTICLE 6 CHANGE ORDERS**

## **6.1 Change Orders**

- (a) The Steering Committee or Development Manager may from time to time request the implementation of a change to the Project Requirements Approved by the Steering Committee, Design Plans Approved by the Steering Committee, Project Plans Approved by the Steering Committee or General Construction Contract (after it has been Approved) (a "**Change Order**"). For the purposes of this Agreement, Change Orders shall be categorized as follows: (i) Change Orders due to errors or omissions or other deficiencies in the design or development of the Project; (ii) Change Orders required to comply with Applicable Laws or Permits, the requirements of any Governmental Authority or that are required for public safety or health reasons (as recommended by the Project Architect); (iii) Change Orders required or recommended by the Project Architect for the structural integrity or durability of the Event Centre, for the integrity or durability of the base building equipment, services or systems or which will materially improve the sustainability of the Event Centre or any of its components (the foregoing Change Orders described in subsections (i) to (iii) inclusive are collectively, "**Required Change**").

**Orders**"); (iv) a Change Order initiated by the Steering Committee, whether or not in respect of a Sole Cost Item (a "**Steering Committee Change Order**"); and (v) a Change Order initiated by Development Manager that is not a Required Change Order that provides some other benefit to the Project (a "**Recommended Change Order**").

- (b) Any Change Order request shall be submitted in writing to the Steering Committee, detailing the change and the supporting rationale.
- (c) Within ten (10) Business Days after receipt of the Change Order request, or such longer period as is reasonable in the circumstances, taking into account the nature and complexity of the requested change, Development Manager will provide the Steering Committee with an estimate of the cost and timeline for any work necessary to implement the proposed Change Order, including any anticipated impact on cost, on the Event Centre (including performance specifications and the Project Requirements), on the Project Budget, on the Project Schedule and whether such Change Order requires a new Permit or a modification to a Permit.
- (d) The Steering Committee will review the proposal in respect of the Required Change Order, the Steering Committee Change Order, or the Recommended Change Order, as the case may be, along with the cost and timeline estimate provided by Development Manager, and determine whether the proposal in respect of such Change Order is Approved; provided however that the Steering Committee must Approve Required Change Orders (but may request Development Manager to revise and resubmit its proposal in respect of same for purposes of alternative proposals for addressing the subject matter of such Required Change Order). For greater certainty, the Steering Committee shall not be required to Approve any Steering Committee Change Order or Recommended Change Order.
- (e) In the case of any Steering Committee Change Order which is Approved, the Steering Committee will advise Development Manager whether the costs of such Change Order are Eligible Costs, or if such Change Order is in respect of a Sole Cost Item, are City Additional Costs or CSERELP Additional Costs, as the case may be.
- (f) Upon Approval from the Steering Committee, Development Manager will prepare the proper documentation for the Change Order to direct the Contractors accordingly and proceed with the Project with the Change Order in place.

## **ARTICLE 7**

### **CONSTRUCTION PHASE COMMENCEMENT**

#### **7.1 Decision**

Development Manager shall deliver recommendations to the Steering Committee in respect of each of the following items on a timely basis (with sufficient time to allow for feedback from, and resubmission to, the Steering Committee if such initial recommendation is not approved), such that the Steering Committee may provide an Approval in respect of each such item on or prior to the Construction Phase Commencement Date:

- (a) Project Requirements;
- (b) Construction Phase Design Plans, including enabling and early works packages, to the extent necessary to commence construction;
- (c) Design Development Report;
- (d) Construction Phase Project Schedule; and
- (e) Construction Phase Project Budget.

**ARTICLE 8**  
**PROJECT FUNDING**

**8.1 Funding by the City and CSERELP**

- (a) Subject to the terms and conditions of this Agreement, the City shall contribute funding for:
  - (i) 50% of all Eligible Costs incurred in connection with the Project, up to a maximum aggregate City contribution equal to the City Maximum Contribution Amount; and
  - (ii) 100% of all City Additional Costs incurred in connection with the Project, (collectively, being the “**City’s Contribution**”).
- (b) Subject to the terms and conditions of this Agreement, CSERELP shall contribute funding for:
  - (i) 50% of all Eligible Costs incurred in connection with the Project, up to a CSERELP contribution amount of \$287,500,000;
  - (ii) 100% of all Eligible Costs in excess of \$575,000,000 of aggregate Eligible Costs; and
  - (iii) 100% of all CSERELP Additional Costs incurred in connection with the Project; (collectively, being “**CSERELP’s Contribution**”).
- (c) For greater certainty:
  - (i) the City and CSERELP shall fund the first \$575,000,000 of Eligible Costs on a 50/50 basis, and CSERELP shall fund 100% of Eligible Costs in excess of \$575,000,000, if any;
  - (ii) any funding contributed by the City for City Additional Costs or funding contributed by CSERELP for CSERELP Additional Costs shall not apply to the respective contribution of Eligible Costs by the City or CSERELP;

- (iii) the City's Contribution is being made in its capacity as owner of the Event Centre and the Lands, as set out in Section 5.2 hereof;
- (iv) CSERELP's Contribution is to acquire a leasehold interest in the Event Centre from the City pursuant to the Management and Lease Agreement, as set out in Section 5.3 hereof; and
- (v) CMLC is making certain contributions pursuant to the CMLC Agreement which contributions shall not be deemed to be Eligible Costs.

## **8.2 Eligible Cost Overruns**

If at any time Development Manager determines that the total aggregate Eligible Costs necessary to complete the Project, including Change Orders (except and to the extent that the costs thereof constitute City Additional Costs or CSERELP Additional Costs), are likely to exceed the Eligible Costs Limit (any such excess, an “**Eligible Cost Overrun**”), Development Manager shall provide notice of the Eligible Cost Overrun to the Steering Committee, including details regarding the nature and extent of the Eligible Cost Overrun. For greater certainty, Development Manager shall not be liable for any Eligible Cost Overrun.

## **ARTICLE 9 [INTENTIONALLY NOT USED]**

## **ARTICLE 10 PAYMENT OF PROJECT COSTS**

### **10.1 Project Account**

A bank account (the “**Project Account**”) to be used for the funding of Project Costs shall be established at the Bank of Nova Scotia or such other banking institution as is agreed by the Steering Committee and Development Manager. The Project Account shall be established and maintained in the name of Development Manager and shall be administered by Development Manager in trust for the Contributing Parties, each as to their respective Advances and proportionate interest in the Project as specified in Sections 5.2, 5.3 and 8.1. Only individuals employed by Development Manager shall be authorized signatories on the Project Account. Development Manager shall deposit all Advances made by the Contributing Parties pursuant to this Agreement and all income, GST input tax credits and other revenues arising from or in connection with the Project in the Project Account. Subject to and in accordance with the applicable provisions of this Agreement, Development Manager shall make all disbursements from the Project Account that are necessary for the due performance of Development Manager’s project management, accounting and administrative functions described in this Agreement which are required to be done pursuant to the terms of this Agreement. The Contributing Parties shall be given written notice of the account number and location of the Project Account. The Project Account shall be kept separate and shall not be commingled with the bank accounts for any other property or any other accounts of Development Manager.



## 10.2 Requests for Advance

It is acknowledged that the Contributing Parties have deposited, or caused CMLC to deposit, an amount to be determined following the reconciliation process set out in the CMLC Agreement (the “**Remaining CMLC Working Capital**”) into the Project Account, and each Contributing Party agrees to deposit a further contribution of funds in respect of Eligible Costs, the amount of which will be determined forthwith following the Effective Date, within fifteen (15) days of the Effective Date (collectively, with the Remaining CMLC Working Capital and further contributions to the Project Account, the “**Working Capital**”), and shall deposit further contribution of funds upon receipt of a Request for Advance from Development Manager in accordance with Section 10.3. Development Manager shall prepare a Request for Advance subject to Section 8.1. Development Manager will be responsible for and shall use the funds in the Project Account for the payment of all Eligible Costs, City Additional Costs, and CSERELP Additional Costs in accordance with the Project Budget. For greater certainty, Development Manager shall not be required to pay any Project Costs using its own funds. Development Manager shall administer the procedure for Advances in respect of Project Costs in accordance with the following terms and conditions:

- (a) Advances shall occur not more frequently than once per month, upon a date (an “**Advance Date**”) determined by Development Manager, which date shall in any event be at least 15 Business Days after the delivery of a Request for an Advance, by delivering to the Steering Committee a completed Request for Advance in the form attached hereto in Schedule F, which Request for Advance shall be accompanied by the following:
  - (i) a statement signed by an officer of Development Manager which includes:
    - (A) the amount of additional funds to be deposited in the Project Account by the Contributing Parties;
    - (B) the current balance in the Project Account and a reconciliation of such balance to the Project balance in the previous statement; and
    - (C) a schedule of the payments for which such additional funds are anticipated to be used to pay Project Costs together with confirmation that each such payment relates to a cost which constitutes a Project Cost and that such Project Costs are provided for in the Project Budget;
    - (D) all material supporting documentation, including copies of detailed invoices from Consultants and Contractors for payments made since the last Request for Advance; and
    - (E) an invoice for the Development Manager Fee.
- (b) Advances shall be made in such amount as is required to replenish the level of Working Capital to the initial amount set forth in the first paragraph of this Section 10.2, provided that the Steering Committee, in consultation with Development Manager, may, acting reasonably, elect to reduce or increase the amount of Working Capital having regard to the cost of the remaining amount of

work to achieve Completion and any upcoming months in which the Project Costs are anticipated to exceed the current level of Working Capital.

### **10.3 Payment of Advances**

On the Advance Date in accordance with Section 10.2, the City and CSERELP will contribute the applicable Advance, plus applicable GST, to Development Manager on the applicable Advance Date by way of deposit of funds to the Project Account on the following basis:

- (a) the City and CSERELP shall each pay an amount equal to 50% of the Eligible Costs set out in the Request for Advance, plus applicable GST, subject to the limitations in Section 8.1(a)(i) and 8.1(b)(i), as applicable;
- (b) CSERELP shall pay an amount equal to 100% of any Eligible Costs in excess of \$575,000,000, plus applicable GST, set out in the Request for Advance;
- (c) the City shall pay an amount equal to 100% of any City Additional Costs, plus applicable GST, set out in the Request for Advance; and
- (d) CSERELP shall pay an amount equal to 100% of any CSERELP Additional Costs, plus applicable GST, set out in the Request for Advance.

### **10.4 Development Manager Fee**

In consideration of the activities and services to be performed by Development Manager pursuant to this Agreement, the Contributing Parties shall pay Development Manager a fee equal to five million three hundred thirty-three thousand three hundred thirty-three dollars and thirty-three cents (\$5,333,333.33) (the “**Development Manager Fee**”). The Development Manager Fee shall be payable in forty (40) monthly installments of one hundred thirty-three thousand three hundred thirty-three dollars and thirty-three cents (\$133,333.33) commencing on August 1, 2021 and ending on November 30, 2024. The monthly installment for each month in such period shall be payable in arrears on the first Advance Date following the end of such month. The Development Manager Fee shall be subject to true-up at Final Completion for any difference between the amounts paid and the total amount of the Development Manager Fee. Upon any early termination of this Agreement, Development Manager shall be entitled to all accrued monthly installments in respect of the Development Manager Fee up to the date of termination, with the payment for the final month being reduced pro rata based on the days in such month which occur up to and including the date of termination, and shall not be entitled to any further payments in respect of the Development Manager Fee.

### **10.5 Disbursement of Funds**

Subject to and in accordance with the applicable provisions of this Agreement, Development Manager is authorized to disburse or withdraw funds from the Project Account from time to time (i) in payment of Project Costs permitted under this Agreement in accordance with the Project Budget and (ii) on account of the Development Manager Fee. Development Manager covenants and agrees with the City and CSERELP to apply the funds deposited into the Project Account by the City and CSERELP pursuant to this Agreement to the payment of Project Costs to the proper Persons, or, in the case of the Development Manager Fee, to itself. In no event shall Development Manager have any obligation to advance any of its own funds in connection with the payment of Project Costs hereunder, unless expressly so provided herein.

**ARTICLE 11**  
**INSURANCE**

**11.1 Insurance**

- (a) Without limiting its obligations or liabilities set forth in this Agreement, Development Manager shall obtain and maintain, at its sole cost and expense, as a minimum, with insurance companies satisfactory to the Steering Committee, the following insurance for the duration of this Agreement:
- (i) workers compensation insurance covering all personnel engaged in the performance of the Services in accordance with Applicable Law;
  - (ii) commercial general liability insurance, on an occurrence basis, with a combined, single limit of not less than five million dollars (\$5,000,000) inclusive for bodily injury including death and/or property damage (including loss of or loss of use of property) per occurrence and otherwise on terms consistent with industry practice having regard to the nature of the Services; which insurance shall include coverage re: cross liability, non-owned automobile, damage to hired automobiles, broad form products and completed operations, broad form property damage, contractual liability, contractor's protective liability, personal injury, pollution liability in respect of the liabilities assumed under this Agreement (and which covers environmental damage in the form of pollution of the air, land or water arising from a sudden, unintended, or unexpected happening resulting from or associated with the Services), employer's liability (for all personnel not covered by the insurance referenced in sub-section (i) above) and employer's contingent liability;
  - (iii) automobile liability insurance covering all motor vehicles owned, leased or licensed by Development Manager, with limits of not less than two million dollars (\$2,000,000.00) for injury or death of one or more persons, or damage to or destruction of property as a result of any one accident;
  - (iv) insurance covering loss of or damage to all equipment, materials and supplies to be provided by the Development Manager, if any;
  - (v) errors and omissions insurance, to be maintained during the performance of the Services and for the duration of any warranty period, with limits of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in the aggregate covering the professional negligence of Development Manager in respect of any professional services performed as part of the Services; and
  - (vi) any other insurance that may be required by Applicable Law.
- (b) If requested by the Steering Committee, Development Manager shall, within ten (10) days of any such request and prior to the expiry of any such insurance policies required to be carried, provide the Steering Committee with insurance certificates confirming the existence of the above insurance or the renewal thereof, as the case may be.

