

**EVENT CENTRE
PROJECT FRAMEWORK 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 the CALGARY FLAMES LIMITED PARTNERSHIP**

MADE AS OF DECEMBER 5, 2019

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Date"). **THIS AGREEMENT** made as of the 5th day of December, 2019 (the "**Effective**

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**"),

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

AND WHEREAS the Parties acknowledge that various agreements are necessary to fund, design, permit, 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 and CSERELP are entering into this Agreement whereby both the City and CSERELP will contribute funds that will be used to design, permit, develop, and construct the Project, on the terms and conditions set out below;

AND WHEREAS the City's Contribution will be used to design, permit, construct and develop the Event Center, which the City will own, and CSERELP's Contribution is to acquire a leasehold interest in the Event Center 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 Center;

AND WHEREAS the following principles were approved by Council on July 30, 2018 in respect of the Event Centre:

- (i) the Event Centre should be a gathering place for all Calgarians that includes: concerts, assemblies, festivals, professional and amateur sports, linked to an outdoor gathering space;
- (ii) public funds must be used for public benefit, including improving access and availability for individuals and groups, while also providing economic benefits for the Calgary economy;
- (iii) the Event Centre must be a catalyst to attract further vibrancy and investment as an anchor for further development in a mixed-use neighbourhood;
- (iv) the Event Centre must be viable and sustainable as its own entity while contributing as part of a comprehensive master plan vision that supports The City of Calgary's planning objectives and enhances our communities' brand and reputation; and
- (v) there will be engagement with the public throughout the process whenever possible to ensure transparency;

AND WHEREAS the City and CSERELP will enter into the Development Management Agreement with CMLC whereby CMLC will undertake development of the Project as the development manager;

AND WHEREAS CSEC has agreed to provide a guarantee of the obligations of CSERELP hereunder in accordance with Article 14 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):

"Acceptable Credit Support" has the meaning ascribed thereto in Section 7.1(a);

"Additional Contribution" has the meaning ascribed thereto in Section 5.4(b)(iv);

"Advance" has the meaning ascribed thereto in the Development Management Agreement;

"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 Parties submitted to the Parties by the Development Manager in the form attached as Schedule E to the Development Management Agreement;

"Approved", "Approval", "Approved by the Steering Committee" or "Approval of the Steering Committee" means approved by, or the approval of, the Parties given as follows:

- (a) by resolution passed by the unanimous vote of all of the members of the Steering Committee present at a meeting of the Steering Committee pursuant to Section 6.11(b); or
- (b) by resolution in writing signed by all of the members of the Steering Committee then in office pursuant to Section 6.11(a); or
- (c) by the execution and delivery of an Approval Form by both Parties' members of the Steering Committee; or
- (d) by the execution and delivery of any other written approval by both of the Parties;

in each case except as otherwise provided herein, including pursuant to Section 6.13 in respect of a Defaulting Party;

"Approving Authorities" means the municipal and regulatory authorities having jurisdiction over the Subdivision and Permit applications and any Land Use Redesignation applications, or any of them as the context requires;

"Arbitration Court" has the meaning ascribed thereto in Section 11.5(b);

"Arbitration Notice" has the meaning ascribed thereto in Section 11.5(a);

"Award" has the meaning ascribed thereto in Section 11.5(f);

"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;

"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 the Development Management Agreement;

"City" means The City of Calgary and any successor thereto;

"City Additional Costs" means the following costs in respect of the Project or the Lands which are the exclusive responsibility of the City:

- (a) Excess Flood Mitigation Costs;
- (b) Excess Site Remediation Costs;
- (c) all costs relating to the performance of the City's obligations pursuant to Section 4.2, including any land value and land acquisition costs and any payment of cash in lieu of dedication of all reserve lands or other lands;

- (d) all costs of Sole Cost Items which are the responsibility of the City pursuant to Section 6.5, including any cost overruns in respect of such Sole Cost Items;
- (e) any offsite levies payable in respect of the Project;
- (f) 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;
- (g) Ineligible Costs solely attributable to the City;
- (h) all costs of any infrastructure on, under or relating to the Lands which is not required for purposes of the Project; and
- (i) any other costs designated as a City Additional Cost by the Steering Committee;

"City Administration" means administration staff of the City;

"City Event of Default" has the meaning ascribed thereto in Section 10.1;

"City Indemnity Beneficiaries" means the City and its elected officials, directors, officers, employees and agents;

"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 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 E 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;

"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;

"Communications Protocol" has the meaning ascribed thereto in the Development Management Agreement, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

"Community Grant Agreement" means the Community Grant Agreement dated December 5, 2019 between the City and the Calgary Flames Foundation, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

"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" has the meaning ascribed thereto in the Development Management Agreement;

"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, marketing plans, business strategies, trade secrets, present and proposed products, customer lists and information regarding customers and suppliers;

"Construction Conditions" has the meaning ascribed thereto in Section 3.4(a);

"Construction Contracts" has the meaning ascribed thereto in the Development Management Agreement;

"Construction Phase" means the period commencing with the decision Approved by or deemed to be Approved by the Steering Committee to proceed with the development, construction and continued funding of the Project upon satisfaction of all Construction Conditions;

"Construction Phase Commencement Date" means July 31, 2021, subject to extension pursuant to Section 3.5(c);

"Construction Phase Design Plans" has the meaning ascribed thereto in the Development Management Agreement;

"Construction Phase Project Budget" has the meaning ascribed thereto in the Development Management Agreement;

"Construction Phase Project Schedule" has the meaning ascribed thereto in the Development Management Agreement;

"Consulting Contracts" has the meaning ascribed thereto in the Development Management Agreement;

"Contribution Amounts" means, collectively, the City's Contribution and CSERELP's Contribution, as such terms are defined in Section 5.1, or either of them as the context requires;

"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 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;

"Control Agreement" has the meaning ascribed thereto in Section 7.1(h);

"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;

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

"CSEC Event of Default" means an event of default by CSEC under Article 14;

"CSEC's Teams" means the Calgary Flames of the NHL, the Calgary Hitmen of the WHL, the Calgary Roughnecks of the NLL and any other CSEC-owned sports teams;

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

"CSERELP Additional Costs" means the following costs in respect of the Project which are the exclusive responsibility of CSERELP:

- (a) Initial Fit Up Costs;

- (b) all costs of Sole Cost Items which are the responsibility of CSERELP pursuant to Section 6.5, including any cost overruns in respect of such Sole Cost Items;
- (c) any costs identified as CSERELP Additional Costs pursuant to Section 2.1(b);
- (d) Ineligible Costs solely attributable to CSERELP; and
- (e) any other costs designated as a CSERELP Additional Cost by the Steering Committee;

"CSERELP Event of Default" has the meaning ascribed thereto in Section 10.2;

"CSERELP Indemnity Beneficiaries" means CSERELP and CSEC and their respective directors, officers, employees and agents;

"Deadlock" means, with respect to a Major Decision, the members of the Steering Committee are deadlocked and are unable to reach a decision despite having formally considered the matter at two meetings of the Steering Committee;

"Defaulting Party" has the meaning ascribed thereto in Sections 6.13 and 10.6, and for purposes of Section 10.5 means: (i) CSERELP in the event this Agreement is terminated pursuant to Section 10.3(c) or (ii) the City if this Agreement is terminated pursuant to Section 10.4(c);

"Design Plans" has the meaning ascribed thereto in the Development Management Agreement;

"Development Management Agreement" means the Development Management Agreement dated December 5, 2019 among City, CSERELP, CMLC and CSEC or any other replacement development management agreement the Parties enter into in respect of the Project, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

"Development Manager" means the development manager for the Project appointed under the Development Management Agreement, which Development Manager will initially be CMLC;

"Disposition" has the meaning ascribed thereto in Section 15.3(b);

"Dispute" has the meaning ascribed thereto in Section 11.1;

"Dispute Notice" has the meaning ascribed thereto in Section 11.1;

"DP Condition" has the meaning ascribed thereto in Section 3.4;

"Eligible Cost Overrun" has the meaning ascribed thereto in Section 5.4;

"Eligible Costs" has the meaning ascribed thereto in Schedule D;

"Effective Date" has the meaning ascribed thereto on the first page of this Agreement;

"Environmental Condition" has the meaning ascribed thereto in Section 3.1;

"Event Centre" has the meaning ascribed thereto in Section 2.1(a);

"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 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 reorganization, 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);

"Excess Flood Mitigation Costs" means all Flood Mitigation Costs in excess of \$2,000,000;

"Excess Site Remediation Costs" means all Site Remediation Costs in excess of \$2,000,000;

"Expert" has the meaning ascribed thereto in Section 11.3;

"Expert Notice" has the meaning ascribed thereto in Section 11.3;

"Facility Fee Agreement" means the Facility Fee Agreement dated December 5, 2019 among City, CSERELP and CSEC, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

"Final Completion" has the meaning ascribed thereto in the Development Management 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;

"Fundamental Principles" has the meaning ascribed thereto in Section 2.4;

"Funding Party" has the meaning ascribed thereto in Section 5.4(b)(iv);

"General Construction Contract" has the meaning ascribed thereto in the Development Management Agreement;

"Good Industry Practice" has the meaning ascribed thereto in the Development Management Agreement;

"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); 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;

"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;

"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;

"Guarantee Obligations" has the meaning ascribed thereto in Section 14.1(a);

"Ineligible Costs" has the meaning ascribed thereto in Schedule D;

"Initial Fit Up Costs" means the first \$1,000,000 of Fit Up Costs incurred in respect of the retail components of the Event Centre;

"Initiating Party" has the meaning ascribed thereto in Section 11.5(a);

"Intellectual Property" means all 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;

"Interior Facility" means the approximate 18,000 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; but excluding the Secondary Facility;

"Land Use Redesignation" means a land use re-designation of the Lands (and all appeal periods in respect thereof having expired) to allow the use of the Lands for the purposes of the Event Centre;

"Lands" means the entirety of Plan "C", Blocks 92 and 95, and the portion of 13th Avenue SE that bisects Plan "C", Blocks 92 and 95, all in the City of Calgary, as shown for reference purposes in heavy black outline on the plan attached as Schedule A1 hereto; provided that, the exact area and dimensions of the Lands shall be determined according to the Subdivision Plan approved by the Approving Authorities and this definition of "Lands" shall upon registration of the Subdivision Plan, be deemed for all purposes under this Agreement to be the Lands set forth in the registered Subdivision Plan and the certificate of title issued by the Alberta Land Titles Office upon such registration;

"Letter of Credit" means an unconditional, irrevocable standby letter of credit from any one of the following banks listed under Schedule I to the *Bank Act* (Canada): The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, Royal Bank of Canada or Bank of Montreal, provided that the long term, senior unsecured

obligations of such issuing bank must have a credit rating equal to at least "A2" from Moody's Investor Services, Inc. or "A" from Standard and Poor's Financial Services LLC (the "**Required Rating**"); provided further that, in the event of a ratings downgrade at any time of the long term, senior unsecured obligations of the issuing bank which results in such issuing bank ceasing to have the Required Rating, such letter of credit shall be replaced, within 15 Business Days, with a letter of credit issued by a bank listed under Schedule I to the *Bank Act* (Canada) that meets the Required Rating or, if no such bank then meets the Required Rating, by such other bank or financial institution that meets the Required Rating; provided further that the letter of credit may be drawn upon if not so replaced within such 15 Business Day period and the proceeds thereof deposited into a cash collateral account established and maintained by the beneficiary thereof, such cash collateral to be returned to the applicable Party upon delivery of a replacement Letter of Credit issued by a bank or financial institution which meets the Required Rating;

