

FACILITY FEE AGREEMENT

This Facility Fee Agreement (the "**Agreement**") is made and effective on December 5, 2019 (the "**Effective Date**").

AMONG:

THE CITY OF CALGARY
("The City")

- and -

CALGARY SPORTS AND ENTERTAINMENT CORPORATION
in its capacity as general partner for and on behalf of
CALGARY FLAMES LIMITED PARTNERSHIP
("CSEC")

- and -

CSE REAL ESTATE CORPORATION
in its capacity as general partner for and on behalf of
CSE REAL ESTATE LIMITED PARTNERSHIP
("CSERELP")

RECITALS:

- A. The City and CSERELP are parties to an Event Centre Project Framework Agreement dated December 5, 2019 (as amended or replaced by the Parties from time to time, the "**Event Centre Project Framework Agreement**"), pursuant to which, The City and CSERELP are each responsible for 50% of Eligible Costs (as defined therein) in respect of the design and construction of the Event Centre (as defined therein) and such other costs and expenses as are the exclusive responsibility of either of The City or CSERELP as set out therein, and CSERELP's total costs incurred under such agreement are the "**CSERELP Event Centre Initial Capital Costs**". The complete cost of design and construction of the Event Centre is estimated to be up to \$550 Million, such that the CSERELP Event Centre Initial Capital Costs are estimated to be up to \$275 Million plus such other costs and expenses as are the exclusive responsibility of CSERELP.
- B. The City and the Calgary Exhibition and Stampede Limited are parties to a Land Exchange Agreement dated December 5, 2019 pursuant to which, The City has an interest in and will become the registered owner of the Event Centre Lands (as defined therein). Pursuant to the Event Centre Project Framework Agreement the Event Centre Lands will be the site of the Event Centre.
- C. The City and CSERELP are parties to an Event Centre Management and Lease Agreement dated December 5, 2019 (as amended or replaced by the Parties from time to time, the "**Management & Lease Agreement**"), pursuant to which: (a) The City leases the Event Centre to CSERELP for the Lease Term; (b) CSERELP is responsible for certain costs relating to the construction of Additional Improvements (as defined therein) to the Event Centre from time to time (the "**Event Centre Subsequent Capital Costs**") and certain other costs relating to the operation, maintenance and repair of the Event Centre; (c) if during the Lease Term CSERELP completes any Material Capital Improvement of the Event Centre, at its sole cost and expense, CSERELP shall have the right to extend the term thereof for a Capital Improvement Extension Term; and (d) during the Lease Term The City shall have certain rights to access and use portions of the Event Centre for City Events.

- D. Section 61(2) of the *Municipal Government Act (Alberta)* (the "**MGA**") authorizes the municipality to charge fees for the use of its property. The City adopted a resolution at Council's July 29, 2019 Combined Meeting (the "**Resolution**") whereby The City's administration was directed 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. The key deal terms contained in Report C2019-0964 refer to The City charging a facility fee but do not set the fee.
- E. The purpose of the Facility Fee is to generate funds to reimburse The City and CSERELP for costs and expenses to design, construct and, in the case of CSERELP, to operate the Event Centre.
- F. CSEC will collect the Facility Fee on behalf of The City and remit the Facility Fee to The City, and The City will pay to CSERELP the Residual Facility Fee to be used solely for the purposes set out in this Agreement.
- G. The City, CSEC and CSERELP have agreed to enter into this Agreement in respect of the determination, collection and remittance of the Facility Fee in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises, covenants, terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties agree as follows:

1. DEFINITIONS

In this Agreement all capitalized words and terms not expressly defined herein shall have the same meaning ascribed to such words and terms in the Management & Lease Agreement. In addition, as used in this Agreement, the following terms have the following meanings:

- 1.1 "**Agreement**" means this facility fee agreement, together with all schedules attached, as amended or replaced by the Parties from time to time;
- 1.2 "**City Manager**" means the person appointed to the position of chief administrative officer of the City pursuant to the MGA, or such person's designate from time to time;
- 1.3 "**Complimentary Ticket**" means:
 - (a) licenses, tickets or admissions to Events granted to employees or contractors of CSEC, CSERELP or their respective Affiliates on a complimentary basis without the payment of a fee therefor, as a term of such employee's employment or such contractor's contract;
 - (b) licenses, tickets or admissions to Events granted to charitable organizations, community groups, amateur sports organizations, non-profit organizations and similar organizations on a complimentary basis without the payment of a fee therefor;
 - (c) licenses, tickets or admissions to Events granted to members of the media on a complimentary basis without the payment of a fee therefor;
 - (d) licenses, tickets or admissions to Events granted to or at the direction of The City pursuant to the Community Engagement Program without the payment of a fee therefor;
 - (e) licenses, tickets or admissions to Events granted to any Person on a complimentary basis without the payment of a fee therefor pursuant to any by-law, rule, regulation, contractual obligation or other request or requirement of the National Hockey League, Canadian

Hockey League, Western Hockey League, National Lacrosse League or any other league or organization;