- (c) The limits and coverage of the policies of insurance obtained by Development Manager shall in no way limit the liabilities or obligations assumed by Development Manager. The Development Manager shall ensure that each of the Contributing Parties is expressly added and included as an additional insured to the commercial general liability insurance policy referenced above, to the full extent of coverage available. The insurance policies maintained by Development Manager above shall, to the extent reasonably practicable, contain a waiver on the part of the insurer, by subrogation or otherwise, of all rights against any of the CP Indemnity Beneficiaries.
- (d) Development Manager is responsible for the full amount of any deductibles under the insurance policies obtained and maintained by it pursuant to this Section 11.1.
- (e) The insurance policies referenced in this Article shall include a provision for the Steering Committee to be given thirty (30) days written notice prior to cancellation or material change (restricting coverage). Development Manager shall promptly advise the Steering Committee should any policies of insurance lapse or otherwise be discontinued.

## **11.2 Project Insurance**

Promptly following execution of this Agreement, Development Manager shall, in consultation with the Project Representatives and any Consultants Approved by the Steering Committee, develop a recommendation for all insurance (including details of coverages, insurers, insureds, deductibles, risks insured, premiums and any other information reasonably required by the Steering Committee) to be obtained and maintained by Development Manager for the benefit of the Project and the Parties and submit such recommendation for Approval to the Steering Committee. Upon Approval by the Steering Committee of such insurance, Development Manager shall obtain and maintain throughout the term of this Agreement all such insurance as Approved by the Steering Committee for the benefit of the Project and the Parties, and the premiums and all deductible amounts in respect of such insurance shall be an Eligible Cost.

## **ARTICLE 12 INDEMNITIES AND LIABILITY**

### **12.1 Indemnity by Development Manager**

Subject to Sections 12.4 and 12.7, Development Manager will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the CP Indemnity Beneficiaries, of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the CP Indemnity Beneficiaries, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses that may be sustained, incurred or paid by the CP Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

- (a) any material breach by Development Manager, its officers, employees, agents or other Persons for whom it is legally responsible, of any terms and provisions of this Agreement;

- (b) any negligence or wilful misconduct of Development Manager, its officers, employees, agents or Persons for whom it is responsible in law (other than any Contractors or Consultants) in connection with the performance of its obligations pursuant to this Agreement; or
- (c) any action taken by Development Manager in contravention of the terms and provisions of this Agreement (including acting outside the scope of its agency appointment hereunder) or contrary to the direction of the Steering Committee pursuant to this Agreement;

and will pay to the CP Indemnity Beneficiaries any loss, costs, damages and expenses (including legal fees and disbursements on a solicitor and client substantial indemnity basis) that may be sustained, incurred or paid by the CP Indemnity Beneficiaries in consequence thereof or in consequence of any such action, suit, claim, lien, execution or demand or in settlement or in discharge or on account thereof.

## **12.2 Indemnity by CSERELP**

Subject to Section 12.4, CSERELP will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Development Manager Indemnity Beneficiaries of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the Development Manager Indemnity Beneficiaries, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

- (a) any material breach by CSERELP, its officers, employees, agents or other Persons for whom it is legally responsible, of any terms and provisions of this Agreement; or
- (b) any negligence or wilful misconduct of CSERELP, its officers, employees, agents or Persons for whom its responsible in law in connection with the performance of its obligations pursuant to this Agreement;

and will pay to the Development Manager Indemnity Beneficiaries any loss, costs, damages and expenses (including legal fees and disbursements on a solicitor and client substantial indemnity basis) that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries in consequence thereof or in consequence of any such action, suit, claim, lien, execution or demand or in settlement or in discharge or on account thereof; provided however that the indemnity provided under this Section shall not extend to:

- (i) any breach by the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity of any of the terms and provisions of this Agreement;
- (ii) any negligent act or omission, or wilful misconduct of the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity or Persons for whom they are respectively responsible at law; or
- (iii) any action taken by Development Manager in contravention of the terms and provisions of this Agreement (including acting outside the scope of its

agency appointment hereunder) or contrary to the direction of the Steering Committee pursuant to this Agreement.

### **12.3 Indemnity by the City**

Subject to Section 12.4, the City will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Development Manager Indemnity Beneficiaries of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the Development Manager Indemnity Beneficiaries, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

- (a) any material breach by the City, its officers, employees, agents or other Persons for whom it is legally responsible, of any terms and provisions of this Agreement; or
- (b) any negligence or wilful misconduct of such the City, its officers, employees, agents or Persons for whom its responsible in law in connection with the performance of its obligations pursuant to this Agreement;

and will pay to the Development Manager Indemnity Beneficiaries any loss, costs, damages and expenses (including legal fees and disbursements on a solicitor and client substantial indemnity basis) that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries in consequence thereof or in consequence of any such action, suit, claim, lien, execution or demand or in settlement or in discharge or on account thereof; provided however that the indemnity provided under this Section shall not extend to:

- (i) any breach by the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity of any of the terms and provisions of this Agreement;
- (ii) any negligent act or omission, or wilful misconduct of the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity or Persons for whom they are respectively responsible at law; or
- (iii) any action taken by Development Manager in contravention of the terms and provisions of this Agreement (including acting outside the scope of its agency appointment hereunder) or contrary to the direction of the Steering Committee pursuant to this Agreement.

### **12.4 Consequential Damages**

Notwithstanding anything to the contrary contained in this Agreement (except as set out below in this Section 12.4), no Party (in this Section, the "**First Party**") will be liable to any other Party (in this Section, the "**Other Party**") for any loss, expense, injury, death, damage or other liability of any indirect, special or consequential nature suffered by the Other Party which arises due to the First Party's failure to perform its obligations under this Agreement or for any other reason (including negligence or willful misconduct on its part or on the part of any Person for whose act it is responsible in law), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise, even if advised of the

possibility thereof; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature shall include loss of revenue, loss of profits (whether direct or indirect), loss of production, loss of earnings, loss of contract, cost of purchased or replacement capacity, cost of capital, and loss of the use of any facilities or property owned, operated, leased or used by the Other Party. For greater certainty, nothing in this Section 12.4 shall limit any claim by Development Manager on account of the Development Manager Fee.

## **12.5 Duration**

The obligations to indemnify contained in this Agreement shall survive any termination or expiration of this Agreement. Nothing in this Article 12 shall create or extend any right for the benefit of any third party, except as expressly stated herein.

## **12.6 Notice of Claim**

When a Party to this Agreement receives notice or otherwise becomes aware of a Claim which that Party determines may give rise to a claim for indemnification from another Party, that Party (in this Section, the "**Indemnified Party**") shall give prompt notice to the other Party (in this Section, the "**Indemnifier**"), including a copy of such Claim (in this Section, the "**Notice of Claim**"). Following receipt by the Indemnifier of a Notice of Claim, the Indemnifier shall be entitled to make a reasonable investigation of the Claim, as the Indemnifier considers necessary or desirable at its sole cost and expense. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifier all information concerning the Claim or relied upon by the Indemnified Party to substantiate the claim for indemnification. Within 30 days following receipt by the Indemnifier of a Notice of Claim, the Indemnifier shall elect to either (a) assume control of and proceed in a diligent manner with the investigation, defence, or settlement of the Claim, including choice of counsel and other advisors, in consultation with the Indemnified Party or (b) direct the Indemnified Party to do so, at the Indemnifier's sole cost and expense. Subject to the next sentence, the Party assuming the defence of the Claim shall, in its discretion, acting reasonably, do such acts and things and conduct such negotiations, take or defend such proceedings, and make such settlement as it deems advisable with respect to the Claim. Except with the prior written consent of the Indemnified Party, the Indemnifier shall not settle or compromise any Claim or admit liability in respect thereof or disclose the existence of the indemnity, other than as may be required in defence of a court action, in respect of matters arising out of or relating to the indemnities contained in this Article 12. If the Indemnified Party shall withhold its consent to any compromise or settlement recommended by the Indemnifier, the Indemnified Party shall thereafter be responsible for all further defence costs (provided that if the ultimate disposition of the Claim results in an outcome more favourable than the compromise or settlement proposed by the Indemnifier, the Indemnifier shall be liable for and shall indemnify the Indemnified Party for all such defence costs), and, should the ultimate disposition of the Claim result in an outcome less favourable than the compromise or settlement proposed by the Indemnifier, the Indemnified Party shall be solely responsible for the difference between the ultimate result and the compromise or settlement not accepted. Each Party shall cooperate with the others fully in respect of any Claim, including providing each other on an ongoing basis with all information which may be relevant to the Indemnified Party's or the Indemnifier's liability hereunder and supplying copies of all relevant documentation promptly, as it becomes available, and each shall make available such witnesses as are under its control. Any payment shall be made where practically possible to give effect to any tax savings. Notwithstanding anything contained in this Article 12, the indemnities provided under this Article 12 shall not extend to any debt, cost, expense, claim or demand for which insurance proceeds have been recovered by the Indemnified Party under insurance policies which are placed for the benefit of the Project and the

Parties pursuant to Section 11.2. Subject to the exceptions in Sections 12.2 and 12.3, for the purposes of the benefit of the indemnities and limitations of liability set out in this Article 12, the City is hereby acting as agent or trustee on behalf of and for the benefit of its elected officials, directors, officers, employees and agents, and CSERELP and CSEC are hereby acting as agent or trustee on behalf of and for the benefit of their respective directors, officers, employees and agents, and Development Manager is hereby acting as agent or trustee on behalf of and for the benefit of its directors, officers, employees and agents.

## **12.7 Limitation of Liability**

Notwithstanding anything to the contrary contained in this Agreement, the liability of Development Manager to the Contributing Parties for any liabilities, obligations, losses, damages, claims, actions, suits, judgments, costs, expenses and disbursements (including reasonable legal fees and expenses) incurred by the Contributing Parties, directly or indirectly, as a result of or arising out of or relating to this Agreement, a breach by Development Manager hereunder, the Project, and/or the performance of Services hereunder shall be limited (except and to the extent resulting from, arising out of or relating to the Gross Negligence or wilful misconduct of Development Manager, or any breach by Development Manager of its obligations pursuant to Sections 10.5, 17.2 and Article 18), to insurance proceeds available to Development Manager pursuant to insurance obtained by it pursuant to this Agreement or the insurance proceeds that would have been available to Development Manager had it obtained all required insurance as set forth in this Agreement. In no event shall the Contributing Parties make any claim against Development Manager or its partners or Affiliates, or their shareholders, officers, directors or employees, on account of any act or omission of Development Manager or any of the foregoing if the same is done in accordance with the Standard of Performance. The Contributing Parties may assert claims only against Development Manager, and under no circumstances shall any partner or Affiliate of Development Manager or any shareholder, officer, director, employee or agent of Development Manager or any partner or Affiliate of Development Manager (or any person or entity which may have succeeded to the interest or assumed the obligations of Development Manager under this Agreement), be personally liable for any of the obligations of Development Manager under this Agreement. This Section 12.7 shall survive the expiration or termination of this Agreement.

## **12.8 Additional Indemnity in favour of Development Manager**

Subject to Section 12.4, the City and CSERELP will, severally (not jointly and not jointly and severally), from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify Development Manager and its directors, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon Development Manager or its directors, officers, employees and agents, or any of them (including claims by Contractors and Consultants), and of, from and against all loss, costs, charges, damages, liens and expenses that may be sustained, incurred or paid by Development Manager or its directors, officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of any action taken by Development Manager or its officers, employees and agents in accordance with the Standard of Performance or as directed or instructed by the Steering Committee; and will pay to Development Manager or its directors, officers, employees and agents any loss, costs, damages and expenses that may be sustained, incurred or paid by any of them in consequence thereof or in consequence of any such action, suit, claim, lien, execution or demand or in settlement or in discharge or on account thereof; provided however that the indemnity provided under this Section shall not extend to:



- (a) any material breach by Development Manager or its directors, officers, employees and agents of any of the terms and provisions of this Agreement;
- (b) any negligent act or omission, or wilful misconduct of Development Manager or its directors, officers, employees and agents or other Persons for whom they are respectively responsible at law; or
- (c) any action taken by Development Manager in contravention of the terms and provisions of this Agreement (including acting outside the scope of its agency appointment hereunder) or contrary to the direction of the Steering Committee pursuant to this Agreement.

### **ARTICLE 13** **TERM OF AGREEMENT AND DEFAULT**

#### **13.1 Term**

The term of this Agreement shall commence as of the Effective Date and, subject to earlier termination in accordance with this Agreement, shall continue in full force and effect until the second anniversary of Completion.

#### **13.2 Development Manager Events of Default**

Any of the following events shall constitute an event of default (a “**Development Manager Event of Default**”) hereunder by Development Manager:

- (a) the occurrence of any Event of Insolvency as to Development Manager;
- (b) if Development Manager defaults in the payment or performance of a material obligation under this Agreement or any of the Construction Contracts, and, in the case of a payment default:
  - (i) Development Manager has been provided with the requisite funds to make such payment in the Project Account, and
  - (ii) such default is not cured within 10 days after notice of such default has been given to Development Manager by the City or CSERELP or,in the case of any other default of a material obligation,
  - (iii) Development Manager was not directed or instructed by the Steering Committee to breach such material obligation, and
  - (iv) such default is not cured within 30 days after notice of such default has been given to Development Manager by the City or CSERELP or within such longer period as may be reasonably necessary given the nature of the default in question provided that Development Manager promptly commenced and diligently continued to cure such default until it was so cured; or

- (c) the occurrence of a Disposition by Development Manager in contravention of Section 21.3;
- (d) Development Manager making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the Project or on the Contributing Parties and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from any other Party;
- (e) any failure by Development Manager to properly deal with and/or account for the funds of the City and CSERELP in accordance with the provisions of this Agreement if such failure is not cured within 10 Business Days after the delivery of a notice of such failure by the City or CSERELP; and
- (f) any failure by Development Manager to comply with any determination, order or Award made and binding against Development Manager in accordance with Article 15, within 30 days after notice of such default has been given to Development Manager by the City or CSERELP or within such longer period as may be reasonably necessary given the nature of the default in question provided that Development Manager promptly commenced and diligently continued to cure such default until it was so cured.