"Major Decision" means the decisions and approvals from time to time respecting the substance of the following matters (and any capitalized terms used in this definition which are not otherwise defined in this Agreement shall have the meanings ascribed to them in the Development Management Agreement):

- (a) the Project Requirements;
- (b) each of the Risk Mitigation Plan, the Project Management Plan, and the Project Procurement Plan;
- (c) any determination with respect to the classification of Eligible Costs or Ineligible Costs (except for Ineligible Costs related to CMLC) and the classification of Project Costs as City Additional Costs, CSERELP Additional Costs or Eligible Costs;
- (d) the Project Budget and any matter or item relating to the Project that may affect the Project Budget;
- (e) the Design Framework, Design Plans and all Reviewable Design Data;
- (f) the Project Schedule;
- (g) the selection of the General Contractor, the terms of the General Construction Contract, any amendments to the General Construction Contract (other than Minor Change Orders) and any matter related to the enforcement or termination of the General Construction Contract or waiver of any rights or obligations thereunder;
- (h) the appointment and replacement of the Project Architect;
- (i) the Communications Protocol;
- (j) insurance related to the Project and the disposition of any insurance proceeds and the application of any condemnation award, including the settlement of any insurance proceeds in excess of thresholds as may be determined by the Steering Committee from time to time, or the settlement of any condemnation award with any condemning authority;

- (k) the execution of any Construction Contracts or Consulting Contracts, to the extent required by the Project Procurement Plan;
- (l) the making of any expenditure in the aggregate in excess of the threshold determined by the Steering Committee from time to time, unless such expenditure is specified in the Design Plans and Project Budget;
- (m) the execution and delivery of any guarantee, indemnity (other than customary indemnities included in any Construction Contract or Consulting Contract that is entered into in accordance with the Development Management Agreement) or similar agreement on behalf of the Parties;
- (n) the Site Remediation Program and any environmental matters relating to the Project;
- (o) the institution, defending or settlement of any litigation, action, arbitration or other proceeding related to the Project where the amount claimed or in dispute is in excess of the threshold determined by the Steering Committee from time to time;
- (p) the selection of auditors for the Project and, after any such selection, the determination to change the auditors (but not, for certainty, in respect of any auditor retained solely by a Party); and

any other matter that by the express terms of this Agreement or the Development Management Agreement requires the Approval of the Steering Committee or the Parties;

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

"Maximum Contribution Amount" means the maximum amount required to be contributed by each of the City and CSERELP for Eligible Costs incurred in connection with the Project, being:

- (a) in respect of the City, \$275,000,000, exclusive of GST; and
- (b) in respect of CSERELP, \$275,000,000, exclusive of GST;

which amounts, for greater certainty, do not include amounts contributed in respect of Ineligible Costs, City Additional Costs or CSERELP Additional Costs, as applicable;

"NHL" means the National Hockey League;

"NLL" means the National Lacrosse League;

"Non-Funding Party" has the meaning ascribed thereto in Section 5.4(b)(iv);

"Obligated Party" has the meaning ascribed thereto in Section 14.2(a);

"Overall Budget Limit" means \$550,000,000, exclusive of GST;

"Parking Agreement" means the Parking Rights and Revenue Sharing Agreement between Calgary Exhibition and Stampede Limited and CSERELP, dated December 5, 2019, as amended, modified, and supplemented from time to time in accordance with the provisions thereof

"Parties" means the City and CSERELP, and **"Party"** means any of them;

"Permits" has the meaning ascribed thereto in the Development Management Agreement;

"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 2.5;

"Pre-Construction Phase" means the period of time commencing with the preliminary decision Approved by or deemed to be Approved by the Steering Committee to proceed with the development, pre-construction and continued funding of the Project upon satisfaction of all Threshold Conditions;

"Pre-Construction Commencement Date" means July 31, 2020, subject to extension pursuant to Section 3.3(c);

"Preliminary Design Framework" has the meaning ascribed thereto in the Development Management Agreement;

"Preliminary Project Budget" has the meaning ascribed thereto in the Development Management Agreement;

"Preliminary Project Requirements" has the meaning ascribed thereto in the Development Management Agreement;

"Preliminary Project Schedule" has the meaning ascribed thereto in the Development Management Agreement;

"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 the Development Management Agreement and in Schedule A2;

"Project Account" has the meaning ascribed thereto in the Development Management Agreement;

"Project Budget" has the meaning ascribed thereto in the Development Management Agreement;

"Project Costs" means all Eligible Costs, City Additional Costs and CSERELP Additional Costs;

"Project Management Plan" has the meaning ascribed thereto in the Development Management Agreement;

"Project Plans" has the meaning ascribed thereto in the Development Management Agreement;

"Project Procurement Plan" has the meaning ascribed thereto in the Development Management Agreement;

"Project Requirements" has the meaning ascribed thereto in the Development Management Agreement;

"Project Schedule" has the meaning ascribed thereto in the Development Management Agreement;

"Proposing Party" has the meaning ascribed thereto in Section 6.5;

"Repayment Amount" has the meaning ascribed thereto in Section 5.4(b)(iv);

"Required Change Orders" has the meaning ascribed thereto in the Development Management Agreement;

"Responding Party" has the meaning ascribed thereto in Section 11.5;

"Risk Mitigation Plan" has the meaning ascribed thereto in the Development Management Agreement;

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

"Secondary Facility" means a separate community skating rink meeting NHL standards and quality, which facility may be included as part of the Event Centre pursuant to Section 2.1(b), and if so included, shall: (i) be designed as an integral part of the Event Centre and will include seating, and may include concourses and amenities which are shared with the Interior Facility and (ii) be located entirely within the Lands;

"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 the Development Management Agreement;

"Sole Cost Item" has the meaning ascribed thereto in Section 6.5;

"Steering Committee" has the meaning ascribed thereto in Section 6.7;

"Subdivision" the subdivision of the parcels comprising the Lands necessary to create a separate legal parcel and issuance of certificate of title for the Lands;

"Subdivision Approval" means approval by the relevant Approving Authorities of the Subdivision and the Subdivision Plan;

"Subdivision Approval Conditions" means, collectively, the terms and conditions imposed by the Approving Authorities in connection with the Subdivision Approval;

"Subdivision Plan" means the plan of subdivision Approved by the Steering Committee in accordance with this Agreement and by the relevant Approving Authorities which will, upon registration at the Land Titles Office, subdivide all parcels necessary to create the Lands as a separate legal parcel and result in the issuance of a separate certificate of title for the Lands;

"Tax Agreement" means the tax agreement dated as of December 5, 2019 between the City, CSERELP and the CSEC, as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof;

"Terminating Party" means the Party that has elected to terminate this Agreement pursuant to Section 10.3(c) or Section 10.4(c), as the case may be;

"Threshold Conditions" has the meaning ascribed thereto in Section 3.2(a);

"Turnover Date" has the meaning ascribed thereto in the Development Management Agreement; and

"WHL" means the Western Hockey League.

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 – Fundamental Principles
- Schedule C – Steering Committee Terms of Reference
- Schedule D – Eligible Costs and Ineligible Costs
- Schedule E – City Policies
- Schedule F – Form of Development Management Agreement

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
PROJECT DEVELOPMENT

2.1 Event Centre and Secondary Facility

- (a) The new event centre to be developed pursuant to this Agreement (the "Event Centre") is comprised of the following elements:
 - (i) the Interior Facility;
 - (ii) subject to Section 2.1(b), the Secondary Facility; and
 - (iii) all on-site parking (whether underground, at-grade or structured parking facilities);

all as more particularly described in Schedule A2; and also including, upon completion and Approval of any Project Plans, any other components of the Event Centre as may be set out such Project Plans.

- (b) Notwithstanding anything to the contrary in this Agreement or the Development Management Agreement, the Secondary Facility shall only be included in the Approved Design Plans and the Project Plans if all costs and expenses related to the design, construction and development of the Secondary Facility will not, after all other Project Costs have been calculated, finalized and included in the Project Budget, cause the Project Costs to exceed the Overall Budget Limit; provided however that if the inclusion of the Secondary Facility will result in the aggregate Project Costs exceeding the Overall Budget Limit and CSERELP nonetheless wishes for the City to proceed with the construction of the Secondary Facility, the City will contribute to the cost of the construction of the Secondary Facility on a 50/50 basis with CSERELP up to and to the extent only that the City's total contribution for the Project, after all other Project Requirements and Project components representing City Additional Costs have been accounted for, does not exceed the City's respective Maximum Contribution Amount. Any and all costs and expenses related to the design, construction and development of the Secondary Facility that exceed the City's maximum contribution as set out in this paragraph shall form part of CSERELP Additional Costs and CSERELP shall be solely liable for such funding costs and expenses notwithstanding that CSERELP's contribution to the Secondary Facility shall in such circumstances exceed 50%. The Secondary Facility shall in any event, if constructed, be wholly located within the Lands and shall form part of the Event Centre.

2.2 Project Development

The Parties agree, subject to and in accordance with the terms and conditions in this Agreement and the Development Management Agreement, for the City to proceed with the Project at the Lands and CSERELP to contribute funding to the Project in accordance with the Project Requirements and the Project Plans Approved by the Steering Committee from time to time and Section 2.4; provided that:

- (a) subject to Section 5.4:

- (i) the Eligible Costs shall not exceed the Overall Budget Limit; and
 - (ii) a Party shall not, in respect of Eligible Costs, be required to contribute more than its respective Maximum Contribution Amount; and
- (b) the Parties' obligations to proceed with the development, construction and continued funding of the Project is subject to the satisfaction or, if applicable, waiver of the:
 - (i) Environmental Condition on or before the date that is 15 days following receipt by the Parties of the Phase 1 & 2 Report;
 - (ii) Threshold Conditions on or before the Pre-Construction Commencement Date; and
 - (iii) Construction Conditions on or before the Construction Phase Commencement Date,

all in accordance with and as further described in Article 3.

2.3 Appointment of Development Manager

The Parties agree to jointly appoint CMLC as the Development Manager and to enter into the Development Management Agreement with CMLC, substantially in the form attached hereto as Schedule F.

2.4 Fundamental Project Principles

The Parties agree that they shall, and shall cause their respective member of the Steering Committee to, make decisions under this Agreement and the Development Management Agreement having regard to and which are generally consistent with the fundamental principles set out in Schedule B, as the same may be amended by the Steering Committee from time to time in accordance with Section 6.2(a) (the "Fundamental Principles").

2.5 Phase 1 & 2 Report

The Parties agree that promptly upon execution of this Agreement they shall cause the Development Manager to requisition a phase 1 and phase 2 baseline environmental assessment of the Lands (at the cost of the Development Manager) (the "Phase 1 & 2 Report") in accordance with and on the terms and conditions set forth in the Development Management Agreement.

2.6 Title to Lands and Event Centre

CSERELP and CSEC acknowledge and agree that the Event Centre and Lands shall be 100% owned by the City, and 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 CSERELP or CSEC, other than as expressly permitted in writing by the City.

2.7 Acquisition of a Leasehold Interest

Notwithstanding that CSERELP's Contribution will be used by the Development Manager to fund the design, permitting, construction and development of the Event Center, CSERELP's Contribution is to acquire a leasehold interest in the Event Center from the City pursuant to the Management and Lease Agreement, and CSERELP is acquiring the lease for purpose of subleasing the Event Center 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.