- (f) licenses, tickets or admissions to Events involving any sports team that are granted to any Person on a complimentary basis without the payment of a fee therefor as part of a ticket package for another sports team;
 - (g) licenses, tickets or admissions to Events granted as a prize to any Person on a complimentary basis without the payment of a fee therefor;
 - (h) licenses, tickets or admissions to Events granted to any Person on a complimentary basis without the payment of a fee therefor by the customer service department of CSEC, CSERELP or any of their respective Affiliates to resolve customer complaints or issues, or otherwise for bona fide customer service reasons;
 - (i) licenses, tickets or admissions to Events granted to any Person on a complimentary basis without the payment of a fee therefor pursuant to any contractual obligation or other request or requirement of the promotor of an Event; and
 - (j) any other licenses, tickets or admissions to Events granted on a complimentary basis without the payment of a fee therefor and for which CSERELP and The City agree (both parties acting reasonably) that the Facility Fee does not apply in respect of;
- 1.4 **"CPI"** means the All-Items Consumer Price Index for the City of Calgary as published by Statistics Canada (or by a successor or other Governmental Authority, including a provincial agency), or, if the Consumer Price Index is no longer published or is not published for the relevant period of time, an index published in substitution for the Consumer Price Index or for such relevant period or time, or any comparable replacement index designated by The City, acting reasonably and in consultation with CSEC. If a substitution or replacement is required, The City, acting reasonably, and in consultation with CSEC, will make the necessary conversions. If the base year for the Consumer Price Index (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other Governmental Authority), The City will make the necessary conversion. If any calculation is required to be made under this Agreement based on the CPI as at a particular date or for a particular period and the CPI for such date or period is not available as at the time such calculation is required to be made, The City, acting reasonably, and in consultation with CSEC, shall be entitled to estimate the CPI for the purposes of such calculation, subject to adjustment following the CPI for the relevant date or period becoming available;
- 1.5 **"CPI Index Ratio"** means a fraction, the numerator of which is the CPI for the October 31 immediately prior to the commencement of a Fiscal Period, and the denominator of which is the CPI for the October 31 immediately prior to the commencement of the preceding Fiscal Period;
- 1.6 **"Default"** has the meaning set forth in Section 8.1 hereof;
- 1.7 **"Defaulting Party"** has the meaning set forth in Section 8.1 hereof;
- 1.8 **"Dispute"** has the meaning set forth in Section 9.6 hereof;
- 1.9 **"Effective Date"** has the meaning set forth on page 1 of this Agreement;
- 1.10 **"Event"** means any event, function, program or activity held at the Event Centre during the Lease Term, excepting only: (a) any event held at the Event Centre during the summer festival called the "Calgary Exhibition and Stampede" (or such other name as may be designated from time to time) for which the admission fee for the Event Centre is included in the base general admission fee for access to the Calgary Exhibition and Stampede grounds (e.g. Superdogs) but excluding any event,

function, program or activity held at the Event Centre during such "Calgary Exhibition and Stampede" (or such other name as may be designated from time to time) for which there is an additional fee charged or an additional fee added to the base general admission fee such as, by way of example only and without limitation, concerts; or (b) any City Event, unless The City provides written notice to CSERELP not less than 60 days prior to the date tickets go on sale for such City Event that it wishes to have the Facility Fee apply in respect of Tickets for such City Event (whereupon such City Event shall be deemed to constitute an Event for all purposes of this Agreement);

- 1.11 "Event Centre Initial Capital Costs" has the meaning set forth in the recitals hereto;
- 1.12 "Event Centre Subsequent Capital Costs" has the meaning set forth in the recitals hereto;
- 1.13 "Facility Fee" means the fee for the use of the Event Centre imposed by the municipality on a Ticket for an Event, pursuant to Section 61(2) of the MGA;
- 1.14 "First Ticket Sale Date" means the date the first Ticket for an Event goes on sale;
- 1.15 "Fiscal Period" means a 12 month period commencing July 1 and ending June 30 of the following year, provided that the first Fiscal Period shall commence on the First Ticket Sale Date and end on the immediately following June 30 and the last Fiscal Period shall end on expiry of the Lease Term, and accordingly the first and last Fiscal Periods may be for periods that are less than 12 months;
- 1.16 "Lease Term" means the term of the Management & Lease Agreement, including any exercised renewals or extensions thereof (including without limitation any Capital Improvement Extension Term);
- 1.17 "Management & Lease Agreement" has the meaning set forth in the recitals hereto;
- 1.18 "MGA" has the meaning set forth in the recitals hereto;
- 1.19 "Party" means The City, CSEC or CSERELP, and "Parties" means The City, CSEC and CSERELP;
- 1.20 "Quarter" means a 3 month period falling during the Lease Term and ending on the last day of March, June, September and December respectively, and "Quarterly" shall have a corresponding meaning;
- 1.21 "Residual Facility Fee" means the Facility Fee minus The City's Share;
- 1.22 "Resolution" has the meaning set forth in the recitals hereto;
- 1.23 "Sales Tax" means any tax or duty imposed upon any of CSEC, CSERELP or The City which is measured by or based in whole or in part directly upon any amounts payable, collectible or to be remitted under this Agreement whether existing at the date of this Agreement or hereafter imposed by any governmental authority including, without limitation, goods and services tax and harmonized sales tax as applicable (pursuant to the *Excise Tax Act (Canada)* or otherwise), value added tax, business transfer tax, sales tax, federal sales tax, excise taxes or duties or any tax similar to the foregoing;
- 1.24 "Suite" means any private suite or similar area within the Event Centre that is licensed or rented for use during Events by multiple guests as designated by CSERELP from time to time;
- 1.25 "Suite License Fee" means, with respect to any Person who is granted the annual, semi-annual or other periodic or similar right to use a Suite for Events or a series of Events, the amount paid by

the initial Person who is granted such right that is reasonably attributable to the use of the Suite (it being acknowledged and agreed that such amount will not include amounts paid that are reasonably attributable to any additional right(s), good(s), benefit(s) or service(s) that are included in addition to the right to use the Suite), such amount reasonably attributable to the use of the Suite to be determined by CSEC, acting in a commercially reasonable manner and in accordance with practices consistent with those of a prudent operator of facilities similar to the Event Centre in North America, such amount to be exclusive of any Facility Fee or applicable Sales Tax;