### **13.3 City Events of Default**

Any of the following events shall constitute an event of default (a “**City Event of Default**”) hereunder by the City:

- (a) the occurrence of any Event of Insolvency as to the City;
- (b) if the City defaults in the payment or performance of a material obligation under this Agreement, and, in the case of a payment default, such default is not cured within 10 days after notice of such default has been given to the City by Development Manager or CSERELP or, in the case of any other default of a material obligation, such default is not cured within 30 days after notice of such default has been given to the City by Development Manager or CSERELP or within such longer period as may be reasonably necessary given the nature of the default in question provided that the City promptly commenced and diligently continued to cure such default until it was so cured;
- (c) the occurrence of a Disposition by the City in contravention of Section 21.3;
- (d) any failure by the City to comply with any determination, order or Award made and binding against the City in accordance with Article 15 which is not cured within 30 days after notice of such default has been given to the City by Development Manager or CSERELP or within such longer period as may be reasonably necessary given the nature of the default in question provided that the City promptly commenced and diligently continued to cure such default until it was so cured; and

- (e) the City making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the Project or on another Party and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from any other Party.

#### **13.4 CSERELP Events of Default**

Any of the following events shall constitute an event of default (a “**CSERELP Event of Default**”) hereunder by CSERELP:

- (a) the occurrence of any Event of Insolvency as to CSERELP;
- (b) if CSERELP defaults in the payment or performance of a material obligation under this Agreement, and, in the case of a payment default, such default is not cured within 10 days after notice of such default has been given to CSERELP by the City or Development Manager or, in the case of any other default of a material obligation, such default is not cured within 30 days after notice of such default has been given to CSERELP by the City or Development Manager or within such longer period as may be reasonably necessary given the nature of the default in question provided that CSERELP promptly commenced and diligently continued to cure such default until it was so cured;
- (c) the occurrence of a Disposition by CSERELP or Change in Control of CSERELP in contravention of Section 21.3;
- (d) any failure by CSERELP to comply with any determination, order or Award made and binding against CSERELP in accordance with Article 15 which is not cured within 30 days after notice of such default has been given to CSERELP by the City or Development Manager or within such longer period as may be reasonably necessary given the nature of the default in question provided that CSERELP promptly commenced and diligently continued to cure such default until it was so cured; and
- (e) CSERELP making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the Project or on another Party and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from any other Party.

#### **13.5 Rights of the City and CSERELP Upon Development Manager Event of Default**

If a Development Manager Event of Default has occurred and is continuing, the City and CSERELP shall have the right (but shall have no obligation) to (without prejudice to any other right or remedy available to the City or CSERELP pursuant to this Agreement or at law or in equity):

- (a) jointly determine to terminate this Agreement by notice in writing to Development Manager, which termination shall be effective two Business Days immediately following delivery of such notice (unless another later day is specified in such

notice but in any event no later than 30 days immediately following delivery of such notice);

- (b) jointly determine to terminate Development Manager as development manager under this Agreement and require Development Manager to assign this Agreement to a new development manager jointly appointed by CSERELP and the City; and
- (c) take such other reasonable action as the City and CSERELP jointly determine appropriate to attempt to cure the default in question, the City's and CSERELP's costs in respect of which shall be payable by Development Manager on demand and shall bear interest from the date incurred to the date paid (both before and after judgment until fully paid) at the rate of 5% per annum in excess of the Bank Rate.

### **13.6 Rights of Development Manager Upon City Event of Default or CSERELP Event of Default**

If a City Event of Default or a CSERELP Event of Default has occurred and is continuing, Development Manager shall have the right (but shall have no obligation) to (without prejudice to any other right or remedy available to Development Manager pursuant to this Agreement or at law or in equity):

- (a) if such City Event of Default or CSERELP Event of Default is a payment default; suspend performance of its obligations under this Agreement (at any time after 10 days following the occurrence of the City Event of Default or CSERELP Event of Default, as the case may be) until such time as such City Event of Default or CSERELP Event of Default has been remedied;
- (b) if such City Event of Default or CSERELP Event of Default is not a payment default; suspend performance of its obligations under this Agreement (at any time after 30 days following the occurrence of the City Event of Default or CSERELP Event of Default, as the case may be) until such time as such City Event of Default or CSERELP Event of Default has been remedied;
- (c) terminate this Agreement by notice in writing to each of the City and CSERELP, which termination shall be effective two Business Days immediately following delivery of such notice (unless another later day is specified in such notice but in any event no later than 30 days immediately following delivery of such notice); and
- (d) if suspension pursuant to Section 13.6(a) or (b) has continued for more than 180 days, then upon 15 days' further notice to the Contributing Parties, terminate this Agreement;

provided that Development Manager agrees to provide the non-defaulting Contributing Party not less than: (i) ten days notice in the event a payment default of the other Contributing Party; and (ii) 30 days notice in the event of a non-payment default of the other Contributing Party, prior to exercising its rights pursuant to this Section 13.6.

### **13.7 Rights of the Contributing Parties upon Termination**

Upon any termination of this Agreement (other than pursuant to the first sentence to Section 13.8) or a termination of Development Manager as the development manager under this Agreement:

- (a) the Steering Committee shall have a period of 30 days, commencing on the date of notice of termination, to determine whether it wishes to appoint a new development manager, to be assigned the rights, and assume the obligations, of Development Manager under:
  - (i) contracts in respect of materials or goods acquired for the development, construction or operation of the Project and warranties and guarantees issued by the supplier of such materials;
  - (ii) contracts in respect of services in connection with the development, construction or operation of the Project ;
  - (iii) the rights of Development Manager in and to all reports, studies, models and other design materials relating to the Project; or
  - (iv) contracts entered into by Development Manager relating to the construction and development of the Project, including the Construction Contracts (provided in each case that such contracts have not either expired or been terminated),

and the Steering Committee shall be or shall have been provided with copies of, or access to, such contracts, for the purpose of making such determinations, provided that in each such case the foregoing remedies shall only apply to the extent such contracts are in the name of Development Manager and not in the name of Development Manager acting as agent for and on behalf of the Contributing Parties;

- (b) if the Steering Committee appoints a new development manager to be assigned and to assume, any such contract or obligations, such contract or obligations shall be assigned to such new development manager without the payment of any penalty or other charge for such assignment by such new development manager;
- (c) if the Steering Committee does not advise Development Manager within such 30 day period that it wishes to appoint a new development manager to be assigned the rights, and to assume the obligations, of Development Manager under such contracts or obligations, Development Manager may terminate such contracts or obligations (but only contracts in the name of Development Manager and not in the name of Development Manager acting as agent for and on behalf of the Contributing Parties); and
- (d) the Contributing Parties or the new development manager shall be entitled to receive original copies of all records, documents and books of account maintained by Development Manager with respect to the Project pursuant to the terms of this Agreement which are in the possession or control of Development Manager; provided, however, that Development Manager may elect to retain notarial or other

copies of such records, documents and books of account, and the Contributing Parties shall produce the originals of such records, documents and books of account whenever reasonably required to do so by Development Manager for the purpose of legal proceedings or dealings with any Governmental Authority or any other purpose reasonably required by Development Manager.

- (e) If required by the Steering Committee, Development Manager shall meet and reasonably cooperate with, and make its key Project personnel reasonably available to the Contributing Parties and the new development manager to the extent reasonably requested by either of the Contributing Parties or the new development manager for purposes of addressing transition issues relating to the handover and transfer of Development Manager's obligations in respect of the Services to the new development manager in a manner which, to the extent reasonably possible, minimizes the negative impact on the Project.
- (f) The provisions of this Section 13.7 shall survive the termination of this Agreement.

### **13.8 Termination of Project Framework Agreement**

If the Project Framework Agreement is terminated due to non-satisfaction or non-waiver of any conditions in the Project Framework Agreement, this Agreement shall likewise concurrently terminate. If the Project Framework Agreement is terminated due to a default by either or both of the Contributing Parties, then this Agreement may, at the option of any of the Parties, be concurrently terminated, except in the event the Terminating Party (as defined in the Project Framework Agreement) exercises its rights under Section 9.5(a)(i) of the Project Framework Agreement to elect to complete the Project in which case this Agreement shall, at the sole option of the Terminating Party, continue in full force and effect, provided that: (a) the Defaulting Party (as defined in the Project Framework Agreement) shall no longer have any rights or obligations (except as accrued up to and including the date of termination and those that survive termination) under this Agreement, and (b) the non-Defaulting Party shall agree in writing with Development Manager to fulfill and be responsible for the Defaulting Party's obligations under this Agreement.

## **ARTICLE 14** **REPRESENTATIONS AND WARRANTIES**

### **14.1 Representations and Warranties of the City**

The City represents and warrants as of the date hereof as follows and acknowledges that CSERELP and Development Manager are each relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) the City has the power, approval, financial capacity and right:
  - (i) to enter into and deliver this Agreement; and
  - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (b) this Agreement constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with its terms subject to applicable

bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;

- (c) the entering into and the delivery of this Agreement and the performance of the obligations of the City hereunder will not result in the violation of:
  - (i) any agreement or other instrument to which the City is a party or by which the City is bound; or
  - (ii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; and
- (d) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting the City or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority.

#### **14.2 Representations and Warranties of CSERELP**

CSERELP represents and warrants as of the date hereof as follows and acknowledges that the City and Development Manager are each relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) CSE Real Estate Limited Partnership is a limited partnership duly formed and subsisting under the laws of the Province of Alberta and its general partner, CSE Real Estate Corporation, is a corporation duly incorporated, organized and subsisting under the laws of the Province of Alberta;
- (b) CSE Real Estate Corporation, in its capacity as general partner and for and on behalf of CSE Real Estate Limited Partnership, has the power, authority, financial capacity and right:
  - (i) to enter into and deliver this Agreement, and to bind CSE Real Estate Limited Partnership to this Agreement; and
  - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of CSERELP, enforceable against CSERELP in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;
- (d) the entering into and the delivery of this Agreement and the performance of the obligations of CSERELP hereunder will not result in the violation of:

- (i) any of the provisions of the limited partnership agreement of CSE Real Estate Limited Partnership or the constating documents or bylaws of CSE Real Estate Corporation; or
  - (ii) any agreement or other instrument to which CSERELP is a party or by which CSERELP is bound; or
  - (iii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; or
  - (iv) any obligations of CSERELP to, or the requirements of, the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body;
- (e) CSERELP has obtained all necessary approvals and consents from the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body to enter into, deliver and perform this Agreement;
- (f) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting CSERELP or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority; and
- (g) CSERELP is in good standing under any and all contracts, licenses, collective bargaining agreements, permits and undertakings to which it is a party or subject to, as the case may be, where failure to be in good standing is reasonably likely to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement.

### **14.3 Representations and Warranties of Development Manager**

Development Manager represents and warrants as of the date hereof as follows and acknowledges that the City and CSERELP are each relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) Development Manager is a corporation duly incorporated, organized and subsisting under the laws of the Province of Alberta;
- (b) Development Manager has the power, authority, financial capacity, and right:
  - (i) to enter into and deliver this Agreement; and
  - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of Development Manager, enforceable against Development Manager in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of



general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;

- (d) the entering into and the delivery of this Agreement and the performance of the obligations of Development Manager hereunder will not result in the violation of:
  - (i) any of the provisions of the constating documents or by-laws of Development Manager;
  - (ii) any agreement or other instrument to which Development Manager is a party or by which Development Manager is bound; or
  - (iii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction;
- (e) Development Manager has, or retains individuals with, all of the requisite skills, knowledge, experience and resources, including a sufficient number of qualified and competent personnel, to carry out its obligations under this Agreement and to discharge such obligations in accordance with the Standard of Performance;
- (f) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting Development Manager or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority; and
- (g) Development Manager is in good standing under any and all contracts, licenses, permits and undertakings to which it is a party or subject to, as the case may be, where failure to be in good standing is reasonably likely to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement.

## **ARTICLE 15** **DISPUTE RESOLUTION**

### **15.1 Dispute Notice**

Any disagreements relating to the validity, construction, meaning, performance or effect of this Agreement, or to the rights or liabilities of the Parties or any other matter related to this Agreement (each a “**Dispute**”) that cannot be resolved by the Steering Committee (including the Development Manager representative to the Steering Committee) will be referred to the City Manager, the Chairman of the Board of CSERELP’s general partner, and the president of Development Manager for resolution. This process may be triggered by any Party providing written notice to the other Parties (a “**Dispute Notice**”) of the Dispute, briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought. For greater certainty, a Dispute Notice shall be sent to all other Parties, notwithstanding that one Party may not be involved in the Dispute.

### **15.2 Negotiation**

Within 5 Business Days of a Party delivering a Dispute Notice to the other Parties, or such longer period as the Parties may agree, the City Manager, the Chairman of the Board of CSERELP’s general partner, and the president of Development Manager will meet and make good faith efforts to resolve the Dispute through without prejudice negotiations.