ARTICLE 3 CONDITIONS AND DECISIONS

3.1 Environmental Condition

- (a) Environmental Condition. The obligation of the Parties to proceed with the development and construction of the Project is subject to the fulfillment of the following condition (the "**Environmental Condition**") on or before the date that is 15 days following receipt by both Parties of the Phase 1 & 2 Report:
 - (i) each of the Parties shall in their sole and absolute discretion be satisfied with the Phase 1 & 2 Report and the condition of the Lands set forth in the Phase 1 & 2 Report.
- (b) The Environmental Condition shall be satisfied or deemed to be satisfied upon each of the Parties delivering to the other notice in writing that the Environmental Condition has been satisfied on or before that date that is 15 days following receipt by both parties of the Phase 1 & 2 Report or written notice of the waiver of such Environmental Condition being delivered in writing by both Parties on or before such date.
- (c) The Parties acknowledge and agree that the Environmental Condition may be waived by each of the Parties; provided however that if such Environmental Condition is not satisfied or waived by both Parties in accordance with Section 3.1(b) above, then such Environmental Condition shall be deemed not to be satisfied or waived.

3.2 Threshold Conditions

- (a) Threshold Conditions. The obligation of the Parties to proceed with the development, construction and continued funding of the Project is subject to the fulfillment of the following conditions (the "**Threshold Conditions**") on or before the Pre-Construction Commencement Date:
 - (i) the City shall have:
 - (A) completed the closing of the purchase of the Lands from Calgary Exhibition and Stampede Limited and the City shall be the fee simple registered owner of the Lands, free and clear of all liens, charges,

- mortgages and encumbrances (other than customary permitted encumbrances) whatsoever;
- (B) obtained Subdivision Approval (including the expiry of all appeal periods) in accordance with the terms of Section 4.2(a);
- (C) if required, as determined by the City, obtained all required approvals for Land Use Redesignation in accordance with the terms of Section 4.2(a);
- (ii) the Steering Committee shall have provided an Approval in respect of preliminary or early-stage versions of each of the following items (subject to the provisions of Section 6.12):
 - (A) Preliminary Project Requirements;
 - (B) Preliminary Design Framework;
 - (C) Preliminary Project Schedule;
 - (D) Preliminary Project Budget;
 - (E) Project Procurement Plan;
 - (F) Risk Mitigation Plan; and
 - (G) Project Management Plan; and
- (iii) the Steering Committee shall have Approved the Subdivision Approval Conditions which require the Approval of the Steering Committee pursuant to Section 4.2;
- (iv) the City shall have obtained all third party consents and approvals as may be required (as determined by the City) to terminate all agreements binding upon the City in respect of the Saddledome, such terminations to be effective on the dates determined by the City but in any event by no later than the Turnover Date (as determined in accordance with the Development Management Agreement).
- (b) Satisfaction/Waiver of Threshold Conditions. The Threshold Conditions shall be satisfied or deemed to be satisfied in accordance with the following:
 - (i) in respect of the Threshold Conditions described in Section 3.2(a)(i), upon the City delivering written notice to CSERELP confirming satisfaction of each such Threshold Condition on or before the Pre-Construction Commencement Date, which notice shall contain reasonable details and supporting information sufficient to allow CSERELP to confirm that such Threshold Conditions have been satisfied;
 - (ii) in respect of the Threshold Conditions described in Sections 3.2(a)(ii) and 3.2(a)(iii), upon Approval of the Steering Committee being delivered in

writing to both Parties on or before the Pre-Construction Commencement Date in respect of each of the matters set out therein or written notice of the waiver of any of such Threshold Conditions being delivered by both Parties on or before the Pre-Construction Commencement Date; and

- (iii) in respect of the Threshold Condition described in Section 3.2(a)(iv), upon the City delivering written notice to CSERELP confirming satisfaction of each such Threshold Condition on or before the Pre-Construction Commencement Date or the waiver of such Threshold Condition being delivered in writing by the City to CSERELP on or before the Pre-Construction Commencement Date.

The Parties acknowledge and agree that: (A) the Threshold Conditions set out in Section 3.2(a)(i) are for the mutual benefit of the Parties and cannot be waived, (B) the Threshold Condition set out in Section 3.2(a)(ii) may be waived by each of the Parties; provided however that if such Threshold Conditions are not satisfied or waived by both Parties in accordance with Section 3.2(b)(ii) above, then such Threshold Conditions shall be deemed not to be satisfied or waived, (C) the Threshold Condition set out in Section 3.2(a)(iii) may be waived by mutual agreement of the Parties; and (D) the Threshold Condition set out in Section 3.2(a)(iv) is for the sole benefit of the City and may be waived by the City; provided however that if such Threshold Condition is not satisfied or waived by the City in accordance with Section 3.2(b)(iii) above, then such Threshold Condition shall be deemed not to be satisfied or waived.

3.3 Pre-Construction Phase Commencement Decision

- (a) If all the Threshold Conditions have been satisfied or, if applicable, waived by the Pre-Construction Phase Commencement Date, the Parties shall be deemed to have made the decision to commence the Pre-Construction Phase on the Pre-Construction Commencement Date (or such earlier date as may be mutually agreed upon by the Parties).
- (b) The Parties may, subject to Section 3.2(b), mutually agree to make the decision to commence the Pre-Construction Phase prior to the satisfaction or, if applicable, waiver of the Threshold Conditions.
- (c) From time to time, the Parties may, upon mutual agreement in writing, extend the Pre-Construction Commencement Date for such period of time as they see fit (such extension period shall herein be referred to as an "**Extended Threshold Condition Period**"); provided however that the Parties shall agree to extend the Pre-Construction Commencement Date for a reasonable period of time if there is a reasonable prospect that the Threshold Conditions would be satisfied within such period.

3.4 Construction Conditions

- (a) Construction Conditions. The obligation of the Parties to proceed with the development, construction and continued funding of the Project is subject to the fulfillment of the following conditions (the "**Construction Conditions**") on or before the Construction Phase Commencement Date:

- (i) the Development Manager shall have obtained the development permit from the Approving Authorities (including the expiry of all appeal periods) required to proceed with the construction of the Project (the "**DP Condition**"); and
- (ii) the Steering Committee shall have provided an Approval in respect of each of the following items (subject to the provisions of Section 6.12):
 - (A) Project Requirements;
 - (B) Construction Phase Design Plans;
 - (C) General Construction Contract (either executed or in final form and in accordance with the Project Procurement Plan);
 - (D) Construction Phase Project Schedule; and
 - (E) Construction Phase Project Budget.
- (b) Satisfaction/Waiver of Construction Conditions. The Construction Conditions shall be satisfied or deemed satisfied in accordance with the following:
 - (i) in respect of the DP Condition, upon the Development Manager delivering written notice to the Parties confirming satisfaction of the DP Condition on or before the Construction Phase Commencement Date; and
 - (ii) in respect of the Construction Conditions described in Section 3.4(a)(ii), upon Approval of the Steering Committee being delivered on or before the Construction Phase Commencement Date in respect of each of the matters set out therein or written notice of the waiver of any of such Construction Conditions being delivered by both Parties on or before the Construction Phase Commencement Date.

The Parties acknowledge and agree that: (A) the DP Condition is for the mutual benefit of the Parties and cannot be waived and (B) the Construction Conditions set out in Section 3.4(a)(ii) may be waived by each of the Parties; provided however that if such Construction Conditions are not satisfied or waived by both Parties in accordance with Section 3.4(b)(ii) above, then such Construction Conditions shall be deemed not to be satisfied or waived.

3.5 Construction Phase

- (a) If all the Construction Conditions have been satisfied or, if applicable, waived by the Construction Phase Commencement Date, the Parties shall be deemed to have made the decision to commence the Construction Phase and proceed with the construction of the Project on the Construction Phase Commencement Date (or such earlier date as may be mutually agreed upon by the Parties).
- (b) The Parties may, subject to Section 3.4(b), mutually agree to make a decision to commence the Construction Phase prior to the satisfaction or, if applicable, waiver of the Construction Conditions.

- (c) From time to time, the Parties may, upon mutual agreement in writing, extend the Construction Phase Commencement Date for such period of time as they see fit (such extension period shall herein be referred to as an "**Extended Construction Condition Period**"); provided however that the Parties shall agree to extend the Construction Phase Commencement Date for a reasonable period of time if there is a reasonable prospect that the Construction Conditions would be satisfied within such period.

3.6 Acknowledgement Re: Effectiveness of Agreement

In consideration of the payment of TEN DOLLARS (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), each Party hereby acknowledges and agrees with the other Party that although the obligations of the Parties to proceed with the development, construction and continued funding of the Project is subject to the fulfillment of the Environmental Condition, Threshold Conditions and Construction Conditions:

- (a) the Environmental Condition, Threshold Conditions and Construction Conditions are not conditions to there being a binding agreement between the Parties on the terms and conditions set out in this Agreement; and
- (b) this Agreement is not void, voidable, revocable or otherwise capable of being terminated by any Party, until the time limited for the fulfilment or waiver of the Environmental Condition, Threshold Conditions or Construction Conditions (as applicable) has expired.

3.7 Failure to Satisfy Threshold or Construction Conditions

If the Environmental Condition is not satisfied or waived (or deemed to be satisfied or waived) in accordance with this Agreement on or before the date that is 15 days following receipt by both Parties of the Phase 1 & 2 Report, or any of the Threshold Conditions are not satisfied or waived (or deemed to be satisfied or waived) in accordance with this Agreement on or before the Pre-Construction Phase Commencement Date (or, if applicable, by the expiry of the Extended Threshold Condition Period), or if any of the Construction Conditions are not satisfied or waived on or before the Construction Phase Commencement Date (or, if applicable, by the expiry of the Extended Construction Condition Period), this Agreement shall terminate and the Parties shall have no further obligations or liabilities hereunder, except each of the Parties shall be responsible to pay Project Costs incurred to date in accordance with Article 5.

ARTICLE 4 DEVELOPMENT OBLIGATIONS

4.1 General Obligations of the Parties

- (a) Each Party agrees:
 - (i) to cooperate with the other in good faith in all matters necessary to enable the Parties to meet the goals and objectives of the Project and will endeavour to minimize sources of disagreement and take timely action before they become matters of Dispute;

- (ii) throughout the delivery of the Project, to use commercially reasonable efforts that are not limited to financial matters to:
 - (A) consider any input that it receives from the other Party;
 - (B) act in accordance with the best interests of the Project; and
 - (C) cooperate and provide reasonable assistance to the other Party in connection with the performance of the other Party's obligations set out in this Article 4; and
 - (iii) to cause its Steering Committee members to comply with the foregoing provisions and the requirements of this Agreement which pertain to such members.
- (b) Each Party shall use commercially reasonable efforts to satisfy all Threshold Conditions and Construction Conditions for which it is responsible, and in all other cases, to assist with the satisfaction of the Threshold Conditions and Construction Conditions, with the goal of satisfying such Threshold Conditions or on before the Pre-Construction Phase Commencement Date and satisfying the Construction Conditions on or before the Construction Phase Commencement Date.