- 1.26 **"Suite Rental Fee"** means, with respect to any Person who is granted the right to use a Suite for a single Event, the amount paid by the initial Person who is granted such right that is reasonably attributable to the use of the Suite (it being acknowledged and agreed that such amount will not include amounts paid that are reasonably attributable to any additional right(s), good(s), benefit(s) or service(s) that are included in addition to the right to use the Suite), such amount reasonably attributable to the use of the Suite to be determined by CSEC, acting in a commercially reasonable and in accordance with practices consistent with those of a prudent operator of facilities similar to the Event Centre in North America, such amount to be exclusive of any Facility Fee or applicable Sales Tax;
- 1.27 **"The City's Share"** means the City's share of the Facility Fee determined pursuant to Section 3.4 hereof;
- 1.28 **"Ticket"** means a license, ticket, or admission granted to a person and thereby entitling that person to admittance to an Event (including without limitation in respect of Suites), except that a "Ticket" shall not include any Complimentary Tickets;
- 1.29 **"Ticket Price"** means:
- (a) with respect to any Ticket granted to a person in exchange for a fee, the actual amount paid by the initial purchaser of a Ticket, exclusive of any Facility Fee or applicable Sales Tax;
 - (b) with respect to any Ticket granted to a person in exchange for a fee whereby the amount paid includes any right(s), good(s), benefit(s) or service(s) in addition to admittance to the Event, the amount paid by the initial purchaser of such Ticket that is reasonably attributable to admittance to the Event (it being acknowledged and agreed that such amount will not include amounts paid that are reasonably attributable to any such additional right(s), good(s), benefit(s) or service(s)), such amount reasonably attributable to admittance to the Event to be determined by CSEC, acting in a commercially reasonable manner with reference to (if available) the face value of similar Tickets for admission to the Event in a similar seat (or location) within the Event Centre and in accordance with practices consistent with those of a prudent operator of facilities similar to the Event Centre in North America, such amount to be exclusive of any Facility Fee or applicable Sales Tax;
 - (c) with respect to any Ticket granted to a Person as part of a sponsorship, in kind arrangement or other similar contract or agreement that allows for attendance at an Event, the reasonable value of such Ticket, such reasonable value to be determined by CSEC, acting in a commercially reasonable manner with reference to (if available) the face value of similar Tickets for attendance to the Event in a similar seat (or location) within the Event Centre and in accordance with practices consistent with those of a prudent operator of facilities similar to the Event Centre in North America, exclusive of any Facility Fee or applicable Sales Tax; and
 - (d) with respect to any right to use a Suite: (i) the Suite Rental Fee; (ii) the Suite License Fee; and (iii) with respect to any additional Tickets that are granted in exchange for an additional fee (over and above the Suite Rental Fee or the Suite License Fee), the actual amount

paid by the initial purchaser thereof, exclusive of any Facility Fee or applicable Sales Tax;
and

1.30 "Ticket Sales Report" has the meaning set forth in Section 5.1 hereof.

2. TERM

2.1 The term of this Agreement commences on the Effective Date and continues for the duration of the Lease Term. This Agreement shall, at the option of a non-defaulting Party, terminate upon expiry or termination of the Management & Lease Agreement, but without prejudice to all rights and remedies of a Party upon any termination of the Management & Lease Agreement or this Agreement due to a default by any other Party or upon the occurrence of an Event of Default under the Management & Lease Agreement (as "Event of Default" is defined under the Management & Lease Agreement).

3. DETERMINATION OF FACILITY FEE

3.1 The City hereby confirms that the municipality has authority pursuant to Section 61(2) of the MGA, from the Turnover Date (as defined in the Management & Lease Agreement), to impose a facility fee on all Events.

3.2 CSEC and CSERELP hereby acknowledges that the municipality has full authority to charge fees for the use of its property pursuant to Section 61(2) of the MGA and to enter into this Agreement pursuant to the Resolution. CSEC and CSERELP agree not to take any steps or participate in or support any action or other proceeding to oppose, contest, quash or invalidate the Resolution.

3.3 The City Manager has authorized the charging of a Facility Fee and set the Facility Fee at 8% of the Ticket Price on all Tickets for Events held at the Event Centre during the Term. The City Manager will not change the Facility Fee during the Term. CSEC shall charge, or cause to be charged, the Facility Fee on all Tickets for all Events held at the Event Centre during the Lease Term.

3.4 The City's Share shall be equal to 2% of the Ticket Price on all Tickets for Events held at the Event Centre during the applicable period, unless the City Manager provides written notice to CSEC and CSERELP not less than 180 days prior to the commencement of any given Fiscal Period that The City's Share for Tickets in respect of such Fiscal Period will be a lesser amount (whereupon The City's Share for Tickets in respect of such Fiscal Period will be the lesser amount set out in such notice), provided that notwithstanding anything to the contrary:

(a) in respect of the period prior to the expiry of the 5th year of the Lease Term (the "Cap Period"), The City's Share shall not exceed \$3 Million for each year during the Cap Period;
and

(b) during any Capital Improvement Extension Term The City's Share shall be \$0.00.