### **15.3 Expert Mediation**

If the Dispute is not resolved pursuant to Section 15.2 to the mutual satisfaction of the Parties to the Dispute within 10 Business Days of a Party delivering a Dispute Notice to the other Parties, or such longer period as the Parties to the Dispute may agree, a Party may by notice to the other Parties (an “**Expert Notice**”) request the appointment of an independent person or persons generally recognized as having familiarity with and expertise in the matter which is the subject of the Dispute (an “**Expert**”) to resolve the Dispute as set out below:

- (a) within 5 Business Days of the delivery of an Expert Notice, each Party to the Dispute will submit in writing to the other Party(ies) to the Dispute, the names of no more than 2 candidates for Expert who are independent of the Parties, experienced in the resolution of similar disputes and immediately available to perform the role of Expert in respect of the Dispute at hand;
- (b) if a Party to the Dispute has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other Parties to the Dispute;
- (c) if for any reason within 5 Business Days of the delivery of an Expert Notice, an Expert has not been appointed, then any Party to the Dispute may apply to the Court of Queen’s Bench of Alberta for the appointment of such Expert;
- (d) the Expert’s fees and expenses will be shared (i) in the case of a Dispute between all three Parties to this Agreement, equally by all Parties, or (ii) in the case of a Dispute between only two Parties to this Agreement, equally by those two Parties;
- (e) the Expert will conduct an impartial review of the Dispute in such manner as the Expert thinks fit, including carrying out on site inspections and interviews with any

persons that the Expert thinks fit. The Parties will comply with all reasonable requests from the Expert for additional information, documents and access to personnel which the Expert considers necessary for the review. Any submission or documentation in respect of the Dispute provided to the Expert by a Party will also be provided to the other Parties to the Dispute;

- (f) the Expert may, with the written approval of the Parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by a Party to the Dispute to retain such other professional persons or experts;
- (g) the Expert will not be obliged to conduct enquiries in the presence of the Parties or receive submissions from the Parties, except to the extent that the Expert thinks fit, and may render a decision notwithstanding the failure of a Party to participate in the proceedings;
- (h) the Expert will render a brief, written, reasoned and impartial decision on the Dispute, with copies to each Party within 15 Business Days after the signing by the Expert and the applicable Parties of an agreement appointing such Expert, or such longer period as agreed to in writing by the Parties. The Expert's decision will be in the form of a proposed determination of the rights of the Parties to the Dispute having regard to the Expert's understanding of the relevant contractual provisions, the Applicable Law and the facts as agreed by the parties or as best the Expert is able to determine them;
- (i) each Party acknowledges the value of having the Expert render a timely decision regarding the Dispute. If the Expert is unable to render his decision within the time set or as extended by mutual agreement of the Parties, then the Parties will request that the Expert provide to the Parties within such time such analysis of the Dispute as the Expert is able to make within that time and describe the further work the Expert recommends would be required in order to arrive at a reasoned decision;
- (j) a decision of an Expert is not binding on the Parties but is intended to assist the Parties to reach agreement with respect to the Dispute;
- (k) the proceedings under this Section 15.3 will be confidential and all information, data or documentation disclosed or delivered by any Party to the Expert as a result or in connection with his duties as Expert will be treated as confidential and neither the Parties nor the Expert will disclose to any Person any such information, data or documentation unless the Parties otherwise agree in writing. Nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Expert; and
- (l) the proceedings by or before an Expert will be without prejudice in any subsequent proceedings.

#### **15.4 Commencement of Arbitration**

If the Dispute is not completely resolved by agreement between the Parties to the Dispute within 10 Business Days of the receipt of the Expert's decision or analysis pursuant to Section 15.3 (or such longer period as the Parties to the Dispute may agree) or within 10 Business

Days of the date on which the Expert's decision or analysis ought to have been received under Section 15.3, or if neither Party to the Dispute elects to issue an Expert Notice pursuant to Section 15.3, then a Party may commence proceedings to have the Dispute finally settled by arbitration under Section 15.5. In any such proceedings the scope of issues will not be limited strictly to the terms of the Dispute Notice but may extend to include directly related matters for the purpose of completely resolving the Dispute.

### **15.5 Arbitration Procedure**

If a Party is entitled under Section 15.4 to commence proceedings to have a Dispute finally resolved by arbitration, such Party may submit the Dispute to arbitration in accordance with the following principles:

- (a) arbitration proceedings shall be commenced by the Party desiring arbitration (the "**Initiating Party**") delivering, within the time and in the manner contemplated by this Agreement, notice of such election to have such matter or question determined by arbitration (the "**Arbitration Notice**") to the other Party(ies) to the Dispute (the "**Responding Parties**") as well as, in the case of a Dispute between two Parties, to the third Party;
- (b) within 10 Business Days following the delivery of the Arbitration Notice, the Initiating Party and the Responding Parties shall meet and attempt to appoint a sole arbitrator. If the Initiating Party and the Responding Parties do not so meet or are unable to agree on a sole arbitrator within such 10 Business Days period then, upon not less than 10 Business Days further notice given by either the Initiating Party or the Responding Parties to the other, such Person may apply to a court of competent jurisdiction pursuant to the *Arbitration Act* (Alberta) (the "**Arbitration Court**") to appoint the sole arbitrator. The provisions of such enactment shall apply to any such application to the Arbitration Court;
- (c) the sole arbitrator selected to act hereunder shall be qualified by education, training and experience to pass upon the particular question or questions in dispute;
- (d) the compensation and expenses of the sole arbitrator and any expert (including legal counsel) or consultant appointed or retained by the sole arbitrator shall be allocated between the Parties as determined by the sole arbitrator or the Arbitration Court;
- (e) the sole arbitrator appointed shall proceed immediately to hear and determine the question or questions in dispute;
- (f) the decision of the sole arbitrator and reasons therefor (the "**Award**") shall be drawn up in writing and signed by the sole arbitrator and shall be made and delivered by the sole arbitrator to all Parties within 20 Business Days after the appointment of the sole arbitrator (or such other longer period as may be agreed to among the Initiating Party, the Responding Parties and the sole arbitrator, in their respective sole discretions) and, in the event that the Award is not made within such time period, either the Initiating Party or the Responding Parties may elect to terminate the arbitration (except where the sole arbitrator has successfully applied

to the Arbitration Court for an extension in the time within which the sole arbitrator is required to make the Award); and

- (g) the Award shall be final and binding upon the Initiating Party or the Responding Parties as to the question or questions so submitted to arbitration and the Initiating Party and the Responding Parties shall be bound by the Award and comply with the terms and provisions thereof.

## **15.6 Other Remedies**

Nothing contained in this Agreement will preclude a Party from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

## **15.7 Payments and Performance Not Suspended**

- (a) In the event of a Dispute in respect of any monies to be paid by a Party pursuant to this Agreement, the obligation to make payment in respect of such Disputed amount shall continue and each Party shall be obligated to make all payments that would have otherwise been required by it under this Agreement during the continuance of a Dispute until the Dispute is resolved pursuant to this Article, by court order or pursuant to the mutual agreement of the Parties involved in the Dispute. Upon resolution of the Dispute, the Parties shall make any necessary adjustments and payments to each other as may be required to comply with the resolution of the Dispute. For greater certainty, nothing in this Section 15.7 requires Development Manager to expend its own funds for the purpose of continuing the Project during any Dispute.
- (b) During the pendency of any Dispute, Development Manager shall continue to perform the Services and shall continue with the design, permitting, construction and development of the Project, all as if such Dispute had not occurred.

# **ARTICLE 16**

## **RELATIONSHIP MANAGEMENT**

### **16.1 Communications Protocol**

The Parties acknowledge and agree that the timely exchange of information and clear lines of communication are essential to support the implementation of the Project, to ensure consistency of messaging, and to support the Parties in accounting to the public at large. Development Manager shall be responsible for preparing and coordinating all public communications pertaining to the Project, all in accordance with communications policies Approved by the Steering Committee (“**Communications Activities**”). Development Manager will provide as much prior notice as is reasonable in the circumstances to the City and CSERELP in respect of all such Communications Activities. Further to the foregoing, Development Manager shall ensure that the City and CSERELP have the opportunity to participate in all such Communications Activities, be it as collaborators in the context of written communications, or as attendees or presenters in the context of non-written communications. No Communications

Activities shall refer to the City without the City's prior written approval, and no Communications Activities shall refer to CSERELP without CSERELP's prior written approval. Each of the Parties shall have the right to continue to issue communications or press releases in respect of non-Project-related activities. Development Manager agrees to consult with the City and CSERELP and will take their direction with respect to any Communications Activities involving personal injuries, material property damage or safety concerns at or involving the Project other than in cases of emergency where, in the reasonable opinion of Development Manager, time does not permit prior consultation with the City and CSERELP (in which case Development Manager shall adhere to the emergency/disaster protocols and provisions set forth in the Communications Protocol). The Steering Committee will determine and Approve a communications protocol in respect of all matters relating to the Project (the "**Communications Protocol**") which shall be adhered to by the Parties. Notwithstanding anything contained in this Agreement, the Parties acknowledge and agree that City elected officials are not bound by this Communications Protocol.

### **16.2 Public Recognition**

Development Manager will give, or ensure the giving of, as applicable, appropriate and balanced textual recognition and acknowledgment of the City's and CSERELP's contribution and investment in the Project in all materials made public by Development Manager related to the Project. The recognition contemplated in this Section shall be in accordance with any applicable policy of the City, including, Section 5.0 of the City's *Corporate Brand Identity and Identifiers* (GN-023) policy.

### **16.3 Conflict of Interest**

The Parties acknowledge that Development Manager is an Affiliate of CSEC and CSERELP and that, accordingly, (i) each of CSEC and CSERELP, in their respective capacities as a Contributing Party and guarantor under this Agreement, have a conflict of interest with respect to matters involving Development Manager, including any termination of Development Manager hereunder, and (ii) Development Manager has a conflict of interest with respect to matters involving the CSEC and CSERELP this respective capacity as a Contributing Party and guarantor under this Agreement. The City hereby waives any such conflicts of interest and any right to make any claim arising therefrom and the City and CSERELP agree that under this Agreement Development Manager shall be deemed to be acting as an independent legal entity from CSEC and CSERELP (and not an Affiliate). Development Manager shall only be considered to be acting as the agent of the City or CSERELP to the extent provided for in this Agreement, and neither CSEC nor CSERELP shall in any circumstances be liable for any act, omission, obligation or liability of Development Manager by virtue of Development Manager being an Affiliate of CSEC and CSERELP.

## **ARTICLE 17**

### **CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

#### **17.1 Freedom of Information and Protection of Privacy Act**

The Parties acknowledge that the City is subject to the protection and disclosure provisions of the *Freedom of Information and Protection of Privacy Act*, 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 and in the possession of the City may be 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 information pertaining to this Agreement or the Project pursuant to the FOIP Act, the City shall, unless prohibited by Applicable Law, (a) notify the other Parties of the potential disclosure if and to the extent required by, and in accordance with, the FOIP Act (b) withhold any information as required by the FOIP Act and (c) limit disclosure to only what is required pursuant to the FOIP Act.

## **17.2 Confidentiality**

The Parties will maintain the confidentiality of all Confidential Information and will not make use of Confidential Information or release it to employees, officials, officers, authorized representatives or external advisors or consultants other than as required for the performance of this Agreement or as required by Applicable Laws and will not otherwise release or disclose the Confidential Information to any unauthorized third party. Development Manager and CSERELP each agree that the City may disclose any and all information it has in its power or control pertaining to this Agreement and the Project with members of Council and employees and officers of the City who require the subject information from time to time, as and when determined by the City, and Development Manager and CSERELP each hereby agree to any and all such disclosure.

## **17.3 Disclosure of Information**

No Party shall owe an obligation of confidentiality in relation to:

- (a) disclosures of information contemplated in Sections 17.1 and 17.2;
- (b) disclosures of information by a Party to its professional advisors and consultants, to the extent necessary to enable the Party to perform its obligations or enforce its rights under this Agreement;
- (c) information that was already known to the Party receiving the information (in each case, the "**Receiving Party**") at the time such information is received from the Party disclosing the information ("**Disclosing Party**");
- (d) information that is developed by the Receiving Party without reference to any confidential information disclosed by the Disclosing Party;
- (e) information that is or has become or hereafter becomes publicly known or available through no fault or breach of confidence by the Receiving Party;
- (f) information that is required to be disclosed under Applicable Laws or similar requirements of or by a Governmental Authority, including a court of competent jurisdiction; or
- (g) information that is subsequently lawfully obtained by a Party from another Person in bona fide belief that such other Person is lawfully entitled to have and disclose the information without breach of any obligation of confidence on its part.

#### **17.4 Survival**

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.

#### **17.5 Improper Disclosure or Use**

Improper disclosure or use of Confidential Information may cause irreparable harm to the City, CSERELP or Development Manager, as the case may be, and such harm may not be adequately compensated by damages. As a result, in addition to all other remedies a Party may have, a Party may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use of any Confidential Information contrary to the provisions of the Agreement.

#### **17.6 Indemnity**

Each Party will indemnify and save the other Parties harmless from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses that may be brought against or suffered by the other Parties as a consequence of the disclosure by the indemnifying Party of the Confidential Information of the other Parties contrary to the terms of this Agreement.

### **ARTICLE 18 INTELLECTUAL PROPERTY**

#### **18.1 Delivery of Construction Data and Intellectual Property**

Development Manager:

- (a) shall use commercially reasonable efforts to make or cause to be made all Construction Data and Intellectual Property Rights therein available to, and upon request shall deliver to, the Contributing Parties free of charge and shall use commercially reasonable efforts to obtain all necessary licenses, permissions and consents to ensure that the Construction Data and Intellectual Property Rights therein is available to the Contributing Parties;
- (b) hereby grants to the Contributing Parties an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable license, including the right to grant sub-licenses, to use the Construction Data and Intellectual Property Rights owned by Development Manager or for which Development Manager is granted a license that it is permitted to sub-license for all purposes as may be required for the Contributing Parties to perform their obligations under this Agreement and for the design, construction, maintenance and/or operation of the Event Centre; and
- (c) shall, where any Intellectual Property Rights are or become vested in a third party, use commercially reasonable efforts to obtain the grant of equivalent license that is referred to in Section 18.1(b).



In this Section 18.1, “use” includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Construction Data and Intellectual Property Rights therein.