4.2 City's Development Obligations

- (a) Subdivision Approval and Land Use Redesignation. The City shall:
- (i) upon execution of this Agreement, immediately (to the extent not already completed prior to execution) cause a tentative plan of subdivision for the Lands to be prepared and submit it to the Steering Committee for information;
 - (ii) upon execution of this Agreement, forthwith determine whether or not a Land Use Redesignation application is required in respect of the Lands in order for the use of the Lands for the purposes of the Event Centre;
 - (iii) apply for and continuously and diligently proceed with the Subdivision process to effect Subdivision as promptly as practicable and, if required apply for and continuously and diligently proceed with the Land Use Redesignation process to redesignate the zoning for the Lands as required as promptly as practicable;
 - (iv) forthwith upon receipt of detailed team review conditions from the Approving Authorities, submit copies of same to the Steering Committee for information;
 - (v) upon issuance of the Subdivision Approval Conditions, forthwith deliver to the Steering Committee for Approval, a copy of the Subdivision Approval Conditions which impact the functional design or operation of the Event Centre. The City shall additionally deliver to the Steering Committee for information any other relevant documents or correspondence including any agreements required by the Approving Authorities to be registered against

title to the Lands and any proposed modifications or additions that are required by the Governmental Authorities. If the Steering Committee does not provide Approval of the Subdivision Approval Conditions which impact the functional design or operation of the Event Centre, the Steering Committee shall determine whether or not it wishes to pursue any appeals and the City shall (or shall cause the Development Manager to) pursue any such appeals;

- (vi) be responsible for satisfying and performing all terms, conditions, obligations and requirements whatsoever relating to:
 - (A) the Subdivision Approval as set out in the Subdivision Approval Conditions, including the payment of cash in lieu of dedication of all reserve lands or other lands; and
 - (B) if applicable, the Land Use Redesignation;
 - (vii) following Subdivision Approval, cause the Subdivision Plan approved under Subdivision Approval to be submitted to the Alberta Land Titles Office, together with all required applications and documents for consolidation, and shall thereafter provide the Steering Committee with a copy of the certificate of title to the Land evidencing the registration of the Subdivision Plan and consolidation. Notwithstanding all provisions hereof, it is agreed that the Subdivision Plan is not required to be registered until the Construction Conditions have all been satisfied or waived.
- (b) Land Acquisition. The City shall use commercially reasonable efforts to acquire title to the Lands from Calgary Exhibition and Stampede Limited promptly following execution of this Agreement (subject to the terms of any agreements between the City and Calgary Exhibition and Stampede Limited).
- (c) Costs. The City shall be responsible for all costs in connection with the performance of its obligations in this Section 4.2, including any land value and land acquisition costs. For greater certainty, such costs shall not apply toward the Maximum Contribution Amount of the City and shall be City Additional Costs.

ARTICLE 5

PROJECT BUDGET AND FUNDING OBLIGATIONS

5.1 General Funding Obligation

- (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 (subject to Section 5.4) a maximum aggregate contribution equal to the City's 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 (subject to Section 5.4) a maximum aggregate contribution equal to CSERELP's Maximum Contribution Amount; and
 - (ii) 100% of all CSERELP Additional Costs incurred in connection with the Project,

(collectively, being "**CSERELP's Contribution**").

- (c) For greater certainty:
 - (i) 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 Maximum Contribution Amounts of the City and CSERELP;
 - (ii) the City's Contribution is made in consideration for the title and ownership of the Event Center and the Lands, as set out in Section 2.6 hereof; and
 - (iii) CSERELP's Contribution is to acquire a leasehold interest in the Event Center from the City pursuant to the Management and Lease Agreement, as set out in Section 2.7 hereof.
- (d) The Parties acknowledge that the City's Contribution and CSERELP's Contribution are exclusive of GST.

5.2 Initial Funding.

On or before 10 days from the Effective Date, the City and CSERELP shall each contribute funding for the Project in the amount of \$10,000,000, for an aggregate initial contribution of \$20,000,000. Such initial contribution shall be made for working capital purposes by way of deposit of funds to the Project Account and shall be utilized by the Development Manager strictly for Eligible Costs incurred in connection with the Project, and for greater certainty such initial contribution shall apply to the Maximum Contribution Amount of each of the City and CSERELP.

5.3 Payment of Project Costs and GST

- (a) The City and CSERELP will contribute funding equal to their share of respective Project Costs as set out in Section 5.1 to the Project Account, in accordance with the Development Management Agreement and will pay all required Advances pursuant to the Development Management Agreement.
- (b) 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 the other Party, 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 Act 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 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).

5.4 Budget Limit and Eligible Cost Overruns

- (a) The Parties will require the Development Manager to notify the Steering Committee if the Development Manager reasonably expects the Approved 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.
- (b) Subject to the obligation of the City to contribute funding for City Additional Costs and CSERELP to contribute funding for CSERELP Additional Costs, under no circumstances may the Eligible Costs exceed, in the aggregate, the Overall Budget Limit; provided that, if the Development Manager notifies the Parties that the total aggregate Eligible Costs necessary to complete the Project, including Required Change Orders, are likely to exceed the Overall Budget Limit (any such excess, an "**Eligible Cost Overrun**"), the City and CSERELP shall:
 - (i) *first*, determine if any allowances or contingency amounts allocated to the Project are available to satisfy the Eligible Cost Overrun and expend any such allowance or contingency, and if insufficient, then;
 - (ii) *second*, the Parties shall explore value engineering, mutually agreeable reductions in the scope of the Project and other cost mitigation strategies to determine if any such measures or strategies can be implemented to satisfy the Eligible Cost Overrun, and if such measures or strategies cannot be agreed to within 20 Business Days from the date the Development Manager notified the City and CSERELP of the Eligible Cost Overrun or are insufficient, then;

- (iii) *third*, determine if additional contributions are available from both the City and CSERELP, on a 50%/50% basis, to fund the Eligible Cost Overrun and expend any such additional funding. It is acknowledged and agreed that the determination of whether or not any additional contributions are available from: (i) the City will require Council approval and (ii) CSERELP will require approval of the board of directors of CSERELP's general partner. If such contributions are insufficient or unavailable (including if Council or the board of directors of CSERELP's general partner does not approve additional funding), then,
- (iv) *fourth*, a Party (the "**Funding Party**") may, at its sole option, elect to contribute funding for all or a portion of such unfunded Eligible Cost Overrun, up to a maximum aggregate amount of \$25,000,000 (the "**Additional Contribution**"), in which case the other Party (the "**Non-Funding Party**") shall pay or cause to be paid to the Funding Party an amount equal to 50% of the Additional Contribution (up to a maximum of \$12,500,000) (the "**Repayment Amount**"), such amount to be paid by way of: (A) if the City is the Funding Party, set-off against amounts payable to CSERELP under the Facility Fee Agreement; and (B) if CSERELP is the Funding Party, payment from the City from any entitlements which the City has and receives under the Facility Fee Agreement, provided that CSERELP shall have no right of set off against the City's entitlements under the Facility Fee Agreement in respect of such Repayment Amount; and if such funding is insufficient to satisfy the Eligible Cost Overrun or is unavailable, then,
- (v) *fifth*, the Project shall be suspended until the Parties mutually agree to a resolution to address the Eligible Cost Overrun.
- (c) The repayment provisions of Section 5.4(b)(iv) shall survive the termination or expiry of this Agreement. Notwithstanding anything else set forth herein, the City's rights and obligations pursuant to Section 5.4(b)(iv) are subject to Council approval.
- (d) All cost savings in respect of the Project Costs shall accrue to the benefit of both Parties, each as to a 50%/50% basis, except as are attributable to City Additional Costs or CSERELP Additional Costs, which costs savings shall accrue to the benefit solely of the Party responsible for contributing funding for such costs pursuant to this Agreement.

ARTICLE 6

ADMINISTRATION AND STEERING COMMITTEE

6.1 Decisions by the Steering Committee / Parties

- (a) All Major Decisions with respect to the Project are subject to Approval by the Steering Committee in accordance with Section 6.11. No action shall be taken, sum expended, decision made or obligation incurred by a Party in respect of any Major Decision unless such action, sum, decision or obligation is expressly permitted hereunder or shall have been first Approved by the Steering Committee.

- (b) The Steering Committee may, at any time, require the Development Manager to implement a Change Order as set forth in the relevant provisions of the Development Management Agreement.

6.2 Approval Requirements

- (a) The City and CSERELP agree that all decisions that are to be Approved by the Steering Committee shall require the unanimous approval of the voting members of the Steering Committee then in office given in accordance with Section 6.11.
- (b) Matters which are not referred to in the agenda of a meeting of the Steering Committee shall not be voted on at that meeting unless all the members consent. Any decisions that are Approved by the Steering Committee shall be binding on the Parties and shall constitute the Approval of the Steering Committee of any steps reasonably necessary to implement, perform or carry out such decision, and each of the City and CSERELP shall do all things and execute any and all deeds, transfers, agreements, and other documents reasonably required to carry out such decision.

6.3 Actions of the Parties and Committee Members

Each of the Parties agrees that, except where this Agreement or the Development Management Agreement provides that decisions of the City or CSERELP may be made in the sole discretion of such Party, in respect of its decisions under this Agreement or the Development Management Agreement, each of the City and CSERELP shall (and shall cause its Steering Committee members to) act reasonably, promptly, honestly and in good faith in accordance with the with this Agreement (including Section 2.4) and good business practices in connection with the Project and with regard to the best interests of the Project; provided that in no instance shall any Party be obligated to act in a manner which contravenes Applicable Laws, conflicts with the City Policies or the corporate or other policies of CSEC and its Affiliates, conflicts with the constating documents of a Party, creates any actual or potential adverse tax consequences to a Party or, in the case of the City, is inconsistent or conflicts with or is in contravention of any Council Event Centre Approvals.

6.4 Approval of Project Budget/Eligible Costs

- (a) It shall be reasonable for a Party's Steering Committee member to withhold its Approval of the Project Budget if the aggregate of such Party's Contribution Amount in respect of Eligible Costs exceeds the Maximum Contribution Amount.
- (b) It shall be unreasonable for a Party's Steering Committee member to withhold Approval of the items comprising the Eligible Costs or the Project Budget on the basis that it wishes to include in Eligible Costs any City Additional Costs, CSERELP Additional Costs or Ineligible Costs.
- (c) If the Eligible Costs set out in the Project Budget in respect of all Project Requirements Approved by the Steering Committee (other than elements relating to City Additional Costs, CSERELP Additional Costs and Ineligible Costs) do not exceed the Overall Budget Limit, the members of the Steering Committee shall be obligated to Approve the Project Budget and shall not have the discretion to withhold their Approval.

- (d) The City's Steering Committee member shall not have the discretion to withhold its Approval of the Project Budget in respect of any CSERELP Additional Costs and CSERELP's Steering Committee member shall not have the discretion to withhold its Approval of the Project Budget in respect of any City Additional Costs.