Any such lesser amount determined by the City Manager pursuant to this Section 3.4 shall be determined in his sole and unfettered discretion, provided that any such lesser amount shall be determined by reference to a percentage of the Ticket Price and the same percentage shall apply for all Tickets for all Events held at the Event Centre. Nothing herein shall compel or require the City Manager to make the same determination of The City's Share from year to year.

3.5 The City may, upon providing written notice to CSEC and CSERELP not less than 180 days prior to the commencement of any given Fiscal Period, request that the Facility Fee, The City's Share and/or the Residual Facility Fee be delineated on such tickets or other payment materials that

would otherwise set out the Ticket Price and Facility Fee for a Ticket, and CSEC and CSERELP, both parties acting reasonably, will use diligent efforts to comply with such request.

4. COLLECTION AND REMITTANCE OF FACILITY FEE

4.1 CSEC shall collect the Facility Fee as agent and trustee of The City for all Events held at the Event Centre during the Lease Term (including, for greater certainty, on all Tickets sold prior to the commencement of the Lease Term), provided however that the agency and trust relationship between CSEC and The City is restricted solely to the collection and remittance of the Facility Fee under this Agreement and is not intended for any other purpose. CSEC may authorize its Affiliates to collect the Facility Fee and remit it to The City on CSEC 's behalf.

4.2 The Parties will account for the Facility Fee as follows:

- (a) No later than the 30th day after the end of each Quarter during the Lease Term, CSEC will remit to The City an amount equal to the total Facility Fee collected in respect of Events held during the immediately preceding Quarter (subject to Section 4.2(b)), as adjusted to reflect refunds issued during such Quarter related to Tickets sold of Suite License Fees reported in a Ticket Sales Report in a previous Quarter, provided that at CSEC's option it may remit to The City the Facility Fee collected in respect of Suite License Fees when such Suite License Fees are paid to CSEC rather than when the Event(s) those Suite License Fees relate to are held (in which case any Suite License Fees paid to CSEC prior to the commencement of the Lease Term which CSEC wishes to remit the Facility Fee in respect of as aforesaid shall be deemed to have been collected during the first Quarter of the Lease Term and the Facility Fee in respect thereof shall be remitted with the first Quarterly remittance pursuant to this Section 4.2(a)). No later than the 30th day following termination of this Agreement, CSEC will remit to The City an amount equal to the total Facility Fee collected in respect of Events held during the period between the end of the immediately preceding Quarter and termination of this Agreement. The Parties acknowledge that the first such remittance following the commencement of the Lease Term and the last remittance following termination of this Agreement may be in respect of a period that is less than 3 months.
- (b) Within 30 days following the date CSEC remits the Facility Fee and the Ticket Sales Report to The City in respect of a Quarter, The City will provide written notice to CSERELP setting out The City's Share in respect of such Quarter and The City will, concurrent with delivery of such written notice, pay to CSERELP the Residual Facility Fee. The Parties acknowledge and agree that the Residual Facility Fee shall be paid to CSERELP on account of and used by CSERELP solely as follows:
 - (i) first, to reimburse CSERELP for all costs and expenses incurred by CSERELP in connection with Event Centre Initial Capital Costs;
 - (ii) once CSERELP has been reimbursed for all amounts set out in paragraph (i) above, to reimburse CSERELP for all costs and expenses incurred by CSERELP in connection with Event Centre Subsequent Capital Costs; and
 - (iii) once CSERELP has been reimbursed for all amounts set out in paragraphs (i) and (ii) above, any excess amount shall be retained by CSERELP to reimburse it for other costs and expenses incurred by CSERELP relating to the operation, maintenance and repair of, and the completion of improvements to, the Event Centre. Notwithstanding the foregoing or anything to the contrary, no portion of the Residual Facility Fee will be used to reimburse CSERELP, CSEC or any Affiliate of either of the foregoing, for operating expenses in respect of any sports team, including without limitation the Calgary Flames, the Calgary Hitmen, the Calgary Roughnecks or any successor franchise to any of the foregoing in the

National Hockey League, Western Hockey League or National Lacrosse League, respectively.

5. VERIFICATION

- 5.1 For the limited purposes of assisting The City in verifying the accuracy of the Facility Fee remitted by CSEC, CSEC shall, no later than the 30th day after the end of each Quarter during the Lease Term, submit a report ("**Ticket Sales Report**") signed by a duly authorized officer of CSEC which itemizes each of the following in respect of the immediately preceding Quarter:
- (a) the number of Events held;
 - (b) except with respect to annual rights to use a Suite and corresponding Suite License Fees (which shall be dealt with pursuant to Section 5.1(d)), for each Event, the Ticket Price(s), the number of Tickets sold at each Ticket Price, the aggregate of the Ticket Prices collected and the related Facility Fee applicable thereto;
 - (c) for each Event, the number of Complimentary Tickets granted;
 - (d) the number of annual rights to use a Suite that are granted in the Quarter, the Suite License Fees collected in the Quarter and the Facility Fee applicable thereto, and the aggregate Suite License Fees collected for the Fiscal Period and the aggregate Facility Fee applicable thereto;
 - (e) any refunds issued during such Quarter related to Tickets sold or Suite License Fees reported in a Ticket Sales Report in a previous Quarter;
 - (f) bad debts realized in such Quarter;
 - (g) the aggregate Facility Fee collected;
 - (h) a summary, together with reasonable supporting documentation and details, of CSEC's determination of:
 - (i) in respect of Suite License Fees, the amount reasonably attributable to the use of the Suite(s), together with a summary of the amounts paid in respect of the Suite(s) that are reasonably attributable to any additional right(s), good(s), benefit(s) or service(s) that are included in addition to the right to use the Suite(s);
 - (ii) in respect of Suite Rental Fees, the amount reasonably attributable to the use of the Suite(s), together with a summary of the amounts paid in respect of the Suite(s) that are reasonably attributable to any additional right(s), good(s), benefit(s) or service(s) that are included in addition to the right to use the Suite(s);
 - (iii) in respect of any Ticket Price referenced in Section 1.29(b), the amount reasonably attributable to admittance to the Event, together with a summary of the amounts paid in respect of an Event that are reasonably attributable to any additional right(s), good(s), benefit(s) or service(s) that are included in addition to admittance to the Event; and
 - (iv) in respect of any Ticket Price referenced in Section 1.29(c), the reasonable value of such Tickets; and
 - (i) any other information reasonably requested by The City to permit The City to verify the accuracy of the Facility Fee remitted by CSEC.