## **18.2 Jointly Developed Materials**

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Development Manager and either or both of the Contributing Parties pursuant to this Agreement or in relation to the Project or the Event Centre (the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that the Contributing Parties shall be the exclusive owners of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Development Manager shall, at the request of a Contributing Party, execute such further agreements any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) The Contributing Parties hereby grant Development Manager an irrevocable, worldwide, royalty free, perpetual, non-exclusive and non-transferable license, with a right to grant sub-licences, to use the Jointly Developed Materials for any Development Manager business purpose.

## **18.3 Claims**

Where a demand, claim, action or proceeding is made or brought against the Contributing Parties or either of them that arises out of the alleged infringement or misappropriation of any rights in or to any Construction Data prepared by Development Manager or Intellectual Property Rights therein or the use thereof by a Contributing Party or because the use of any materials, machinery or equipment in connection with the Project provided by Development Manager infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Construction Data or Intellectual Property Rights by the Contributing Party otherwise than in accordance with the terms of this Agreement, Development Manager shall indemnify, defend and hold the Contributing Parties harmless from and against all such demands, claims, actions and proceedings (subject to Section 12.7). For greater certainty, this indemnity does not extend to any Construction Data or Intellectual Property Rights developed by any Contractor, Subcontractor or Consultant.

## **18.4 Survival**

This Article 18 shall survive expiry of this Agreement.

# **ARTICLE 19** **POLICIES, PRACTICES AND GUIDELINES**

## **19.1 Practices and Policies**

At all times during the performance of its obligations under this Agreement, the Parties will endeavour to have in place and implement written practices and policies consistent with best practices that govern:

- (a) the provision of services;
- (b) conflicts of interest;
- (c) whistle blower protection;
- (d) financial administration;
- (e) cash management; and
- (f) the protection, safe-guarding, retention and destruction of records, which practices and policies shall be consistent with the City's practices and policies in such regard.

and, further, each Party will provide copies of any and all such written practices and policies to the other Parties as and when requested by such Party.

## **19.2 Adherence to City Policies**

At all times during the performance of its obligations under this Agreement, Development Manager and CSERELP will abide by City Policies. Where the terms of any such City Policies conflict with the terms of this Agreement, the terms of this Agreement will govern.

## **ARTICLE 20 CSEC GUARANTEE**

### **20.1 Guaranteed Obligations**

- (a) CSEC hereby agrees that it absolutely and unconditionally guarantees to the City, the prompt payment when due, of all amounts due under this Agreement including, without limitation, administration fees, interest, charges and other amounts of any kind whatsoever payable under this Agreement by CSERELP or Development Manager (each, a "**Guaranteed Obligor**") and the observance and performance of all other covenants, provisions and obligations of whatsoever kind contained in or arising out of this Agreement, which are to be observed and performed by a Guaranteed Obligor under this Agreement (collectively the "**Guaranteed Obligations**").
- (b) If any or all of the Guaranteed Obligations are not duly paid or performed by a Guaranteed Obligor and are not paid or performed by CSEC under Section 20.1(a) for any reason whatsoever, CSEC shall, as a separate and distinct obligation, indemnify and save harmless the City from and against all losses resulting from the failure of such Guaranteed Obligor to pay or perform such Guaranteed Obligations, other than any Guaranteed Obligations for which such Guaranteed Obligor has a defense or are otherwise not enforceable against such Guaranteed Obligor unless, in any such case, such defence or unenforceability is as a result of an Event of Insolvency in respect of such Guaranteed Obligor.

## **20.2 No Discharge or Diminishment of Guarantee**

- (a) The obligations of CSEC hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full and performance in full of the Guaranteed Obligations), including (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate or partnership existence, structure or ownership of a Guaranteed Obligor or of or any other Person liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting a Guaranteed Obligor or CSEC (including, without limitation, any Event of Insolvency) (each, an “**Obligated Party**”), or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which CSEC may have at any time against any Obligated Party, the City, or any other Person, whether in connection herewith or in any unrelated transactions.
- (b) The obligations of CSEC hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of Applicable Law purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.
- (c) Further, the obligations of CSEC hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the City to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; or (iii) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of CSEC or that would otherwise operate as a discharge of CSEC as a matter of law or equity (other than the payment in full and performance in full of the Guaranteed Obligations).

## **20.3 Defenses Waived**

To the fullest extent permitted by Applicable Law, CSEC hereby waives any defense based on or arising out of any defense of any Guaranteed Obligor or CSEC or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Guaranteed Obligor or CSEC, other than the payment in full and performance in full of the Guaranteed Obligations. Without limiting the generality of the foregoing, CSEC irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by Applicable Law, any Notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. The City may, at its election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of CSEC under this guarantee except to the extent the Guaranteed Obligations have been fully paid and performed. To the fullest extent permitted by Applicable Law, CSEC waives any defense arising out of any such election even though that election may operate, pursuant to Applicable Law, to

impair or extinguish any right of reimbursement or subrogation or other right or remedy of CSEC against any Obligated Party or any security.

#### **20.4 Guarantor Acknowledgements**

CSEC hereby acknowledges that the City shall not be required to (and CSEC hereby waives any right to require the City to):

- (a) proceed against or exhaust any remedy against any Guaranteed Obligor or any other indemnifier or guarantor or any other Person;
- (b) proceed against or exhaust any security given by any Guaranteed Obligor or any other Person to the City or any other Person; or
- (c) pursue any other remedy available to the City. The City has the right to enforce this guarantee regardless of the acceptance of additional security from any Guaranteed Obligor or any other Person and regardless of any release or discharge of any Guaranteed Obligor by the City or by others or by operation of any law,

before making a claim hereunder against CSEC.

#### **20.5 Demand**

If any Guaranteed Obligation is not performed or paid for any reason whatsoever when due or payable by any Guaranteed Obligor, the City may treat such Guaranteed Obligation as due or payable and may demand forthwith from CSEC: (a) performance of the applicable Guaranteed Obligation to be performed hereunder; and/or (b) payment of the total amount of the applicable Guaranteed Obligation guaranteed hereunder. CSEC shall pay to or perform in favour of the City the total amount (or the total performance) of the applicable Guaranteed Obligation forthwith after demand therefor is made to CSEC.

#### **20.6 Rights of Subrogation**

CSEC will not assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until each Guaranteed Obligor and CSEC have fully performed all of the obligations, provisions and covenants to be performed by each Guaranteed Obligor under this Agreement.

#### **20.7 Information**

CSEC assumes all responsibility for being and keeping itself informed of each Guaranteed Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that CSEC assumes and incurs under this guarantee, and agrees that the City shall not have any duty to advise CSEC of information known to it regarding those circumstances or risks.

## **20.8 Representations and Warranties of CSEC**

CSEC represents and warrants as of the date hereof as follows and acknowledges that the City is relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) CSEC is a limited partnership duly formed, organized and subsisting under the laws of the Province of Alberta and its general partner, Calgary Sports and Entertainment Corporation, is a corporation duly incorporated, organized and subsisting under the laws of the Province of Alberta;
- (b) CSEC (by its general partner) has the power, authority, financial capacity, approval and right:
  - (i) to enter into and deliver this Agreement; and
  - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of CSEC, enforceable against CSEC in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and
- (d) the entering into and the delivery of this Agreement and the performance of the obligations of CSEC hereunder will not result in the violation of:
  - (i) any of the provisions of the limited partnership agreement, constating documents or by-laws of CSEC or its general partner;
  - (ii) any agreement or other instrument to which CSEC is a party or by which CSEC is bound;
  - (iii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; or
  - (iv) any obligations of CSEC to, or the requirements of, the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body;
- (e) CSEC has obtained all necessary approvals and consents from the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body to enter into, deliver and perform this Agreement;
- (f) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting CSEC or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Event Centre

or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority; and

- (g) CSEC is in good standing under any and all contracts, licenses, permits and undertakings to which it is a party or subject to, as the case may be, where failure to be in good standing is reasonably likely to have an adverse effect on the Event Centre or its ability to carry out its obligations in this Agreement.

#### **20.9 Additional Covenants of CSEC**

CSEC acknowledges and agrees that the provisions of each of Section 16.1 (Communications Protocol), Section 16.2 (Public Recognition), Section 16.3 (Conflict of Interest), Article 17 (Confidentiality and Freedom of Information and Protection of Privacy) and Section 21.3 (Successor and Assigns) of this Agreement shall apply to CSEC, *mutatis mutandis*, and CSEC shall comply with the provisions thereof.

#### **20.10 Defaults by CSEC**

CSEC, CSERELP and Development Manager each agree that if any of the Events of Default described in Section 13.4 occur in respect of CSEC and continue beyond the expiration of any cure period provided for in such Section, or if the covenant of CSEC in Section 20.12 is breached, then, in any such case, an Event of Default shall be deemed to have occurred in respect of each of CSERELP and Development Manager pursuant to Sections 13.4 and 13.2, respectively.

#### **20.11 Interest**

CSEC shall pay interest at a rate of interest per annum equal to the Bank Rate on all amounts required to be paid by CSEC to the City under this Agreement from the due date of payment thereof until paid to the City (both before and after judgment until fully paid).

#### **20.12 No Relocation**

CSEC represents and warrants that one of the assets of CSEC is a franchise from the National Hockey League to operate a professional hockey club which presently participates in the National Hockey League under the name "Calgary Flames". CSEC covenants and agrees that it shall not cause such franchise to relocate from the City of Calgary prior to the Turnover Date. Any transfer, assignment, sale or otherwise disposition by CSEC of its interest in such franchise shall be subject to CSEC first delivering to the City and Development Manager a written covenant from such transferee that it shall assume and be bound by the covenants in this Article 20.

#### **20.13 Survival**

The provisions of this Article 20 shall survive the expiration or sooner termination of this Agreement including, without limitation, any disclaimer of this Agreement by or on behalf of CSERELP if an Event of Insolvency occurs in respect of CSERELP or any disclaimer of this Agreement by or on behalf of Development Manager if an Event of Insolvency occurs in respect of Development Manager.

**ARTICLE 21**  
**GENERAL**

**21.1 Notices**

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if delivered personally upon the party for whom it is intended, mailed by registered mail or written electronic communications at:

- (a) the City, addressed to it, at:

The City of Calgary  
8th Floor, 800 Macleod Trail SE  
Calgary, Alberta T2G 2M3

Attention: City Treasurer  
Fax No.: 403-268-2578

With a copy to:

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

Attention: City Solicitor  
Fax No.: 403-268-4634

- (b) CSERELP, addressed to it, at:

c/o Calgary Sports and Entertainment Corporation  
555 Saddledome Rise SE  
Calgary, Alberta T2G 2W1

Attention: President and Chief Executive Officer  
Fax No.: 403-777-5349

With a copy to:

Norton Rose Fulbright Canada LLP  
3700, 400-3<sup>rd</sup> Avenue SW  
Calgary, Alberta T2P 4H2

Attention: Steve Raby  
Fax No.: 403-264-5973

- (c) CSEC, addressed to it, at:

555 Saddledome Rise SE  
Calgary, Alberta T2G 2W1

Attention: President and Chief Executive Officer  
Fax No.: 403-777-5349

With a copy to:

Norton Rose Fulbright Canada LLP  
3700, 400-3<sup>rd</sup> Avenue SW  
Calgary, Alberta T2P 4H2

Attention: Steve Raby  
Fax No.: 403-264-5973

(d) Development Manager, addressed to it, at:

c/o Calgary Sports and Entertainment Corporation  
555 Saddledome Rise SE  
Calgary, Alberta T2G 2W1

Attention: President and Chief Executive Officer  
Fax No.: 403-718-0500

With a copy to:

Norton Rose Fulbright Canada LLP  
3700, 400 – 3<sup>rd</sup> Avenue SW  
Calgary, Alberta T2P 4H2

Attention: Steve Raby  
Fax No.: 403-264-5973

or to such other address or in care of such other officers as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if delivered personally or by written electronic communication shall be deemed to be the date of delivery thereof (if such day is a Business Day and notice has been received prior to 4:00 PM local time, and if not, the next following Business Day), or if mailed as aforesaid, the date of delivery by the postal authority.

## **21.2 Enforceability**

Save and except for any provisions or covenants contained herein which are fundamental to the subject matter of this Agreement (including those that relate to the payment of monies), the invalidity or unenforceability of any provisions of this Agreement or any covenants herein contained will not affect the validity or enforceability of any other provision or covenants hereof or herein contained and any such invalid provisions or covenants will be deemed to be severable. Each provision and covenant herein contained will be separately valid and enforceable to the fullest extent permitted by law.



### 21.3 Successors and Assigns

- (a) This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each party hereto.
- (b) No Party may assign, transfer, grant a security interest in or otherwise encumber (including by way of a floating charge), dispose of or otherwise alienate any interest in this Agreement (a "**Disposition**"), whether directly or indirectly except, in each case, with the prior written consent of the other Parties, which consent may be withheld or conditioned in the sole subjective and absolute discretion of the other Parties, and any Disposition made otherwise shall be void as between the parties to such Disposition as well as between the Parties hereto. If any Party shall at any time effect or attempt to effect a Disposition in contravention of the provisions of this Agreement, the other Parties shall, in addition to all other rights and remedies of the other Parties under this Agreement or at law and/or in equity, be entitled to an order restraining and enjoining such action, and the offending Party shall not plead in defense thereto that there would be an adequate remedy at law and/or in equity, it being recognized and agreed that the injury and damage resulting from such a breach would be impossible to measure monetarily. A Party effecting a Disposition shall be responsible for all reasonable third party costs, including legal fees and disbursements, incurred by the other Parties arising from the Disposition. Nothing herein shall limit the rights of the Contributing Parties under Article 13 upon a Development Manager Event of Default. Any permitted Disposition shall be subject to the Party effecting the Disposition (the "**Transferor**") executing and causing the assignee, grantee or transferee of the Disposition, as the case may be (the "**Transferee**") to execute promptly an assumption agreement in favour of the other Parties (in form satisfactory to the other Parties, each acting reasonably), whereby the Transferee agrees, *inter alia*: (a) to be bound by all of the terms, covenants and conditions contained in this Agreement as if such Transferee had originally executed this Agreement; (b) to pay all amounts required to be paid by the Transferor hereunder; and (c) notwithstanding the Disposition, the Transferor shall be jointly and severally liable with the Transferee under this Agreement and shall not be released from performing any of the terms, covenants and conditions of this Agreement (unless the other Parties consent to such release in writing).
- (c) Subject to Section 21.3(d) no Party shall effect or permit a Change in Control unless it has first obtained the written consent of the other Parties, which consent may not be unreasonably withheld, but may be subject to conditions imposed by the consenting Party.
- (d) CSERELP shall not undertake or permit to be undertaken any transaction or series of transactions that would result in a change in the direct or indirect ownership interests in CSERELP or its general partner (including, without limitation, any transfer, assignment, conveyance or other disposition of all or part of the equity interests or other securities of CSERELP or the general partner of CSERELP, by operation of law or otherwise) other than in accordance with the following provisions:
  - (i) In respect of any such transaction or series of transactions undertaken between the direct or indirect holders of the equity interests or other securities of CSERELP or the general partner of CSERELP as of the date

of this Agreement, it shall provide the City with no less than thirty (30) days' prior written notice thereof, but without any requirement to obtain the City's approval.