6.5 Sole Cost Items

If the Steering Committee, acting in accordance with Section 2.4, determines that a design feature, functional component, other specification or Change Order proposed by one Party (the "**Proposing Party**") or its Steering Committee member to be included in the Project Requirements, Preliminary Design Framework or Construction Phase Design Plans or otherwise incorporated in, or implemented in respect of, the Event Centre is not Approved, or it is otherwise determined pursuant to the Dispute resolution procedure in Article 11 that such feature, component, other specification or Change Order proposed by one Party is not to be included in the Project Requirements, Preliminary Design Framework or Construction Phase Design Plans or otherwise incorporated in, or implemented in respect of, the Event Centre, then, with the consent of the other Party (not to be unreasonably withheld, conditioned or delayed), the Proposing Party shall be entitled to have such feature, component, specification or Change Order (the "**Sole Cost Item**") included in the Project Requirements or Construction Phase Design Plans or otherwise incorporated in, implemented in respect of, the Event Centre, as the case may be, provided that the Proposing Party shall be responsible for all costs, fees and expenses in connection with such Sole Cost Item, including all cost overruns in respect of such Sole Cost Item. For greater certainty:

- (a) if CSERELP is the Proposing Party, such costs, fees and expenses shall not apply toward the Maximum Contribution Amount of CSERELP and shall be CSERELP Additional Costs; and
- (b) if the City is the Proposing Party, such costs, fees and expenses shall not apply toward the Maximum Contribution Amount of the City and shall be City Additional Costs.

6.6 Agreements in Writing

The execution of any contract or other document by the City and CSERELP shall constitute the Approval of the Parties of that contract or other document and all of its provisions. The receipt, review or Approval of the Parties of any contract or document shall not be deemed to be a representation or warranty that the Approved document complies with any Applicable Laws or is suitable for the Project.

6.7 Formation of Steering Committee

The City and CSERELP hereby form and establish a steering committee to oversee and provide direction and approval regarding any matters associated with the Project as set out in this Agreement (the "**Steering Committee**"). The Steering Committee shall remain in place until Final Completion has occurred and all Warranty Periods have expired.

6.8 Governance Support

Each of the Parties will support and contribute to the governance of the Project and facilitate communication among the Parties on matters related to this Agreement and the Development Management Agreement and the Project through participation in the Steering Committee.

6.9 Terms of Reference (Steering Committee)

The terms of reference for the Steering Committee, including the roles and responsibilities of the Steering Committee, are attached hereto as Schedule C.

6.10 Members (Steering Committee)

- (a) Members. Each of the City and CSERELP will appoint and have one member on the Steering Committee at all times. Each Party may designate an alternate natural person to act as a member of the Steering Committee in the absence from time to time of its appointed member. Each Party shall notify the other Party in writing of the name of its appointee and alternate. If a Party wishes to replace its member or alternate to the Steering Committee, it may do so in writing at any time and from time to time. Each member of the Steering Committee shall have authorization to act on behalf of the Party that appointed him or her. Until removed or replaced by its appointing body, the members of the Steering Committee will be:

(i) member for the City – Stuart Dalgleish; and

(ii) member for CSERELP – John Bean.

The Development Manager shall be entitled appoint a representative to attend all Steering Committee meetings, provided that such the Development Manager representative shall not be entitled to vote at any meeting of the Steering Committee or otherwise participate in providing Approvals.

- (b) Termination. The office of a member of the Steering Committee shall be vacated upon the occurrence of any of the following events:

(i) if he or she dies or a medical declaration or an order is made declaring him or her to be mentally incompetent or incapable of managing his or her affairs;

(ii) if he or she is removed from office by a written notice from the Party that appointed him or her; or

(iii) if by notice in writing to the Parties he or she resigns his or her office and such resignation, if not effective immediately, becomes effective in accordance with its terms.

- (c) Vacancies. Any vacancies in the Steering Committee shall be filled by the Party that appointed the former member of the Steering Committee whose loss of office created the vacancy within 5 Business Days following the creation of the vacancy. Such Party shall fill the vacancy by written notice stating the name and address of the natural person whom it appoints to the Steering Committee to fill the vacancy. Copies of such written notice shall be given to the other Party and the Development Manager and the natural person so appointed shall thereafter be a member of the Steering Committee.

6.11 Decision-Making

- (a) Decision-Making. The power of the Steering Committee may be exercised by resolution at a meeting at which a quorum of its members is present or by resolution in writing consented to by all of the members of the Steering Committee then in office if constituting a quorum, all in accordance with the terms of reference set forth in Schedule C. All decisions and determinations made by the Steering Committee shall constitute the Approval of the Steering Committee and shall be binding upon the Parties and may be implemented by the Steering Committee without any further approvals of the Parties.
- (b) Unanimous Vote. At all meetings of the Steering Committee, every question shall be decided by the unanimous vote of the members of the Steering Committee at the meeting, provided that a quorum is present in accordance with terms of reference set forth in Schedule C. The member of the Steering Committee appointed by the City shall be entitled to one vote and the member of the Steering Committee appointed by CSERELP shall be entitled to one vote. Any representative of the Development Manager at the meetings shall not be entitled to vote.
- (c) Compensation. No fees, salaries, expenses, commissions or other compensation shall be paid by the Parties as an Eligible Cost to the members of the Steering Committee in respect of their work on the Steering Committee.

6.12 Deadlock

If there is a Deadlock in respect of any of the matters to be Approved by the Steering Committee (including in respect of the Threshold Conditions set out in Section 3.2(a)(ii) or the Construction Conditions set out in Section 3.4(a)(ii)), the Parties shall submit such matter to the dispute resolution procedure set out in Article 11.

6.13 Defaulting Party

So long as a City Event of Default in respect of the City or a CSERELP Event of Default in respect of CSERELP or a CSEC Event of Default in respect of CSEC, in each case beyond all applicable cure periods, (as used in this Section, a "**Defaulting Party**") continues, the participation of the member of the Steering Committee representing such Defaulting Party (it being agreed that in the event of either a CSERELP Event of Default or a CSEC Event of Default, such member shall be the member representing CSERELP on the Steering Committee) shall not be required for any decisions to be Approved by the Steering Committee and, notwithstanding the provisions of this Article 6 and Schedule C, during such period, a quorum of the Steering Committee shall be one representative of the non-defaulting Party and the "Approval of the Steering Committee" may be given by the non-defaulting Party, acting alone; provided however that if the occurrence of a City Event of Default, a CSERELP Event of Default or a CSEC Event of Default is in Dispute, the provisions of this Section shall not apply until the Dispute is resolved. A Defaulting Party shall continue to receive notices of meetings of the Steering Committee and shall have the right to attend and participate therein, but shall not be entitled to vote.

6.14 Removal of the Development Manager

- (a) The Steering Committee may, by unanimous vote, elect to:

(i) terminate the Development Manager as the development manager for the Project and require the Development Manager to assign the Development Management Agreement to a replacement development manager; or

(ii) terminate the Development Management Agreement,

including in cases where the Development Manager has: (A) materially breached the Development Management Agreement, (B) committed an act of Gross Negligence or wilful misconduct and (C) acted outside of the Development Manager's scope of authority set out in the Development Management Agreement; provided that the Steering Committee members shall be required to act reasonably in making a decision to remove the Development Manager or terminate the Development Management Agreement. In the event the Development Management Agreement is terminated, the Parties shall use commercially reasonable efforts to enter into a replacement Development Management Agreement with a replacement Development Manager on terms which are substantially similar to the terms of the Development Management Agreement attached hereto. The Parties agree to make any consequential amendments to this Agreement which are required as a result of the Parties having entered into a replacement Development Management Agreement.

(b) Upon any termination of the Development Management Agreement, the replacement Development Manager shall be assigned the rights, and assume the obligations, of the terminated 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 the Development Manager in and to all reports, studies, models and other design materials relating to the Project; or

(iv) contracts entered into by the 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).

ARTICLE 7

SECURITY

7.1 Funding Security

(a) Within 10 Business Days of the Construction Phase Commencement Date, each Party shall, for the benefit of the other Party, deliver to the Development Manager (to be held by the Development Manager as agent for and on behalf of such other Party), and thereafter maintain, security in the form of cash, a pledge of a cash account (together with a Control Agreement in form and substance acceptable to the

other Party, acting reasonably) meeting the requirements set out in Section 7.1(g) below, a Letter of Credit naming the other Party as the beneficiary (and acknowledging the Development Manager's right to draw upon the Letter of Credit as agent for and on behalf of such other Party) and meeting the requirements set out in the definition of Letter of Credit in this Agreement or any other form of security acceptable to each of the Parties, securing the respective obligations of the Parties to contribute funding under this Agreement and the Development Management Agreement and to pay Advances under the Development Management Agreement, such Letter of Credit or other form of security having a face amount (or in the case of a cash account, being in an amount) of not less than \$75,000,000 (each "**Acceptable Credit Support**").

- (b) The Acceptable Credit Support provided by a Party may be:
 - (i) reduced to a face amount of \$50,000,000 once such Party has contributed funding on account of Eligible Costs in an amount of not less than \$100,000,000;
 - (ii) reduced to a face amount of \$25,000,000 once such Party has contributed funding on account of Eligible Costs in an aggregate amount of not less than \$125,000,000; and
 - (iii) fully released and returned to such Party once such Party has contributed funding on account of Eligible Costs in an aggregate amount of not less than \$175,000,000.
- (c) A Party may draw upon (or may direct the Development Manager to draw upon) the Acceptable Credit Support provided by the other Party in accordance with Article 10, and may make multiple draws on such Acceptable Credit Support. In the event of any drawing upon any Acceptable Credit Support, the Party which has provided such Acceptable Credit Support shall, subject to Section 7.1(b), be required to replenish the Acceptable Credit Support to the extent drawn.
- (d) If at any time:
 - (i) a Party fails to renew any Letter of Credit required to be maintained hereunder no later than ten (10) Business Days before its expiry; or
 - (ii) any Acceptable Credit Support fails to meet the requirements of this Article 7 (including in relation to the credit rating of the issuing bank referred to in the definition of Letter of Credit) and the applicable Party fails to provide a replacement Letter of Credit or other Acceptable Credit Support which meets the requirements of this Article 7 within 10 Business Days of being notified, or otherwise becoming aware, of such failure,

then the Development Manager, at the direction of the Party which is the beneficiary of such Acceptable Credit Support, shall be entitled to draw upon the full amount of the existing Acceptable Credit Support and the proceeds thereof deposited into a cash collateral account established and maintained by the Development Manager (as agent, for and on behalf of the Party which is the beneficiary of such Acceptable Credit Support), such cash collateral to be held for the same purpose as the

Acceptable Credit Support and to be returned to the other Party upon delivery of a replacement Letter of Credit issued by a bank or financial institution which meets the foregoing requirements of this Article 7 or other Acceptable Credit Support which meets the foregoing requirements of this Article 7.

- (e) Any costs associated with providing the Acceptable Credit Support in accordance with this Article 7 shall be for the account of the Party providing the Acceptable Credit Support and shall not be considered Eligible Costs or apply to the Maximum Contribution Amount of the applicable Party.
- (f) All interest earned, if any, on or in respect of any Acceptable Credit Support during the time it is held by the Development Manager will accrue for the benefit of the Party providing such Acceptable Credit Support.
- (g) Any pledge of a cash account by either Party for purposes of this Article 7 shall be subject to a Control Agreement.
- (h) For purposes of this Article 7, "**Control Agreement**" means an account control agreement to be executed among the Parties (which may include the Development Manager as agent for and on behalf of the Party which is the beneficiary of the Applicable Credit Support) and the applicable bank or financial institution, which agreement is made in order for the Party which is the beneficiary of the Applicable Credit Support to perfect its security interest in the applicable account through control.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the City

The City represents and warrants as of the date hereof as follows and acknowledges that CSERELP is 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;
- (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; and
- (e) the City 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.