5.2 On or before the sixtieth (60th) day following the end of each Fiscal Period (including the last Fiscal Period during the term of this Agreement), CSEC shall deliver to The City, a written statement (the "**Annual Statement**") signed by a duly authorized officer of CSEC having knowledge of the matters set forth in the Annual Statement, which Annual Statement shall: (i) include a compilation of all Ticket Sales Reports delivered to The City for the preceding Fiscal Period, with any required corrections to the original Ticket Sales Reports delivered and a reconciliation of all such corrections; (ii) state that the Ticket Prices for all Tickets granted in respect of Events held during the preceding Fiscal Period as set forth in the Annual Statement delivered to The City in respect of the Fiscal Period are in all material respects true and accurate and in accordance with the definition of Ticket Price in Section 1.29 of this Agreement; (iii) state that the Suite License Fees and the Suite Rental Fees as set forth in the Annual Statement delivered to The City in respect of the Fiscal Period are in all material respects true and accurate and in accordance with the definitions of Suite License Fee and Suite Rental Fee respectively in Sections 1.25 and 1.26 of this Agreement; (iv) state that the Facility Fee remitted to The City by CSEC in respect of the Fiscal Period is in all material respects the true and accurate Facility Fee required to be remitted by CSEC to The City in accordance with the terms of this Agreement; (v) contain a certification that the Annual Statement is true and correct in all material respects; (vi) contain the information required by Section 6.3 relating to GST; and (vii) otherwise be in such detail and form as The City, acting reasonably, determines in order to verify the accuracy of the Facility Fee remitted by CSEC.

5.3 The Parties agree to the following regarding record keeping and the Ticket Sales Report:

(a) If The City or CSEC discovers an error or omission in a Ticket Sales Report or otherwise disputes any matter set out in a Ticket Sales Report, such Party (a "**Notifying Party**") shall provide written notice to the other Party (a "**Notified Party**") describing the error or omission or other dispute (including any supporting documentation if available) and any amounts to be adjusted and paid by The City or CSEC as a result of such error or omission or disputed matter (the "**Adjustment Notice**"). The Notified Party may, within thirty (30) days of the date of the Adjustment Notice, provide written notice to the Notifying Party disputing the Adjustment Notice (a "**Dispute Notice**"), failing which the Notified Party shall be deemed to have accepted the Dispute Notice and any amount to be adjusted and paid by The City or CSEC pursuant to the Adjustment Notice shall be paid within five (5) days of expiry of such thirty (30) day period. If the Parties cannot resolve such dispute within five (5) Business Days of a Party delivering a Dispute Notice to the other Party, or such longer period as the Parties may agree, then the matter shall be referred to the Chief Financial Officers (or their respective designates) of the Parties, who shall meet and make good faith efforts to resolve the dispute through without prejudice negotiations. If the Parties cannot resolve such dispute within ten (10) Business Days of the matter being referred to the Chief Financial Officers (or their respective designates), or such longer period as the Parties may agree, then the dispute shall be referred to dispute resolution in accordance with the terms of Article 13 of the Management & Lease Agreement, such provisions to be incorporated *mutatis mutandis* into this Agreement (except Sections 13.1 and 13.2 thereof shall not apply in respect of any dispute pursuant to this Section 5.3(a)). If either The City or CSEC fails to remit any amount owing as set out above within the time periods set out above (it being understood that any amount that is the subject of a Dispute Notice shall not be due until final determination of the dispute), interest shall accrue on such amounts at the Interest Rate from the date due to the date paid. An Adjustment Notice must be provided no later than two (2) years from the date the Ticket Sales Report is delivered to The City, provided however that if The City has commenced an audit pursuant to Section 5.3(d), the Parties shall each have a further period of six (6) months following the completion of such audit to issue the Adjustment Notice, failing which the Parties shall thereafter have no further claims under a Ticket Sales Report and such Ticket Sales Report shall be final and binding on the Parties.

(b) CSEC agrees to prepare and maintain all records and supporting documentation as may be reasonably required in order to prepare Ticket Sales Reports and ascertain the Facility

Fee collected and remitted in respect of each Fiscal Period for a period of at least seven (7) years following the date of each such Fiscal Period (or such longer period as may be required under applicable laws), such records and documentation to include all pertinent information which would normally be examined by an independent chartered professional accountant pursuant to accepted auditing standards in performing a detailed audit of the Ticket sales and Facility Fee applicable to the Event Centre. CSEC shall produce such records and documentation to any independent auditor appointed pursuant to Section 5.3(d).