- (ii) In respect of any such transaction or series of transactions that will result in any Person that is not a direct or indirect holder of equity interests or other securities of CSERELP or the general partner of CSERELP as of the date of this Agreement to become a direct or indirect holder of equity interests or other securities of CSERELP or the general partner of CSERELP following completion of such transaction or series of transactions:
  - (A) if such transaction or series of transactions results in a direct or indirect Change in Control of CSERELP or the general partner of CSERELP, it shall require the prior written approval of the City, which approval: (x) shall not be unreasonably withheld or delayed by the City if the Person who will Control CSERELP or the general partner of CSERELP following completion of such Change in Control has been approved by the National Hockey League and evidence of such approval has been provided to the City; or (y) in all other instances, may be withheld or conditioned by the City in its sole discretion;
  - (B) if such transaction or series of transactions shall result in such Person directly or indirectly owning between 20% to 49% of the equity interests or other securities in CSERELP or the general partner of CSERELP, CSERELP shall provide the City with written notice, but without any requirement to obtain the City's approval, as soon as reasonably practical prior to the completion of such transaction or series of transactions, provided the City agrees to maintain the confidentiality of such information and will not make use of such information or release it to employees, officials, officers, authorized representatives or external advisors or consultants without the prior written consent of CSERELP or as required by Applicable Laws; and
  - (C) if such transaction or series of transactions will result in such Person directly or indirectly owning less than 20% of the equity interests or other securities in CSERELP or the general partner of CSERELP, CSERELP shall provide the City with written notice confirming the completion of such transaction or series of transactions by no later than thirty (30) days following the completion of such transaction or series of transactions.
- (iii) Together with any notice or request for consent delivered by CSERELP to the City in the circumstances described in this Section 21.3(d), CSERELP shall provide to the City: (A) evidence satisfactory to the City, acting reasonably, confirming the identity of the direct or indirect owners of the equity interests or other securities of CSERELP and/or the general partner of CSERELP following completion of such transaction or series of transactions; and (B) if such transaction or series of transactions requires

the approval of the National Hockey League, evidence of such approval having been granted by the National Hockey League.

- (e) Notwithstanding anything contained in this Agreement, no Disposition may be made unless the prospective new Party resulting from such Disposition enters into an agreement with the remaining Parties (in form and substance satisfactory to the remaining Parties, acting reasonably) whereby the prospective new Party agrees to be bound by, and entitled to the benefit of, this Agreement and the other agreements affecting the Project contemplated by this Agreement, to the extent of the Party's interest (and obligations) or part thereof which is the subject of the Disposition.

#### **21.4 Capacity of the City**

Nothing in this Agreement shall constitute the granting by the municipality of The City of Calgary (including in its capacity as Approving Authority) of any approval or permit as may be required pursuant to the *Municipal Government Act* (Alberta) or any other legislation in force in the Province of Alberta. Nothing in this Agreement restricts the municipality of The City of Calgary, Council, its officers, employees or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a Governmental Authority or Approving Authority.

#### **21.5 Time of Essence**

Time shall in all respects be of the essence hereof; provided, however, that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the City, CSERELP and Development Manager or their respective solicitors and shall be subject to the provisions of Section 4.12 relating to Contributing Party Delays and Force Majeure.

#### **21.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

#### **21.7 Third Parties**

None of the rights or obligations hereunder of any party shall enure to the benefit of or be enforceable by any party other than the parties to this Agreement and their respective successors and permitted assigns.

#### **21.8 GST**

In the event that GST or any other sales or use tax is applicable to any amounts payable to any Party hereunder after assessing all reasonably available exemptions, such taxes shall be payable in respect of (and in addition to) such amounts. Each of the Parties shall comply with the *Excise Tax Act* (Canada) and regulations thereunder (as the same may be amended, replaced or any successor legislation from time to time) and all other legislation and regulations applicable to GST from time to time (in this Section, collectively, the "**GST Act**") and shall pay applicable GST on all amounts payable by such Parties under this Agreement, and each of the Parties shall comply with the *Income Tax Act* (Canada) and regulations thereunder (as the same may be amended,

replaced or any successor legislation from time to time) and all other legislation and regulations applicable to income tax from time to time (in this Section, collectively, the “**ITA**”). Each of the Parties (in this Section, the “**Indemnifying Party**”) shall indemnify and hold harmless each of the other Parties, and its respective officers and employees (in this Section, each an “**Indemnified Party**”), from and against any and all actions, suits, claims, judgments, damages, penalties, interest, fines, assessments, reassessments, costs and expenses (in this Section, a “**Tax Claim**”), that the Indemnified Party may suffer, sustain, pay or incur, arising from or in respect of the failure of the Indemnifying Party to: (a) comply with the GST Act or the ITA in any respect; (b) pay GST, income tax or other taxes as required by law or the Canada Revenue Agency (or successor agency); and (c) perform its obligations in respect of GST, income tax or other taxes or submit any required returns or filings within the required time periods, such Tax Claims to include, without limitation, any legal fees on a solicitor and own client basis which the Indemnified Party incurs in response to or in defence of any Tax Claim and the Indemnifying Party shall further pay to the Indemnified Party interest on all amounts required to be paid by the Indemnified Party on account of a Tax Claim at the Bank Rate plus 5% per annum from the date paid or incurred to the date reimbursed by Indemnifying Party (both before and after judgment until fully paid).

### **21.9 Entire Agreement**

This Agreement, together with the other agreements contemplated by this Agreement, constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, understandings, negotiations, proposals, representations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Agreement and in the other agreements contemplated by this Agreement.

### **21.10 Survival of Covenants**

Any covenant, term or provision of this Agreement which, in order to be effective must survive the expiration or termination of this Agreement, shall survive any such expiration or termination.

### **21.11 Waivers**

No failure by the City, CSERELP or Development Manager to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any other or subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

### **21.12 Termination of Initial Development Management Agreement**

The parties hereto acknowledge that as of the Effective Date, the Initial Development Management Agreement will be terminated pursuant to the CMLC Agreement and the parties

hereto shall have no further rights or obligations pursuant to the Initial Development Management Agreement except as may be specifically set forth in this Agreement or in the CMLC Agreement.

**21.13 Counterparts**

This Agreement may be executed in original counterparts, 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. Any such executed counterpart may be delivered by facsimile transmission or by email in PDF and will be deemed to be an original document.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF this Agreement has been executed by the parties.

**THE CITY OF CALGARY**

by \_\_\_\_\_  
Name: David Duckworth  
Title: City Manager

by \_\_\_\_\_  
Name: Kate Martin  
Title: City Clerk

**CSE REAL ESTATE CORPORATION, in its  
capacity as general partner for and on  
behalf of CSE REAL ESTATE LIMITED  
PARTNERSHIP**

by \_\_\_\_\_  
Name: John Bean  
Title: President and CEO

by \_\_\_\_\_  
Name: Cameron Olson  
Title: CFO

**CALGARY SPORTS AND  
ENTERTAINMENT CORPORATION, in its  
capacity as general partner for and on  
behalf of CALGARY FLAMES LIMITED  
PARTNERSHIP**

by \_\_\_\_\_  
Name: John Bean  
Title: President and CEO

by \_\_\_\_\_  
Name: Cameron Olson  
Title: CFO

**CSE DEVELOPMENT  
MANAGEMENT CORPORATION**

by \_\_\_\_\_  
Name:  
Title:

by \_\_\_\_\_  
Name:  
Title:



## **SCHEDULE A-2**

### **PROJECT DESCRIPTION**

The Event Centre (**EC**) is a multi-purpose, multi-level, state-of-the-art, approximately 18,000 seat, not to exceed 19,000 seat, gathering place for all Calgarians which uses includes, but is not limited to, concerts, assemblies, festivals, professional and amateur sports that will serve as the home practice and competition venue of the NHL's Calgary Flames, the WHL's Calgary Hitmen, the NLL's Calgary Roughnecks.

In addition, the EC will host multiple annual concerts of varying seat capacities, Calgary Stampede events during the annual Stampede Festival, family shows, eSports, Televised Award Shows, Community events, conference and other events consistent with this type of facility.

The EC will be located on the entirety of Blocks 92 and 95 and a portion of 13<sup>th</sup> Avenue SE in the River District and is approximately 6.9 acres bounded by Stampede Trail/Olympic Way – 4<sup>th</sup> Street SE on the West, 5<sup>th</sup> Street SE on the East, 12<sup>th</sup> Avenue SE on the North and 14<sup>th</sup> Avenue SE on the South.



## SCHEDULE B

### ELIGIBLE COSTS AND INELIGIBLE COSTS

#### Eligible Costs

"**Eligible Costs**" means all actual and verifiable costs (without duplication) incurred by the Contributing Parties or CMLC or the Development Manager on or after December 5, 2019 in respect of the public engagement, planning, designing, Permitting, development, constructing, Servicing and Overall Commissioning of the Project in accordance with the Project Budget or the Approval of the Steering Committee, including but not limited to the following items:

- (a) fees paid to CMLC pursuant to the Initial Development Management Agreement, and any adjustments thereto up to the date of termination of the Initial Development Management Agreement;
- (b) Development Manager Fee;
- (c) all reasonable costs for the design reviews conducted by the City's corporate engineering team;
- (d) all costs incurred in investigating the feasibility of the Project and soil and other conditions of the Lands, including any studies and surveys in connection with the Project and the Lands;
- (e) the costs of environmental assessments, monitoring and follow up programs, as required by the Canadian Environmental Assessment Act, 2012, the Environmental Protection and Enhancement Act (Alberta) and regulations thereunder and any other Applicable Laws, other than the Site Remediation Costs;
- (f) all costs incurred in negotiating, settling and entering into any municipal agreements and performance thereunder and all costs of, or contributions to the costs of, off-site sidewalks, landscaping, roads, sewers, traffic lights and other utilities, services and improvements, for or arising out of the construction and development of the Project;
- (g) the cost of securing any Permits or satisfying any development, building or other permit conditions;
- (h) costs of excavation, disposal of excavated materials and site preparation (other than the Site Remediation Costs);
- (i) Shared Site Remediation Costs;
- (j) costs of Servicing (other than any incremental costs of installation and construction of oversized underground utility lines or other utility facilities servicing the Event Centre which are required to be oversized due to the servicing requirements of other lands and buildings within the Rivers District, to the extent only of costs attributable to such oversized utility lines and facilities which are incremental to the costs of such utility lines and facilities which would have been incurred had they

not been required to be oversized to meet the servicing requirements of such other lands and buildings within the Rivers District);

- (k) all payments under or pursuant to the Construction Contracts or Consulting Contracts, including pursuant to the Consulting Contract with the Sports Development Manager and in respect of any Change Orders (except and to that the costs thereof constitute City Additional Costs or CSERELP Additional Costs);
- (l) all sums paid and expenses incurred (including payments or subsidies to suppliers of public utilities) in connection with utility connections and the provision of utilities required for the Project; except and to the extent any of the foregoing constitute City Additional Costs;
- (m) the costs of machinery, supplies, plant, equipment and apparatus acquired or used in connection with the construction of the Project;
- (n) the costs of all Event Centre Equipment included in the Project Requirements;
- (o) all Fit Up Costs, other than the Initial Fit Up Costs;
- (p) costs for the removal and disposal of waste materials and debris;
- (q) all costs and expenses incurred in respect of: Permits; duties, excises and assessments in connection with the development and construction of the Project (including letters of credit and deposits made to a Governmental Authority); service connection and energization charges; development charges and building permits; insurance and necessary surety and other performance and/or labour and material bonds (or other security in lieu thereof) or similar assurances; and all accounting and legal expenses and other incidental expenses relating to the development, construction and operation of the Project;
- (r) all costs and expenses incurred to comply with all Applicable Laws;
- (s) costs for safety measures and programs (including all applicable equipment);
- (t) costs for sustainability measures and programs (including all applicable equipment);
- (u) premiums and deductibles paid by Development Manager or CMLC, as applicable, pursuant to any insurance policies it is (or was) specifically obligated to obtain in respect of the Project pursuant to this Agreement or the Initial Development Management Agreement, as applicable, excepting deductibles payable by Development Manager or CMLC, as applicable, in respect of any claim to the extent arising from or in respect of the negligence or wilful misconduct of Development Manager or CMLC, as applicable;
- (v) other direct Project expenditures (without duplication), including for example a scale model and other public relations materials;
- (w) any workers' compensation or like payments required to be paid on or behalf of the City and CSERELP pursuant to Applicable Laws with respect to the

construction of the Project, but excluding any workers' compensation or like payments or other source deductions required with respect to any employee of Development Manager;

- (x) expenditures directly associated with Joint Communications and Development Manager Communications Activities related to the Project and signage as contemplated in Sections 16.1 and 16.2;
- (y) all costs of a registered land surveyor to provide all required surveys, measurements and layouts and a real property report;
- (z) all costs for inspections or tests or appraisals required from time to time by a Governmental Authority;
- (aa) costs of Indigenous consultation, and where appropriate, accommodation;
- (bb) any Flood Mitigation Costs, up to a maximum aggregate of \$2,000,000;
- (cc) contingencies and allowances as contemplated in Section 4.6(b);
- (dd) all costs of Overall Commissioning; and the costs of preparing building condition assessments and asset management plans;
- (ee) legal fees or disbursements incurred by Development Manager or CMLC, as applicable, in fulfilling its obligations under this Agreement or the Initial Development Management Agreement, as applicable (except for the legal fees and disbursements incurred by Development Manager or CMLC, as applicable, in respect of any Dispute to which Development Manager is a Party);
- (ff) any costs incurred by Development Manager in participating in a mediation, arbitration or other dispute resolution procedure in respect of a Dispute to which Development Manager is not a Party;
- (gg) costs arising from any suspension of the Project, including due to Contributing Party Delay, Force Majeure, or a Dispute (other than costs which are only payable by one Party pursuant to an Award);
- (hh) any other third party costs incurred by Development Manager or CMLC, as applicable, in performing its obligations under this Agreement or the Initial Development Management Agreement, as applicable, excluding any costs for third party project managers hired by Development Manager or CMLC, as applicable;
- (ii) joint audit costs of the Contributing Parties in respect of Development Manager's or CMLC's, as applicable, obligations under this Agreement or the Initial Development Management Agreement, as applicable, relating to Project Costs;
- (jj) any costs identified in this Agreement as being Eligible Costs; and
- (kk) any other costs Approved by the Steering Committee in respect of the Project;

provided that, notwithstanding anything to the contrary above, "Eligible Costs" shall not in any event include any City Additional Costs, CSERELP Additional Costs, Ineligible Costs or any costs contributed by CMLC pursuant to the CMLC Agreement.