8.2 Representations and Warranties of CSERELP

CSERELP 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) 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 limited partnership agreement of CSE Real Estate Limited Partnership or the constating documents or bylaws of CSERELP; 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 NHL, WHL, NLL or any other applicable sports association, league or body;
- (e) CSERELP has obtained all necessary approvals and consents from the NHL, WHL, NLL 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;
- (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; and
- (h) as of the Execution Date, there has been no Change in Control in CSERELP except as disclosed to the City prior to the Effective Date and no Change in Control in CSERELP shall occur during the term of this Agreement, except with the prior written consent of the City in accordance with Section 15.3.

ARTICLE 9

INDEMNITIES AND LIABILITY

9.1 Indemnity by the City

Subject to Section 9.3, the City will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the CSERELP Indemnity Beneficiaries (without duplication) of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the CSERELP 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 CSERELP Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

- (a) any material breach (including any payment default) 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 the Development Management Agreement (or both); and

- (b) any negligence or wilful misconduct of 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 or the Development Management Agreement (or both),

and will pay to the CSERELP 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 CSERELP 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 CSERELP Indemnity Beneficiaries of any of the terms and provisions of this Agreement or the Development Management Agreement (or both); or
- (ii) any negligent act or omission, or wilful misconduct of the CSERELP Indemnity Beneficiaries or Persons for whom they are respectively responsible at law.

9.2 Indemnity by CSERELP

Subject to Section 9.3, CSERELP will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the City Indemnity Beneficiaries of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the City 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 City Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

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

and will pay to the City 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 City 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 City Indemnity Beneficiaries of any of the terms and provisions of this Agreement or the Development Management Agreement (or both); or

- (ii) any negligent act or omission, or wilful misconduct of the City Indemnity Beneficiaries or other Persons for whom they are respectively responsible at law (except to the extent covered and paid by the insurance of CSERELP relating to the Lands or the Project).

9.3 Consequential Damages

Notwithstanding anything to the contrary contained in this Agreement, no Party (in this Section, the "**First Party**") will be liable to the 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.

9.4 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 Section 9.1 or 9.2. 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 9, the indemnities provided under this Article 9 shall not extend to any debt, cost, expense, claim or demand for which insurance proceeds have been recovered by the Indemnified Party under Project insurance policies which are placed for the benefit of the Project and the Parties pursuant to the Development Management Agreement. Subject to the exceptions in Section 9.1 and 9.2, for the purposes of the benefit of the indemnities and limitations of liability set out in this Article 9, 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 CSERLP and CSEC are hereby acting as agent or trustee on behalf of and for the benefit of their respective directors, officers, employees and agents.

9.5 Right to Contribution

- (a) Each Party (in this Section, the "**Indemnifying Party**") agrees with the other Party (in this Section, the "**Indemnified Party**") to be responsible for the Contribution Amount of the Indemnifying Party in all of the debts, liabilities, obligations, duties, agreements and expenses arising from or incurred in connection with the Project, whether present or future, provided that such debts, liabilities, obligations, duties, agreements and expenses have been Approved by the Steering Committee or have been properly incurred pursuant to this Agreement or the Development Management Agreement, including as may be payable or owed to a third party under Construction Contracts (collectively, in this Section, the "**Liabilities**").
- (b) Each Indemnifying Party shall at all times indemnify and save harmless each Indemnified Party from any and all Liabilities, to the extent of that portion of all Liabilities it has incurred and which is in excess of the Indemnified Party's share of the Liabilities (as contemplated in Section 5.1) and which has been paid or incurred by the Indemnified Party. Each Indemnifying Party shall reimburse, forthwith on demand, each Indemnified Party with respect to such portion, provided that no Party shall be entitled to be indemnified for any Liabilities to the extent that such Liabilities result from such Party's default or breach under this Agreement or the Development Management Agreement or from such Party's Gross Negligence or willful misconduct.
- (c) Each Indemnifying Party shall at all times indemnify and save harmless each Indemnified Party from any and all Claims suffered or incurred by the Indemnified Party arising out of the Indemnifying Party's separate debts, liabilities, obligations, duties and agreements, whether present or future, in each case not related to the Project.
- (d) For purposes of this Section 9.5 only, the reference to "**Contribution Amount**" and "Indemnified Party's share" shall be interpreted without regard to or the application of those provisions in Section 5.1 which would limit a Party's funding obligation to a maximum amount.

9.6 Duration

The indemnification obligations contained in this Article 9 shall survive the termination or expiry of this Agreement. Nothing in this Article 9 shall create or extend any right for the benefit of

any third party, except as expressly stated herein. Any indemnity payment required to be paid by a Party pursuant to this Article 9 shall be paid within 30 days after written notice and demand for payment is given by the other Party. If a Party denies that an indemnity payment is required to be paid by it pursuant to this Article, then either Party may refer that question to dispute resolution under Article 11 and, if the resolution of the dispute determines that an indemnity payment is required, the period of time for making the indemnity payment shall commence from the date that the dispute is resolved or an Award is granted, as the case may be.

ARTICLE 10

DEFAULT AND TERM OF AGREEMENT

10.1 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 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 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 any Disposition by the City in contravention of Section 15.3;
- (d) any failure by the City to comply with any determination, order or Award made and binding against the City in accordance with Article 11, which is not cured within 30 days after notice of such default has been given to the City by 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;
- (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 the other 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; or
- (f) the occurrence of an event of default by the City under the Development Management Agreement (defined as a "City Event of Default" under the Development Management Agreement).

10.2 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; or
- (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, 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 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 any Disposition by CSERELP or Change in Control of CSERELP in contravention of Section 15.3;
- (d) the loss or impairment of CSEC's franchise rights from the National Hockey League for any reason whatsoever such that CSEC does not have the right to operate the Calgary Flames professional hockey club in the City of Calgary;
- (e) any failure by CSERELP to comply with any determination, order or Award made and binding against CSERELP in accordance with Article 11; which is not cured within 30 days after notice of such default has been given to CSERELP by the City 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;
- (f) 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 the other 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; or
- (g) the occurrence of an event of default by CSERELP under the Development Management Agreement (defined as a "CSERELP Event of Default" under the Development Management Agreement).

10.3 Rights of the City Upon CSERELP Event Default

If a CSERELP Event of Default has occurred, the City shall have the right (but shall have no obligation) to take one or more of the following actions (without prejudice to any other right or remedy available to the City pursuant to this Agreement or at law or in equity):

- (a) if such CSERELP Event of Default is a payment default, draw down upon (or if applicable, direct the Development Manager to draw upon) the Acceptable Credit Support provided by CSERELP to the extent necessary to remedy such payment default;

- (b) if such CSERELP Event of Default is a payment default and the face amount remaining on the Acceptable Credit Support provided by CSERELP is insufficient to fully cure such payment default or such payment default occurs prior to CSERELP placing the Acceptable Credit Support in accordance with Section 7.1, maintain an action against CSERELP for any unpaid amounts and interest thereon (at the Bank Rate plus 5% per annum, calculated and payable monthly in arrears on the first Business Day of each and every month, both before and after judgment until fully paid), plus the costs of the action on a solicitor and client basis, on a continuing basis as such amounts are payable, but not paid by CSERELP, as if those payment obligations were liquidated damages due and payable on the relevant date they were due to be paid, without any right or resort of CSERELP to set-off or counterclaim;
- (c) if such CSERELP Event of Default is not a payment default (or is a payment default and the face amount remaining on the Acceptable Credit Support provided by CSERELP is insufficient to fully cure such payment default or such payment default occurs prior to CSERELP placing the Acceptable Credit Support in accordance with Section 7.1), terminate this Agreement by notice in writing to 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);
- (d) take all rights and remedies under, and otherwise enforce, the CSEC guarantee contained in Article 14 of this Agreement and, in the case of a CSERELP Event of Default under Section 10.2(g), the CSEC guarantee contained in the Development Management Agreement; and
- (e) take such other action as the City deems appropriate to attempt to cure the default in question, the City's costs in respect of which shall be payable by CSERELP on demand and secured by the Acceptable Credit Support provided by CSERELP and shall bear interest from the date incurred to the date paid at the rate of 5% per annum in excess of the Bank Rate (both before and after judgment until fully paid).

10.4 Rights of CSERELP Upon City Event Default

If a City Event of Default has occurred, CSERELP shall have the right (but shall have no obligation) to take one or more of the following actions (without prejudice to any other right or remedy available to CSERELP pursuant to this Agreement or at law or in equity):

- (a) if such City Event of Default is a payment default, draw down upon (or if applicable, direct the Development Manager to draw upon) the Acceptable Credit Support provided by the City to the extent necessary to remedy such payment default;
- (b) if such City Event of Default is a payment default and the face amount remaining on the Acceptable Credit Support provided by the City is insufficient to fully cure such payment default or such payment default occurs prior to the City placing the Acceptable Credit Support in accordance with Section 7.1, maintain an action against the City for any unpaid amounts and interest thereon (at the Bank Rate plus 5% per annum, calculated and payable monthly in arrears on the first Business Day of each and every month, both before and after judgment until fully paid), plus the costs of the action on a solicitor and client basis, on a continuing basis as such

amounts are payable, but not paid by the City, as if those payment obligations were liquidated damages due and payable on the relevant date they were due to be paid, without any right or resort of the City to set-off or counterclaim;

- (c) if such City Event of Default is not a payment default (or is a payment default and the face amount remaining on the Acceptable Credit Support provided by the City is insufficient to fully cure such payment default or such payment default occurs prior to the City placing the Acceptable Credit Support in accordance with Section 7.1), terminate this Agreement by notice in writing to the City, 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) take such other action as CSERELP deems appropriate to attempt to cure the default in question, CSERELP's costs in respect of which shall be payable by the City on demand and secured by the Acceptable Credit Support provided by the City 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.

10.5 Compensation and Obligations Upon Termination

- (a) If the City terminates this Agreement pursuant to Section 10.3(c) or if CSERELP terminates this Agreement pursuant to Section 10.4(c), then the Defaulting Party shall, at the option of the Terminating Party, either:
 - (i) if the Terminating Party is completing the Event Centre, pay the Terminating Party a termination payment in an amount equal to all Project Costs and Eligible Cost Overruns the Defaulting Party would reasonably have been expected to be responsible for in accordance with this Agreement had the Agreement not been terminated less an amount equal to all Project Costs and Eligible Cost Overruns actually funded by the Defaulting Party; or
 - (ii) pay the Terminating Party a termination payment in an amount equal to all Project Costs funded by the Terminating Party up to the date of such termination (provided that the amount payable in respect of such Project Costs shall not in any event exceed the amount of any termination payment that would have been payable under Section 10.5(a)(i)) plus all costs and expenses reasonably expected to be incurred by the Terminating Party as a result of such termination;
- and any such termination payment shall be paid by the Defaulting Party to the Terminating Party within 30 days after the date on which the Terminating Party notifies the Defaulting Party of whether it has elected to receive the termination payment in Section 10.5(a)(i) or 10.5(a)(ii).
- (b) If CSERELP is the Terminating Party and it elects receive the termination payment in Section 10.5(a)(i), then the City shall:
 - (i) provide CSERELP with unfettered access to the Lands for purposes of completing the Project, and the Management and Lease Agreement, Tax Agreement, Parking Agreement, Facility Fee Agreement and Community

Grant Agreement (and any other Project agreement designated by CSERELP) shall remain in full force and effect; and

- (ii) if requested by CSERELP and for nil consideration, assign its entire interest in the Development Management Agreement and any contracts thereunder to CSERELP.
- (c) If the City is the Terminating Party, then CSERELP shall, if requested by the City and for nil consideration, assign its entire interest in the Development Management Agreement and any contracts thereunder.
- (d) The provisions of this Section 10.5 shall survive the termination of this Agreement indefinitely.