- (c) The receipt or use by The City of any Ticket Sales Report or Annual Statement from CSEC or any remittance of the Facility Fee, The City's Share or the Residual Facility Fee based thereon, shall neither constitute acceptance of such statement or of the Facility Fee, The City's Share or the Residual Facility Fee to be remitted with respect to any period, nor constitute a waiver by The City of any obligation of CSEC hereunder and shall be without prejudice to The City's right to commence an audit pursuant to Section 5.3(d).
- (d) The City may, upon providing written notice to CSEC within two (2) years following the end of a Fiscal Period (an "Audit Notice"), cause an independent audit to be made verifying the accuracy of the information provided in the Annual Statement delivered by CSEC in respect of such Fiscal Period. Such audit shall be completed by an independent auditor or chartered professional accountant (the "Auditor"), from one of the five (5) largest accounting firms in Canada, who is contracted with in a manner other than on a commission basis (or a basis where compensation is based upon a percentage of the recoveries obtained), and who has been approved in writing by CSEC, acting reasonably. If the Parties cannot agree upon such Auditor within thirty (30) days of receipt of an Audit Notice, or such longer period as the Parties may agree, then: (i) within five (5) Business Days of the expiry of such thirty (30) day or longer period, each Party will submit in writing to the other Party, the names of no more than two (2) candidates for such Auditor who meet the requirements set out above; (ii) if a Party has an objection to a proposed Auditor, it will give written notice of such objection with reasons to the other Party; and (iii) if for any reason an Auditor has not been appointed within five (5) Business Days of the expiry of such thirty (30) day or longer period, then either Party may apply to the Court of Queen's Bench of Alberta for the appointment of such Auditor from among the proposed Auditors submitted by the Parties. CSEC shall make available to the Auditor such of CSEC's books and records relating to the Ticket Sales Reports and the determination of the Facility Fee and The City's Share as are reasonably required by the Auditor for the audit. Any report from the Auditor from time to time shall be delivered to each of the Parties. The cost of any such independent audit will be paid by The City unless the independent audit report reveals that The City's Share that was to be remitted to The City in respect of the immediately preceding Fiscal Period was higher than the amount actually remitted to The City in respect of such Fiscal Period plus \$20,000 (in respect of the First Fiscal Period, such \$20,000 to be increased annually for each subsequent Fiscal Period by the CPI Index Ratio), in which case CSERELP will be responsible for the full cost of the audit. The report of the Auditor from time to time is final and binding upon the Parties hereto.

5.4 CSEC and CSERELP take the position that the Ticket Sales Report, Annual Statement provided by CSEC, and any records, documentation or information obtained by The City as a result of an independent audit pursuant to this Agreement or otherwise obtained by The City and used by CSEC to prepare Ticket Sales Reports, Annual Statements and/or to ascertain the Facility Fee collected and to be remitted hereunder, is provided in confidence and that, if disclosed, the information would reveal commercial or financial information related to CSEC and CSERELP that could reasonably be expected to significantly harm the competitive position or significantly interfere with the negotiating position of CSEC and CSERELP, or result in undue financial loss.

5.5 This Article 5 shall survive the termination of this Agreement for a period of seven (7) years following the date of the last Event held at the Event Centre prior to termination of this Agreement.

6. Sales Taxes

- 6.1 In addition to any amount to be paid or remitted by a Party under this Agreement, such Party shall pay to the other Party hereunder, at the earlier of the time provided for by applicable laws or at the time such amount is required to be paid or remitted under this Agreement, all applicable Sales Tax calculated on or in respect of such amount.
- 6.2 CSEC shall be responsible for collecting any applicable Sales Tax for all Tickets sold for Events. For greater certainty, this includes collecting, as agent and trustee of The City, any applicable Sales Tax related to the Facility Fee, which CSEC shall remit to The City as required pursuant to Section 6.1. The City shall remit to CSERELP any applicable Sales Tax related to the Residual Facility Fee as required pursuant to Section 6.1. Each Party shall be responsible for remitting any Sales Tax collected by such Party pursuant to this Article 6 to the applicable authorities when due under applicable laws.
- 6.3 For purposes of monthly GST filing obligations of The City, within five (5) days following the end of each month, CSEC will provide a report to The City including an estimate of the Facility Fees collected in such month, the GST collected with respect to such Facility Fees and the revenues upon which such Facility Fees were assessed (the "**Monthly Estimated Amounts**"). In the Annual Statement to be delivered pursuant to Section 5.2, CSEC shall provide a reconciliation of the actual Facility Fees collected, the actual GST collected with respect to such Facility Fees and the revenues upon which such Facility Fees were assessed during the applicable Fiscal Period to the Monthly Estimated Amounts with sufficient detail to enable The City to include adjustments in its GST filings triuing up the amounts previously reported for such Fiscal Period based on the Monthly Estimated Amounts.
- 6.4 CSEC agrees to fully indemnify and save harmless The City for any tax assessments, levies, fines, or other cost or penalty incurred by The City as result of CSEC 's failure to fulfill its obligations under this Article 6, and The City agrees to fully indemnify and save harmless CSEC and CSERELP for any tax assessments, levies, fines, or other cost or penalty incurred by CSEC and/or CSERELP as result of The City's failure to fulfill its obligations under this Article 6.
- 6.5 This Article 6 shall survive termination of this Agreement until 30 days after the expiration of the last applicable limitation period under any applicable tax laws.