**Ineligible Costs**

"**Ineligible Costs**" means any of the following costs which are incurred by either of the Contributing Parties or CMLC or the Development Manager in respect of the Project (which costs are the sole responsibility of the Party which incurred such costs):

- (a) expenditures incurred prior to December 5, 2019, as well as any and all expenditures related to contracts signed prior to December 5, 2019;
- (b) expenditures related to developing a business case or a funding proposal;
- (c) costs incurred by CSERELP in respect of accepting Turnover, including moving costs, pre and post opening expenses, any cost associated with decommissioning or vacating the Saddledome and operational planning and forecasting;
- (d) financing charges and interest payments on loans, with the exception of those Approved by the Steering Committee;
- (e) any overhead costs of any Contributing Party or CMLC or the Development Manager, including salaries and other employment benefits of any employees of any such party, its direct or indirect operating, or administrative costs (except and to the extent included in the Development Manager Fee);
- (f) legal fees or disbursements in connection with negotiating this Agreement;
- (g) income, business or other taxes payable by a Contributing Party;
- (h) costs or expenses incurred by a Contributing Party pursuant to indemnities it gives under this Agreement or any other contract entered into for its own account;
- (i) the cost of any goods or services which are received through donations or in kind;
- (j) the Phase 1 & 2 Report Costs (which are borne by CMLC pursuant to the CMLC Agreement);
- (k) the Initial Site Remediation Costs (which are borne by CMLC pursuant to the CMLC Agreement); and
- (l) the Offsite Servicing Costs (which are borne by CMLC pursuant to the CMLC Agreement).

## **SCHEDULE C** **PROCUREMENT PLAN REQUIREMENTS**

The procurement plan will describe how an open, fair and transparent procurement process will be achieved that ultimately provides for the timely delivery of the Project while providing value for money at an acceptable level of risk.

The procurement plan will address, at a minimum, all of the content identified in Section 1 below and will comply with the requirements set out in subsequent sections of this Schedule.

### **1. Procurement Plan Contents**

The procurement plan will set out an overall procurement strategy for the Project, giving appropriate consideration to all aspects of the procurement, and will, at a minimum, set forth information in respect of, or otherwise address, the following:

- project delivery model;
- project scope;
- de-scoping requirements;
- the Risk Mitigation Plan;
- bidding and evaluation methodologies;
- forms of contracts;
- procurement organization, staffing and advisors;
- procurement schedule (major Milestone Dates);
- procurement budgets; and
- approval processes.

### **2. Compliance with Legislation, Policies and Trade Agreements for Procurement**

All procurement activities will be subject to:

- all Applicable Laws, rules and regulations;
- applicable trade agreements; and
- all applicable City Policies as they relate to procurement.

The procurement plan should address how such policies and procedures will be applied to procurement initiatives for all phases of the Project.

### **3. Conflict of Interest and Confidentiality Provisions**

The procurement plan will establish reasonable requirements in respect of conflicts of interest and confidentiality.

### **4. Fairness Provisions**

The procurement plan will establish requirements for ensuring that all procurement in respect of the Project is undertaken in a fair and consistent manner, including appropriate provision in respect of ethical bidding behaviour (subject to section 7 below of this Schedule C).

## 5. Engagement of Advisors

Development Manager will, as agent for and on behalf of the Contributing Parties, engage Consultants in all aspects of procurement pertaining to the Project where expertise in respect thereof is not readily available within Development Manager. Such Consultants, and their role, may include the following:

- technical design consultants for all phases of the Project from reviewing the draft project specific documentation to assisting in the preparation of the project specific documentation, attending technical meetings with bidders, assisting with the preparation of responses to questions posed or comments submitted by bidders, and assisting in the evaluation process;
- an independent engineer to act for the Contributing Parties as an independent overseer to review the technical design consultant's work;
- procurement consultant to guide the procurement process with leading practices in the selected delivery model and assisting with documentation where applicable;
- a risk management consultant;
- financial consultants to help establish commercial terms for procurement documents and forms of contracts, and to assist with other financial matters, including review of submissions, and assistance in the preparation of review documentation and reports such as any value for money report and refreshes thereof;
- a fairness advisor to monitor each applicable procurement process to ensure that it is fair, open and transparent; and
- legal consultants to assist in the preparation and review of the procurement documents and the project agreement to be entered into by Development Manager (as agent for and on behalf of the Contributing Parties) and the successful General Contractor and other agreements and legal documents ancillary to those agreements.

## 6. Contracting

- (a) Development Manager shall award contracts pertaining to the Project in a fair, transparent and competitive manner that is consistent and compliant with the Project Procurement Plan and all applicable trade agreements in effect from time to time;
- (b) When accepting bids or awarding Construction Contracts, Development Manager shall use commercially reasonable efforts to pursue opportunities for savings, and to secure for and credit to, the Contributing Parties any discounts, commissions or rebates obtainable as a result of such purchases or contracts for goods or services in accordance with all applicable trade agreements in effect from time to time;
- (c) Subject to compliance with: (i) any other requirement contained in this Agreement for the Approval of the Steering Committee in connection with the execution and delivery of the General Construction Contract and any other Construction Contracts, and (ii) any requirements or directions from the Steering Committee, Development Manager, as agent for and on behalf of the Contributing Parties shall have the power and authority to negotiate and settle, and to execute and deliver the Construction Contracts, provided that the entering into of such Construction Contracts does not result in the total Project Costs being in excess of those specified in the Project Budget. Without limiting the generality of the foregoing,

Development Manager shall ensure that the General Construction Contract and any other Construction Contracts:

- (i) require the applicable Person to assume “prime contractor” responsibility under the occupational health and safety legislation, regulations and codes in effect in Alberta from time to time and shall require such Person to be solely responsible for initiating, maintaining and supervising all safety precautions and programs as may be prudent under the circumstances to keep the Event Centre Site at all times in a safe and orderly state and to ensure the safe completion of the Project and the construction and installation of the Event Centre Equipment that the Contractor has been retained to construct and install, all in compliance with all applicable health and safety regulations; and
- (ii) ensure all bonds and performance security from Contractor are provided when required by the Steering Committee and, for certainty, Development Manager shall recommend, negotiate and, subject to the Approval of the Steering Committee, obtain all such policies of insurance and bonds as the Steering Committee considers necessary or desirable to protect the Contributing Parties from liability, damage or loss, including builder's risk insurance, liability insurance and, except such policies of insurance and bonds as a Contributing Party may elect to negotiate for and procure on its own behalf, Development Manager shall deliver to the Steering Committee a certificate for each policy obtained by Development Manager in connection with the Project and copies of all performance, labour and material and other bonds forthwith upon receipt.
- (d) Development Manager shall inspect all insurance policies and workers' compensation certificates to ensure compliance with requirements of contracts and Good Industry Practices and this Agreement and, when bonds and performance security are required by the Steering Committee, shall maintain and manage all such bonds and performance security.
- (e) Development Manager shall settle all insurance claims, and co-ordinate and supervise necessary restoration and repairs. The prosecution, defense or settlement of insurance claims in excess of a dollar amount determined by the Steering Committee for any single claim or a dollar amount determined by the Steering Committee in the aggregate over any 12 consecutive months, or such other matters as may from time to time be determined by the Steering Committee shall require prior Approval of the Steering Committee.
- (f) Development Manager shall diligently oversee all amounts payable to the Contractors under the Construction Contracts, will secure the right to audit all costs under the Construction Contracts and will audit any costs that it considers to be suspect.
- (g) Development Manager shall use commercially reasonable efforts to negotiate and enforce the Construction Contracts such that the Construction Contracts are completed in accordance with the Project Schedule, for no more cost than as identified in the Project Budget (except and to the extent otherwise provided for in this Agreement including in Article 6) and in accordance with the Standard of

Performance use commercially reasonable efforts to enforce the Contributing Parties' rights under the Construction Contracts that may result in savings, and Development Manager will consult with the Steering Committee and afford the Contributing Parties the opportunity to participate in discussions regarding the enforcement of such rights to the extent the same is reasonably possible and consistent with the foregoing.

## **7. Bidding Practices**

The procurement plan will establish requirements in respect of unethical bidding practices and restrictions on the participation by parties who engage in, or have been convicted in Canada of engaging in same.



## SCHEDULE D

### MINIMUM REPORTING REQUIREMENTS

1. Each monthly report to the City and CSERELP will cover the following to a level of detail that enables full and meaningful review of the status of the Project and current risk profile:
  - (a) cost, including total expenditures to date including a breakdown showing the total amount of Eligible Costs, City Additional Costs, and CSERELP Additional Costs, as well as comments on actual expenditures in relation to the Project Budget and a detailed explanation on any variances and how much of any allowances or contingencies, if any, set out in the Project Budget have been used and for what purpose;
  - (b) reconciliation of the Project Account;
  - (c) scope;
  - (d) environment, health and safety;
  - (e) risk; and
  - (f) progress narrative and site photos, including to the extent available status reports from the Project Architect and any other Consultant.
2. Design Review Status
  - (a) the City's and CSERELP's submissions and Approvals for Design Review;
  - (b) statutory submissions and approvals; and
  - (c) schedule of upcoming submissions and status of associated design documents.
3. Project Schedule
  - (a) covering design, procurement, construction and commissioning phases;
  - (b) showing progress against the Project Schedule;
  - (c) presented as Gantt chart showing all activities and milestones critical to Completion and Overall Commissioning with activities shown in sufficient detail to identify the planned sequence to progress the works and track progress of each activity on a monthly basis;
  - (d) identifying total float and free float and a clear critical path and the early and late start and finish dates for each activity; and
  - (e) if the actual schedule has deviated from the Project Schedule, a recovery plan.
4. Procurement schedule for all major and critical trades showing anticipated and actual dates for design, tender and award, aligned with the Project Schedule and with particular emphasis on long-lead items.

5. Project Risk Register
  - (a) a risk register providing an update on Project issues and risks, if any, and mitigation measures with full revision history, including an estimate of the cost and likelihood of each risk occurring and risk mitigation strategies and plans;
6. Cash-flow report
  - (a) reflecting the amount invoiced to date compared to the amount projected and structured in alignment with the contractor's applications for payment, showing:
    - (i) the key elements of the construction works;
    - (ii) consultancy and contingency line items; and
    - (iii) monthly forecast of cash-flow against the Project Budget, together with three months of historic data.
7. Environmental Health and Safety
  - (a) a description of any environmental, health and safety matters, together with details of any accidents, incidents and near misses within the reporting period, together with a root cause analysis and comparison of performance to date against key performance indicators; and a copy of all reports submitted to any Governmental Authority with respect thereto.
8. Change Orders Log
  - (a) Required Change Orders pending or issued to date, with details of the time, cost, scope and risk impact;
  - (b) Steering Committee Change Orders pending or issued to date, with details of the time, cost (including whether the costs are Eligible Costs or constitute City Additional Costs of CSERELP Additional Costs as the case may be), scope and risk impact; and
  - (c) Recommended Change Orders pending or issued to date, with details of the time, cost, scope and risk impact.
9. Claims, potential claims or disputes that have arisen in the period or any other significant matters affecting or relating to the Project.

**SCHEDULE E**

**APPROVAL FORM**

Capitalized terms not otherwise defined herein shall have the respective meanings given to them in the Development Management Agreement dated July 30, 2021 (the “**Agreement**”) between The City of Calgary, CSE Real Estate Limited Partnership, Calgary Sports and Entertainment Corporation, and CSE Development Management Corporation.

Pursuant to Section 3.3 of the Agreement, Development Manager hereby requests the Approval of the Steering Committee to the following actions:

**1. [List matters for which approval sought.]**

Development Manager hereby requests a response from the Steering Committee within \_\_\_\_\_ Business Days of the date of this Approval Form.

This approval form may be executed in counterpart and transmitted by fax or email and the reproduction of any signature in counterpart and by fax or email will be treated as though such reproduction was an executed original signature.