7. INDEMNITY

- 7.1 CSEC shall be liable to and shall defend, indemnify and hold harmless The City, its elected officials, officers, consultants, agents and employees (collectively the "**City Indemnified Parties**") from and against any and all claims, damages, suits, losses, costs, expenses, liabilities, fines, obligations, penalties, demands, actions or proceedings of any nature or kind whatsoever (including without limitation legal fees and disbursements on a solicitor/client full indemnity basis) of or by anyone whosoever, resulting from, or arising out of, directly or indirectly:
- (a) this Agreement and the rights and obligations of The City under this Agreement, including without limitation, the obligation to charge and collect the Facility Fee and remit the Residual Facility Fee;
 - (b) any negligent act or omission or wilful misconduct of CSEC, CSERELP or any of their respective directors, officers, servants, subcontractors, employees or any other persons for whom in law CSEC is responsible arising in connection with this Agreement or the performance of its rights and obligations hereunder;
 - (c) any breach or default by CSEC, CSERELP or any of their respective directors, officers, servants, subcontractors, employees or any other persons for whom in law CSEC or

CSERELP is responsible of any covenant, term or provision of this Agreement and in enforcing payment or in enforcing any other covenant, term, agreement or obligation to be observed or performed by CSEC or CSERELP contained in this Agreement if it is determined that CSEC or CSERELP defaulted in its obligations under this Agreement;

provided, however, CSEC shall not be liable to or indemnify or hold harmless the City Indemnified Parties to the extent contributed to or caused by the negligent act or omission or wilful misconduct of the City Indemnified Parties notwithstanding anything stated in this Section 7.1.

7.2 Section 7.1 shall survive termination or expiry of this Agreement for a period of seven (7) years.

8. DEFAULT

8.1 Any of the following occurrences or acts shall constitute a "Default" by The City, CSEC or CSERELP under this Agreement (a "Defaulting Party"):

- (a) failure to pay any amounts required to be paid or remitted by such Party under this Agreement within ten (10) days after receipt of notice in writing of such failure from any other Party; or
- (b) if any Event of Insolvency (as defined in the Management & Lease Agreement) occurs in respect of such Party; or
- (c) subject to Section 8.3, non-performance or non-observance by such Party of any of its other covenants, terms, agreements or obligations hereunder not specifically referenced in this Section 8.1 for thirty (30) days after receipt of notice in writing from any other Party of such failure (or, in case of a failure which cannot with diligence be cured within such thirty (30) day period if such Party shall not promptly proceed to cure such failure after receiving such notice and thereafter prosecute the curing of such failure with diligence, it being intended that in connection with a failure not capable of being cured within such thirty (30) day period the time within which to cure such failure shall be extended for such period as may be necessary to cure such failure with diligence).

8.2 CSEC and CSERELP acknowledge and agree that a Default under this Agreement shall be deemed to be an Event of Default under the Management & Lease Agreement.

8.3 If a notice of a Default is given by a non-Defaulting Party under Section 8.1(c), the Defaulting Party may, within thirty (30) days of receipt of such notice of Default, notify the non-Defaulting Party that it disputes the matters contained in such notice, in which case unless otherwise agreed the dispute shall be referred to dispute resolution in accordance with Section 9.6 of this Agreement, provided that the cure periods referred to in Section 8.1(c) shall be extended for so long as the dispute is being resolved in accordance with the provisions thereof. If such dispute is determined in a manner adverse to the Defaulting Party, wholly or in part, the Defaulting Party shall forthwith commence to correct the applicable Default promptly following the completion of such dispute resolution process and shall complete same within thirty (30) days after such determination (or if more than thirty (30) days are reasonable required to remedy such Default, commence to remedy same within such thirty (30) days and thereafter prosecute the same to completion within the time period determined as reasonable for such completion by the adjudicator of the dispute as part of their determination).

8.4 Without limiting any other rights or remedies available to The City at law or under this Agreement, in the event of a Default under Section 8.1(a) hereof which is not cured within the time limit set out therein for the curing of such Default, The City shall have the right to set-off all amounts owing to The City pursuant to this Agreement against any and all amounts owing from The City to CSEC or CSERELP pursuant to this Agreement (including interest at the Interest Rate accruing from the date such amount is due until paid or set-off as aforesaid).

8.5 Without limiting any other rights or remedies available to a non-Defaulting Party at law or under this Agreement, in the event of any of the following circumstances, a non-Defaulting Party may by notice in writing to the other Parties hereto, terminate this Agreement without the necessity of any other act or any suit or legal proceedings being brought or taken:

- (a) a Default under Section 8.1(a) hereof which: (i) was not cured within the time limit set out therein for the curing of such Default; (ii) is in respect of an amount owing in excess of \$100,000 (in respect of the First Fiscal Period, such \$100,000 to be increased annually for each subsequent Fiscal Period by the CPI Index Ratio); and (iii) is not cured within a further thirty (30) days after receipt of a further notice in writing from such non-Defaulting Party setting out the previous failure to cure and the non-Defaulting Party's intention to terminate this Agreement if such Default is not cured within such further thirty (30) day period;
- (b) a Default under Section 8.1(b) hereof;
- (c) three (3) or more Defaults in a given Fiscal Period by a Defaulting Party under Section 8.1(c) and/or Section 8.3 hereof which are not cured within the time limit set out therein for the curing of such Defaults.