**DATED** as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CSE DEVELOPMENT MANAGEMENT CORPORATION**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

We have authority to bind the corporation.

**APPROVAL OF THE STEERING COMMITTEE:**

**THE CITY OF CALGARY**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

We have authority to bind the corporation.

**CSE REAL ESTATE LIMITED PARTNERSHIP, by  
its general partner CSE REAL ESTATE  
CORPORATION**

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title:

We have authority to bind the corporation.

## SCHEDULE F

### REQUEST FOR ADVANCE FORM

To: **[The City of Calgary/CSE Real Estate Limited Partnership] - insert as applicable**

This request for Advance is delivered pursuant to the Development Management Agreement dated July 30, 2021 (the "**Agreement**") between The City of Calgary, CSE Real Estate Limited Partnership, Calgary Sports and Entertainment Corporation, and CSE Development Management Corporation. Unless otherwise defined or the context requires otherwise, capitalized terms used in this notice shall have the respective meanings ascribed to them in the Agreement.

1. Development Manager requests an Advance from **[the City/CSERELP]** as follows:
  - (a) Advance Date: \_\_\_\_\_
  - (b) Amount of Advance: \_\_\_\_\_
2. Development Manager certifies, after due inquiry, that as at the date hereof:
  - (a) all of the representations and warranties of Development Manager contained in the Agreement remain true and correct in all material respects;
  - (b) Development Manager has complied with all of its covenants, and has performed all of its obligations, under the Agreement in all material respects;
  - (c) no Development Manager Event of Default has occurred and is continuing; and there exists no circumstance or event which could with notice or lapse of time, or both, constitute a Development Manager Event of Default;
  - (d) no event or circumstance has occurred which has resulted in, or could with notice or lapse of time, or both, be reasonably expected to result in a Development Manager Material Adverse Change; and no Development Manager Material Adverse Change has occurred;
  - (e) the Agreement is in full force and effect;
  - (f) the information submitted with respect to Project Costs is true and accurate in all material respects;
  - (g) all other conditions of Advance that are required to have been met by Development Manager as of the date of this Advance request have been met; and
  - (h) all terms and conditions of the Agreement that are required to be met as of the date of this Advance request have been met.
3. Attached hereto as Exhibit 1 is:
  - (a) an updated Project cashflow that outlines (1) the key elements of the construction works, (2) consultancy and contingency line items (3) monthly forecast of cashflow against the Project budget, together with 3 months of historic data and specifying the estimated total expenditures, estimated Eligible Costs and estimated contributions by the City, CSERELP and any other Persons (4) the total amount expended by Development Manager in respect of the Project;

(b) if requested by a Contributing Party, a clearance certificate issued under any workers' compensation or similar workplace safety legislation in force in Alberta in respect of each Contractor and Subcontractor which did work in connection with the Project.

For certainty, this certificate is not in substitution of, and shall not abrogate or diminish, in any way, any of the obligations of Development Manager under the Agreement or in respect of the Project in any way. The undersigned gives this notice knowing that the Contributing Parties are relying upon its contents for the purpose of making or continuing to make Advances available pursuant to the Agreement and for the purposes of making or continuing to make contributions available pursuant to the Project Framework Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CSE DEVELOPMENT MANAGEMENT CORPORATION**

By: \_\_\_\_\_  
Name:

Title:

By: \_\_\_\_\_  
Name:

Title:

## **SCHEDULE G**

### **CITY POLICIES**

1. Investing in Partnerships Policy
2. Corporate Accessibility Policy
3. Access Design Standards
4. Public Use Policy
6. Sustainable Building Policy
7. Design Guidelines for City of Calgary Funded Buildings
8. Integrated Risk Management Policy
9. Corporate Brand Identity and Identifiers Policy
10. Corporate Public Art Policy
11. Municipal Naming Sponsorship and Naming Rights Policy
12. Plaque Policy
13. All procurement related policies

## SCHEDULE H

### DUTIES OF DEVELOPMENT MANAGER

Without limiting Development Manager's obligations under this Agreement, Development Manager shall perform the following duties in connection with the design, development, Permitting and construction of the Project, all in accordance with the terms and conditions of this Agreement and subject at all times to the direction of the Steering Committee:

#### General Duties:

- (a) undertake development and use commercially reasonable efforts to achieve Substantial Completion, Turnover and Final Completion of the Project on and in accordance with the terms and conditions set out in this Agreement;
- (b) use commercially reasonable efforts to deliver the Project within the Project Budget, and Complete the Project in accordance with the Project Requirements in a diligent and timely manner in conformance with the Design Plans, by the Turnover Date and otherwise in compliance with the Project Schedule;
- (c) use commercially reasonable efforts to cause the Project to be developed in accordance with the Standard of Performance and ensure that all design, engineering, Servicing, construction and development work is completed in accordance with such standards, subject in all events to the Project Budget and to the availability of funds in the Project Account;
- (d) engage, manage, and direct the performance of, and coordinate the activities of, all necessary Consultants and Contractors in accordance with the Project Procurement Plan to complete the Project in accordance with the Project Requirements and the Project Plans; and use commercially reasonable efforts to ensure that all such Consultants and Contractors: (i) are qualified, registered and licensed to practice in the Province of Alberta and are in good standing under all Applicable Laws; and (ii) maintain professional liability insurance with policy limits which are in compliance with the Project Procurement Plan or are otherwise satisfactory to the Steering Committee;
- (e) use commercially reasonable efforts to cause the Project to be developed in compliance with all Applicable Laws, and municipal, provincial and national (and to the extent applicable, international) codes or any other equivalent guidelines, standards or policies; and promptly notify the Steering Committee if Development Manager becomes aware of any failure of the Project or any part thereof to comply with the foregoing and make recommendations to the Steering Committee as to how such non-compliance may be rectified;
- (f) comply in all material respects with (and use commercially reasonable efforts to cause the Project Architect, Contractors, Subcontractors and all other Consultants to comply in all material respects with) all Applicable Laws, and requirements of Governmental Authorities, including all agreements between such Governmental Authorities, recognizing that to the extent there is overlap between any Applicable Laws and requirements of Governmental Authorities, the more stringent provision or provisions will apply;



- (g) use commercially reasonable efforts to obtain and maintain in good standing, and comply with, all material leases, licences, permits and approvals from any and all Governmental Authorities required in respect of the Project;
- (h) notify the Steering Committee forthwith of any material changes or developments affecting the Project;
- (i) maintain the accounting for the Project including monitoring all revenues and proceeds thereof, including preparing, submitting and maintaining reporting, information and the Project Books with respect to the Project, all in accordance with the Standard of Performance;
- (j) promptly notify the Steering Committee if, at any time, Development Manager has reason to believe that there is a shortfall in funding for the Project, including if the aggregate amount of the Eligible Costs exceed or are anticipated to exceed the Eligible Costs Limit; and, if applicable, make recommendation to the Steering Committee in respect of Eligible Cost Overruns pursuant to Section 8.2;
- (k) promptly report to the Steering Committee all material notifications, advice or other contact, whether verbal or written, received from governmental officials (whether federal, provincial or municipal) relating to its responsibilities pursuant to this Agreement or the Project;
- (l) take any immediate action as may be required to preserve the environment, public health, or safety, and promptly advise the Steering Committee of such situation and all action taken; and
- (m) pay and satisfy all indebtedness, obligations and liabilities owed by it (including as agent for and on behalf of the Contributing Parties) under this Agreement (provided the Contributing Parties have paid all amounts then due by the Contributing Parties), all on and in accordance with the terms set forth herein.

**Reporting:**

- (a) On or before the 15th day of each month prior to Final Completion, Development Manager shall cause a monthly report to be provided concurrently to the Steering Committee containing the Minimum Reporting Requirements, and any such other information as may be requested by the Steering Committee from time to time.
- (b) If and to the extent that a monthly report is to be presented by City Administration to Council and/or a committee of Council and Development Manager has been notified at least 10 Business Days in advance thereof, Development Manager shall ensure representation from its senior management is in attendance at such presentation(s), such persons in attendance being prepared to present and/or answer questions, as and when reasonably required.

**Planning and Design:**

- (a) Implementation - implement all strategies required to be Approved by the Steering Committee and report to the Steering Committee on all activities as requested by the Steering Committee;

- (b) Project Requirements - ensure the Project Requirements which have been approved in accordance with this Agreement, are appropriately translated into the Design Plan for the Project;
- (c) Cost Controls - establish and implement appropriate administrative, financial and cost controls for the design and planning of the Project and make suggestions or requests for specific design improvements, cost savings and efficiencies;
- (d) Planning, Management, Coordination and Supervision - supervise all aspects of the design and planning of the Project and provide planning, scheduling, expediting, technical co-ordination and supervision necessary for the proper execution of the work of the Consultants, Contractor and Subcontractors, and without limiting the generality of the foregoing, Development Manager shall manage and administer the Consulting Contracts, monitor performance, process change orders and progress payments through the duration of the Consulting Contracts and co-ordinate the work that may be being performed simultaneously under separate Consulting Contracts;
- (e) Consulting Contracts - prepare all tendering documents, administer tendering processes, make bid recommendations, and prepare contract documentation in respect of all Consulting Contracts, all in accordance with and subject to the Project Procurement Plan;
- (f) Health, Safety and Environment - develop any required operations protocols including fire and evacuation plans, health and safety protocols, security protocols, maintenance and cleaning programs, waste and recycling programs, energy conservation programs, and implement staffing requirements as necessary to properly operate the Project and the Event Centre Site; and
- (g) Community Engagement - engage users and the community in accordance with a community engagement program to ensure reasonable consideration of community input in the development and design of the Project.

**Construction Phase:**

- (a) Implementation – use commercially reasonable efforts to cause the Project to proceed and be constructed in accordance and compliance with all applicable Permits, all Applicable Laws, this Agreement, all registered title contracts and the Design Plans; complete Servicing, including engaging and working with the relevant utility companies or adjacent land owners to relocate utilities if required;
- (b) Surveys – use commercially reasonable efforts to cause a real property report of the structures within the Project to be prepared and delivered to the Steering Committee by an Alberta Land Surveyor upon the completion of the foundation thereof and upon the completion of the exterior thereof, all such real property reports to be endorsed with certificates of compliance from the municipality;
- (c) Cost Controls - establish and implement appropriate administrative, financial and cost controls for the construction of the Project, and, make suggestions or requests for specific design improvements, cost savings and efficiencies;

- (d) Planning, Management, Coordination and Supervision - supervise all aspects of the construction of the Project and provide planning, scheduling, expediting, technical co-ordination and supervision necessary for the proper execution of the work of the Project Architect, Contractor, Consultants and Subcontractors, and without limiting the generality of the foregoing Development Manager shall manage and administer the Construction Contracts, monitor performance, process change orders and progress payments through the duration of the Construction Contracts, co-ordinate the work that may be being performed simultaneously under separate Construction Contracts, co-ordinate the contract wrap-up and occupancy and administer the work through the warranty period after Completion;
- (e) Adhering to Project Schedule – use commercially reasonable efforts to finalize and cause adherence to the Project Schedule, including resource allocation breakdown, scheduling activities into individual tasks and resources showing the sequence and timing of the main construction activities and the desired completion date of the Project;
- (f) Construction Contracts - prepare all tendering documents, administer tendering processes, make bid recommendations, and prepare contract documentation in respect of all Construction Contracts, including in respect of a General Construction Contract to be entered into with a General Contractor on terms and conditions required by the Steering Committee, all in accordance with and subject to the Project Procurement Plan;
- (g) Financial Administration - provide technical and financial administration with respect to progress payments, updating cash flow requirements and holdbacks and retain all required documentation to meet applicable audit requirements;
- (h) Reviewable Design Data - expedite the receipt of all Reviewable Design Data, and to ensure that they comply with the specified requirements in general terms before submitting them to the Project Architect for approval;
- (i) Monitoring Reviewable Design Date - monitor the Reviewable Design Data approval process to ensure timely delivery of the material and Event Centre Equipment incorporated into the Project;
- (j) Personal Property - use commercially reasonable efforts to procure all necessary Event Centre Equipment and other personal property to be used in connection with the Project;
- (k) Construction Meetings - schedule and conduct meetings to discuss construction procedures, progress and scheduling with Contractor and the Project Architect;
- (l) Change Orders - evaluate, manage and comply with the process for Change Orders set out in Article 6;
- (m) Utilities and Servicing - use commercially reasonable efforts to obtain and maintain, on behalf of the Contributing Parties, any utility and other similar services or facilities and any grants, dedications, easements, agreements, licenses, rights and covenants necessary, appropriate or required for the Project; except for those required to be provided by CMLC pursuant to the CMLC Agreement;

- (n) Encumbrances - upon Completion, deliver the Lands and Project to the City free and clear of all encumbrances under the Lien Act which arise in connection with the Services provided by Development Manager hereunder, including in connection with any of the Construction Contracts or Consulting Contracts;
- (o) Labour Disputes and Issues - provide advice and assistance on labour problems in order to minimise work stoppages and in the settlement of jurisdictional or other labour disputes;
- (p) Contract Disputes – use commercially reasonable efforts to facilitate the settlement of contract disputes with respect to the General Construction Contract, any other Construction Contract or other agreement relating to the Project;
- (q) Calgary Stampede and Key Stakeholders - cooperate with the City, Calgary Exhibition and Stampede Limited, and other key stakeholders identified by the Steering Committee during the construction of the Project so as to minimize the disruption cause by such construction;
- (r) Construction Data - maintain a complete physical and electronic copy (in a format acceptable to the City and CSERELP) of all Construction Data as it becomes available in both a physical location and on a website; and
- (s) Delivery of "As Built" Drawings - coordinate the delivery by Contractor to the Contributing Parties of the guaranties, warranties, releases, affidavits, bonds, manuals, insurance certificates and other deliverables required under the General Construction Contract and ensure that authenticated record drawings and specifications, "as-built" drawings, maintenance manuals, operating instructions and similar materials are properly completed and handed over to the City.