8.6 Despite a termination pursuant to Section 8.5: (i) any right of action by either Party against the other in respect of any antecedent breach of the covenants, terms or provisions in this Agreement to be observed or performed shall not be prejudiced by the termination of this Agreement; and (ii) any non-defaulting Party shall nevertheless be entitled to sue for all damages arising from such Default and termination of this Agreement, subject only to such non-defaulting Party's obligation at law to mitigate its damages.

9. GENERAL

9.1 Notice in writing or other correspondence required or permitted to be given to either Party pursuant to this Agreement shall be sufficiently given when delivered to the following addresses (or to any other address or to the attention of any other person as may be designated in writing by a Party):

To The City: 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

To CSEC: Calgary Sports and Entertainment Corporation
555 Saddledome Rise SE
Calgary, Alberta T2G 2W1
Attention: President and Chief Executive Officer

To CSERELP: CSE Real Estate Limited Partnership
c/o Calgary Sports and Entertainment Corporation
555 Saddledome Rise SE
Calgary, Alberta T2G 2W1
Attention: President and Chief Executive Officer

Notice shall conclusively be deemed to have been given on the date of delivery.

- 9.2 This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein, and the Parties hereby irrevocably attorn to the jurisdiction of the Courts of the Province of Alberta.
- 9.3 Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, if either Party assigns its rights and obligations under the Management & Lease Agreement in accordance with the provisions thereof, then concurrent therewith such Party shall assign its rights and obligations under this Agreement to the assignee thereof (and the non-assigning Party shall consent to such assignment).
- 9.4 This Agreement will be binding on The City, CSEC and CSERELP and their respective heirs, executors, administrators, successors, including successors in title, and permitted assigns.
- 9.5 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 is governed by FOIP and may be eligible for disclosure in accordance with the requirements of same. In each case, if the City at any time receives a request for access to any information pursuant to FOIP, the City shall, unless prohibited by Applicable Law, (a) notify the Manager of the potential disclosure if and to the extent required by, and in accordance with, FOIP, (b) withhold any information as required by FOIP, and (c) limit disclosure to only what is required pursuant to FOIP. For clarity, the Parties acknowledge that this Agreement shall be made public. CSEC and CSERELP take the position that the disclosure of any records relating to this Agreement would reveal commercial or financial information related to CSEC and CSERELP that could reasonably be expected to significantly harm the competitive position or significantly interfere with the negotiating position of CSEC and CSERELP, or result in undue financial loss.
- 9.6 In the event of any dispute or disagreement 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"), such Dispute shall first be referred to the Oversight Committee appointed pursuant to the Management & Lease Agreement and if such Dispute cannot be resolved by the Oversight Committee within fifteen (15) days of such referral, then the Dispute shall be referred to dispute resolution in accordance with the terms of Article 13 of the Management & Lease Agreement, such provisions to be incorporated *mutatis mutandis* into this Agreement.
- 9.7 The waiver of any covenant, condition or provision of this Agreement must be in writing. The failure of any Party at any time to require strict performance by the other Party of any covenant, condition or provision of this Agreement shall in no way affect such Party's right thereafter to enforce such covenant, condition or provision, nor shall the waiver by any Party of any breach of any covenant, condition or provision hereof be taken or held to be taken as a waiver of any future breach of any such covenant, condition or provision.
- 9.8 An amendment of any term of this Agreement, including any schedule hereto, must be in writing and signed by the Parties.
- 9.9 Each of the Parties shall from time to time execute and deliver all further documents and instruments and do all things and acts as the other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 9.10 The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement. The reference to any legislation in this

Agreement shall be deemed to include all amendments thereto and all regulations thereunder and all statutes, including all amendments thereto and regulations thereunder, that may be substituted for that legislation.

- 9.11 Time is of the essence in this Agreement and no extension or variation of this Agreement operates as a waiver of this provision.
- 9.12 If there is a conflict between this Agreement and the Management & Lease Agreement, the provisions of this Agreement shall prevail.
- 9.13 Save and except for any provisions or covenants contained herein which are fundamental to the subject matter of this Agreement (including, without limitation, 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 applicable laws.
- 9.14 This Agreement may be executed in any number of original counterparts, all of which together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties have executed this Facility Fee Agreement.

**CALGARY SPORTS AND ENTERTAINMENT
CORPORATION AS GENERAL PARTNER FOR
AND ON BEHALF OF CALGARY FLAMES
LIMITED PARTNERSHIP**

Per: _____ "J. Bean"

Name: John Bean
Title: President and CEO

(Corporate Seal)

Per: _____ "K.M. King"

Name: Ken M. King
Title: Vice Chairman

We have authority to bind the corporation

**CSE REAL ESTATE CORPORATION AS
GENERAL PARTNER FOR AND ON BEHALF
OF CSE REAL ESTATE LIMITED
PARTNERSHIP**

Per: _____ "J. Bean"

Name: John Bean
Title: President and CEO

(Corporate Seal)

Per: _____ "K.M. King"

Name: Ken M. King
Title: Vice Chairman

We have authority to bind the corporation

| APPROVED AS TO CONTENT | INITIALS |
|--|----------|
| Bus. Unit: _____ Name: _____ | |
| APPROVED AS TO FORM BY LAW DEPARTMENT | INITIALS |
| Name: _____ Law File: _____ | |

THE CITY OF CALGARY

Per: _____ "D. Duckworth"
 Name: _____
 Title: _____

(Corporate Seal)

Per: _____ "L.M. Kennedy"
 Name: _____
 Title: _____