10.6 Rights against a Non-Funding Party

If any Party (as used in this Section, the "**Defaulting Party**") refuses or fails to make a payment that is required under Article 5 or otherwise pursuant to this Agreement or the Development Management Agreement or that is otherwise Approved by the Steering Committee, then the other Party (as used in this Section, the "**Non-Defaulting Party**") may, but is not required to, make all or any part of the payment required to be made by the Defaulting Party, provided that the Non-Defaulting Party has made its own concomitant payment (if any). Notwithstanding anything contained in this Agreement, the City's right to make any such payment or to cure any financial defaults of any other Party is subject at all times to Council Approval. If the Non-Defaulting Party elects to make all or any part of the payment required to be made by the Defaulting Party (the "**Deficiency Payment**") on behalf of and for the account of the Defaulting Party, then:

- (a) the Defaulting Party shall continue to be a Defaulting Party; and
- (b) the Defaulting Party shall pay or cause to be paid, within 10 Business Days following written demand therefor, to the Non-Defaulting Party:
 - (i) the amount of the Deficiency Payment;
 - (ii) the reasonable costs (other than interest) of the Non-Defaulting Party relating to obtaining monies to make the Deficiency Payment; and
 - (iii) interest on the amount of the Deficiency Payment outstanding from time to time equal to the Bank Rate plus 5% per annum, calculated and payable monthly in arrears on the first Business Day of each and every month (both before and after judgment until fully paid).

10.7 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.

ARTICLE 11

DISPUTE RESOLUTION

11.1 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 or a Deadlock on a Major Decision (each a "**Dispute**") that cannot be resolved by the Steering Committee will be referred to the City Manager and the Chairman of the Board of CSERELP's general partner for resolution. This process may be triggered by any Party providing written notice to the other Party (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.

11.2 Negotiation

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

11.3 Expert Mediation

If the Dispute is not resolved pursuant to Section 11.2 to the mutual satisfaction of the Parties within 10 Business Days of a Party delivering a Dispute Notice to the other Party, or such longer period as the Parties may agree, a Party may by notice to the other Party (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 will submit in writing to the other Party, 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 has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other Party;
- (c) if for any reason within 5 Business Days of the delivery of an Expert Notice, an Expert has not been appointed, then either Party 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 equally by the 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 Party;

- (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 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 of the signing by the Expert and both 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 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 11.3 will be confidential and all information, data or documentation disclosed or delivered by either 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.

11.4 Commencement of Arbitration

If the Dispute is not completely resolved by agreement between the Parties within 10 Business Days of the receipt of the Expert's decision or analysis pursuant to Section 11.3 (or such longer period as the Parties 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 11.3, or if neither Party elects to issue an Expert Notice pursuant to Section 11.3, then a Party may commence proceedings to have the Dispute finally settled by arbitration under Section 11.5. 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.

11.5 Arbitration Procedure

If a Party is entitled under Section 11.4 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 Person 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 hereto (the "**Responding Party**");
- (b) within 10 Business Days following the delivery of such notice, the Initiating Party and the Responding Party shall meet and attempt to appoint a sole arbitrator. If the Initiating Party and the Responding Party 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 Party 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 the Initiating Party and the Responding Party 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 Party 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 Party 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 Party as to the question or questions so submitted to arbitration and the Initiating Party and the Responding Party shall be bound by the Award and comply with the terms and provisions thereof.

11.6 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.

11.7 Payments Not Suspended

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.

11.8 Continuation of Work During Dispute

Notwithstanding any Dispute, the development, design and construction of the Event Centre shall continue, to the extent commercially reasonable to do so in light of the Dispute in question, in accordance with the terms of this Agreement and the Development Management Agreement.

ARTICLE 12

CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

12.1 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 are governed by FOIP and may be eligible for disclosure in accordance with the requirements of same. 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 Party 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.

12.2 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. CSERELP agrees that the City may disclose any and all information it has in its power or control pertaining to this Agreement and the Project to 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, acting reasonably.

12.3 Disclosure of Information

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

- (a) disclosures of information contemplated in Sections 12.1 and 12.2;
- (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.

12.4 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.

12.5 Improper Disclosure or Use

Improper disclosure or use of Confidential Information may cause irreparable harm to the City or CSERELP, 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.

12.6 Indemnity

Each Party will indemnify and save the other Party 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 Party as a consequence of the disclosure by the indemnifying Party of the Confidential Information of the other Party contrary to the terms of the Agreement.

ARTICLE 13 **INTELLECTUAL PROPERTY**

13.1 Ownership of Intellectual Property

Any Intellectual Property developed in connection with the Project shall, where possible and practical, be jointly owned by the Parties and if not possible and practical, such Intellectual Property shall be owned by the City and the City shall grant CSERELP a royalty-free, non-exclusive and fully paid up licence to use such Intellectual Property. Other than in connection with the Project, neither Party shall be entitled to use such Intellectual Property except and to the extent agreed to by the Parties.

ARTICLE 14 **CSEC GUARANTEE**

14.1 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 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 CSERELP under this Agreement (collectively the "**Guaranteed Obligations**").
- (b) If any or all of the Guaranteed Obligations are not duly paid or performed by CSERELP and are not paid or performed by CSEC under Section 14.1(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 CSERELP to pay or perform such Guaranteed Obligations, other than any Guaranteed Obligations for which CSERELP has a defense or are otherwise not enforceable against CSERELP unless, in any such case, such defence or unenforceability is as a result of an Event of Insolvency in respect of CSERELP.

14.2 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 CSERELP or of or any other Person liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting CSERELP 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 CSERELP, 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).

14.3 Defenses Waived

To the fullest extent permitted by Applicable Law, CSEC hereby waives any defense based on or arising out of any defense of CSERELP 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 CSERELP 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.

14.4 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 CSERELP or any other indemnifier or guarantor or any other Person;
- (b) proceed against or exhaust any security given by CSERELP 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 CSERELP or any other Person and regardless of any release or discharge of CSERELP by the City or by others or by operation of any law,

before making a claim hereunder against CSEC.

14.5 Demand

If any Guaranteed Obligation is not performed or paid for any reason whatsoever when due or payable by CSERELP, 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.

14.6 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 CSERELP and CSEC have fully performed all of the obligations, provisions and covenants to be performed by CSERELP under this Agreement.

14.7 Information

CSEC assumes all responsibility for being and keeping itself informed of CSERELP'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.

14.8 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, constituting 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.

14.9 Additional Covenants of CSEC

CSEC acknowledges and agrees that the provisions of each of Article 12 (Confidentiality and Freedom of Information and Protection of Privacy Act), Section 15.3 (Successor and Assigns), Section 15.9 (Rivers District Endorsement) and Section 15.10 (Conflict of Interest) of this Agreement shall apply to CSEC, *mutatis mutandis*, and CSEC covenants to comply with the provisions thereof.

14.10 Defaults by CSEC

CSEC and CSERELP each agree that if any of the Events of Default described in Sections 10.2 (a), (b), (c), (d), (e) and (g) 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 14.12 is breached, then, in any such case, an Event of Default shall be deemed to have occurred in respect of CSERELP pursuant to such applicable Section.

14.11 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).

14.12 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 a written covenant from such transferee that it shall assume and be bound by the covenants in this Article 14.

14.13 Survival

The provisions of this Article 14 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.

ARTICLE 15 GENERAL

15.1 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 which results in a written or printed notice 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, 400-3rd 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, 400-3rd 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 if not, the next following Business Day), or if mailed as aforesaid, the date of delivery by the postal authority.

15.2 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.

15.3 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 Party, which consent may be withheld or conditioned in the sole subjective and absolute discretion of the other Party, 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 Party shall, in addition to all other rights and remedies of the other Party 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 Party arising from the Disposition. 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 Party (in form satisfactory to the other Party, 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 Party consents to such release in writing).
- (c) 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 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 15.3(c), 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.
- (d) 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.

15.4 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.

15.5 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 and CSERELP or their respective solicitors.

15.6 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.

15.7 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.

15.8 Reporting as a Civic Partner and on the Use of Public Funds

As a 'Partner' under the *Investing in Partnerships Policy* (CP2017-01), CSERELP may be requested to participate in an annual corporate reporting process. If and to the extent so requested to participate, CSERELP shall participate as required.

15.9 Rivers District Endorsement

From and after the date of this Agreement, CSERELP and CSEC agree they shall publicly and privately support, endorse and promote the Rivers District and the proposed vision and development thereof. Without limiting the generality of the foregoing, CSERELP and CSEC agree they shall utilize its media capabilities to positively profile and promote the Rivers District by, without limitation, including such positive profiling and promotion as part of their marketing in respect of the Event Centre.

15.10 Conflicts of Interest

The Parties acknowledge that CMLC is an Affiliate of the City and that, accordingly, (i) the City, in its capacity as a Party under this Agreement, has a conflict of interest with respect to matters involving CMLC, including any termination of CMLC hereunder or under the Development Management Agreement, and (ii) CMLC has a conflict of interest with respect to matters involving

the City in its capacity as a Party under this Agreement. CSERELP hereby waives any such conflicts of interest and any right to make any claim arising therefrom and the City and CSERELP agrees that under the Development Management Agreement CMLC shall be deemed to be acting as an independent legal entity from the City (and not an Affiliate).

15.11 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.

15.12 Survival of Covenants

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

15.13 Waivers

No failure by the City or CSERELP 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.

15.14 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.

[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 "D. Duckworth"
Name:
Title:

by "L.M. Kennedy"
Name:
Title: City Clerk

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

by "J. Bean"
Name: John Bean
Title: President and CEO

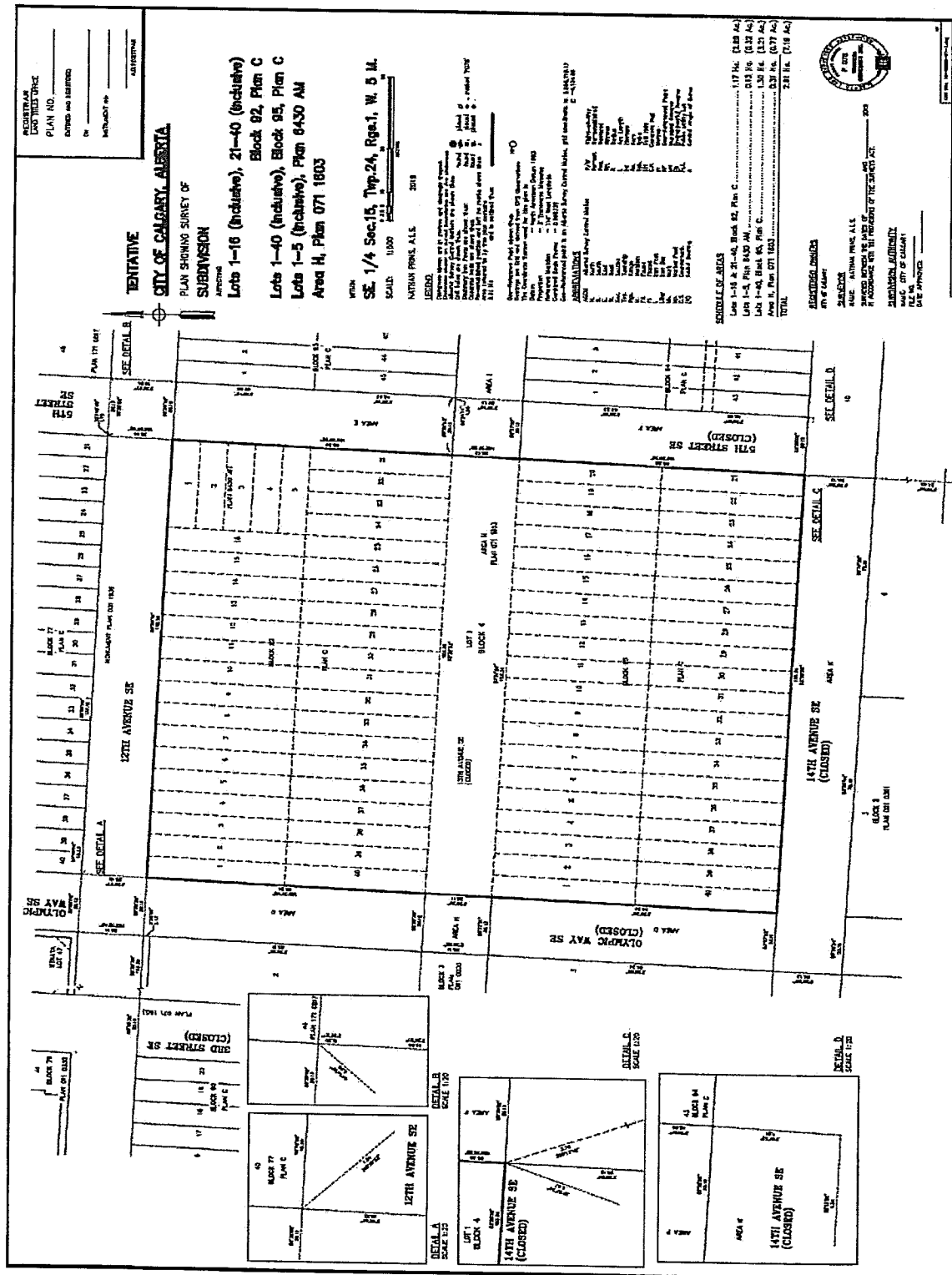
by "K.M. King"
Name: Ken M. King
Title: Vice Chairman

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

by "J. Bean"
Name: John Bean
Title: President and CEO

by "K.M. King"
Name: Ken M. King
Title: Vice Chairman

LANDS



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 13th Avenue SE in the River District and is approximately 6.9 acres bounded by Stampede Trail/Olympic Way – 4th Street SE on the West, 5th Street SE on the East, 12th Avenue SE on the North and 14th Avenue SE on the South.

SCHEDULE B

FUNDAMENTAL PRINCIPLES

In addition to Section 4.1 of the Agreement, and in compliance with Section 2.4, the Steering Committee will make all decisions under this Agreement and Development Management Agreement having regard to and which are generally consistent with the following fundamental principles:

- (a) the Project will adhere to the Council Event Centre Approvals and City Policies;
- (b) the Event Centre will, where prudent and in keeping with the Overall Budget Limit and other provisions of this Agreement and the Development Management Agreement:
 - (i) meet, and where prudent exceed, the current NHL, WHL and NLL facility and operations standards;
 - (ii) be designed and constructed:
 - (A) with a view to optimize arena revenues for NHL events, WHL events, NLL events and other events (such as concerts, assemblies and festivals);
 - (B) as a state-of-the-art, multi-purpose facility with design features, functional components and specifications that, where appropriate and prudent, are comparable to those consistently found in Comparable Event Centres, subject to such differences as would apply due to differences in the Calgary market, climate and urban environment;
 - (iii) foster a sense of community that, while distinctive in its own aesthetic, is complimentary to the River District neighbourhood (for example, the architectural and visual design of the Event Centre and related facilities shall be consistent with the quality and standard evident in other recent buildings and developments in the Rivers District);
 - (iv) provide for a sustainable business model with a view to optimizing profitability through revenue optimization and cost minimization within the Overall Budget Limit;
 - (v) be "fan-centric" with a view to exceeding fan expectations in all areas of the guest experience;
 - (vi) be "right sized" for the Calgary market, housing approximately 18,000 seats and a maximum of 19,000 seats for NHL hockey, including suite and premium products that will meet current demand for such suites and products and allow for flexibility in the future as the market changes and evolves;

- (vii) incorporate, where prudent and in keeping with the Overall Budget Limit, appropriate technologies and design elements to the advantage of CSEC's Teams and will provide a competitive advantage in favour of CSEC's Teams;
 - (viii) be environmentally responsible and designed to be operationally efficient in all aspects;
 - (ix) be a gathering place for all Calgarians that includes: concerts, assemblies, festivals, professional and amateur sports, linked to an outdoor gathering space;
 - (x) be viable and sustainable while contributing as part of a comprehensive master plan vision that supports The City of Calgary's planning objectives and enhances Calgary communities' brand and reputation; and
 - (xi) be a catalyst to attract further vibrancy and investment as an anchor for further development in a mixed-use neighbourhood;
- (c) Public funds must be used for public benefit, including improving access and availability for individuals and groups, while also providing economic benefits for the Calgary economy;
- (d) There will be engagement with the public throughout the process whenever possible to ensure transparency.

SCHEDULE C
STEERING COMMITTEE TERMS OF REFERENCE

1. Steering Committee Authorizing Framework and Definition

The requirement to establish a Steering Committee is a requirement of Section 6.7 of this Agreement.

2. Membership

The initial members of the Steering Committee will be those individuals named in Section 6.10 of this Agreement. A Party may remove or replace its representative from time to time in accordance with Section 6.10.

3. Scope and Purpose

The Steering Committee is empowered to provide strategic guidance and support to the Project by carrying out those functions set out in Section 6.8 of this Agreement, monitoring the scope, time and budget parameters and providing Approvals in accordance with this Agreement and ensuring that the Project approved by the Board of CSERELP's general partner and Council is what will ultimately be achieved.

4. Guiding Principles

The Steering Committee will use the following guiding principles in order to realize the Parties' vision for the Project:

- (a) timely decision-making (in accordance with Section 2.4), adherence to the Project timetable, and cost-control within the Approved Project Budget;
- (b) working collaboratively in a spirit of respect and true partnership to advance the Project and ensure the success of the Project; and
- (c) making use of all available information sources and adhering to best practices in order to provide informed direction to the Project.

5. Roles and Responsibilities

The Steering Committee is responsible for the following:

- (a) ensuring the performance of its respective responsibilities as described in this Agreement without delay and continually reviewing and responding to any concerns raised by the City or CSERELP, or both, as a result of risk analysis, planning or otherwise in respect of the Project;
- (b) ongoing monitoring and strategic advice as the Project is advanced in accordance with the terms and conditions of this Agreement, including:
 - (i) monitoring the general progress, design, construction and completion of the Project and enforcement of all warranties;

- (ii) be responsible for receiving and reviewing all matters related to the Project, including: (A) any design, construction and commissioning issues; (B) the Project Schedule; (C) any issues arising from reports or documents provided under or pursuant to this Agreement; (D) any quality assurance and safety issues; (E) any special matters referred to the Steering Committee by the Development Manager or any Party; (F) any community and media relations issues in accordance with the Communications Protocol; and (G) any other issues pertaining to the Project;
- (iii) create any sub-committees deemed appropriate to address specific aspects of the Project and establish the terms of reference of any sub-committees;

and the Steering Committee will consider all information available, giving support and guidance as appropriate;

- (c) monitoring compliance with this Agreement and the Development Management Agreement and with all Council Event Centre Approvals and all other Council approvals and directions;
- (d) acting as a forum to resolve potential issues and address concerns and assist the Parties by promoting cooperate and effective communication with respect to matters related to this Agreement and the Project;
- (e) in the event of unanticipated events that have an adverse effect on the scope, budget or scheduled delivery of the Project, promptly developing and agreeing upon mitigation strategies;
- (f) reviewing and giving direction pertaining to each phase of the Project;
- (g) providing Approvals as contemplated in this Agreement; and
- (h) attending to any other function required by this Agreement, or as mutually agreed to by the Parties.

6. Steering Committee Meetings

- (a) The Steering Committee will (unless it otherwise agrees) meet a minimum of 2 times per month and special meetings of the Steering Committee will be called as required to address time-sensitive matters. The schedule of the monthly Steering Committee meetings dates will be set 6 months in advance or as may otherwise be determined by the Steering Committee. A representative of the Development Manager shall be entitled to be present at every meeting, but such representative shall not be entitled to vote. Steering Committee meetings will be held in person at a location to be determined by the Steering Committee, provided that attendance by phone or other means of electronic communication will be permitted as set out below in paragraph 6(c) of this Schedule. In order to convene a meeting of the Steering Committee, the City Steering Committee member and CSERELP Steering Committee member are required to be in attendance. Alternate Steering Committee members may attend all Steering Committee meetings but shall not be entitled to vote thereat unless the primary member appointed by the Party which appointed the alternate member is

not present at the meeting, in which event the alternate member may vote in the place and stead of such primary member.

- (b) The City Steering Committee member and CSERELP Steering Committee member shall constitute a quorum for the transaction of business at any meeting of the Steering Committee. If, within 30 minutes (or such longer period of time as agreed by the City Steering Committee member and CSERELP Steering Committee member) after the time fixed for holding a meeting, a quorum for the transaction of business at the meeting is not in attendance, then the voting on any Major Decision shall be cancelled or adjourned for at least 5 Business Days with a notice of an adjourned meeting to be given to all members of the Steering Committee. Notice of an adjourned meeting shall be given in the same manner as set out in below in section 7 of this Schedule, including specifying in reasonable detail the business to be considered at the adjourned meeting. If, within 30 minutes (or such longer period of time as agreed by the City Steering Committee member and CSERELP Steering Committee member) after the time fixed for holding the adjourned meeting, a quorum for the transaction of business at the meeting is not in attendance, such meeting may be adjourned for a second time according to the same procedure as for the first adjournment, but the member(s) of the Steering Committee present at the second adjourned meeting shall form the quorum and may transact business and make all the decisions for which the meeting was convened, provided that such decisions arise from business specified in the notice of the second adjourned meeting.
- (c) A meeting of the Steering Committee may be held by means of conference telephone or other communications equipment by which all members participating are able to hear each other and able to review materials prepared by the Development Manager and/or Project Representatives and all members so participating shall be deemed to be present in person at such meeting and the meeting shall be deemed to have been held at the place set out in the notice of such meeting. A member of the Steering Committee may participate in a meeting of the Steering Committee by means of a telephone or other communication facility which permits all persons participating in the meeting to hear each other, and a member participating in such a meeting by such means is deemed to be present at the meeting.
- (d) The rules and procedures for the conduct of meetings of the Steering Committee not prescribed herein will be determined by the members of the Steering Committee.
- (e) Requirements for additional attendees, for the purpose of making presentations or to provide additional information to support informed decision-making will be at the Steering Committee's discretion.

7. Steering Committee Administration

- (a) For regularly scheduled monthly meetings of the Steering Committee, the Development Manager will circulate to Steering Committee members and supporting representatives, the following documents not less than 5 Business Days prior to the applicable Steering Committee meeting:
 - (i) the meeting agenda;

- (ii) the minutes from the previous meeting;
 - (iii) the monthly written status report advising on progress against key milestones in accordance with the reporting requirements set out in the Development Management Agreement or any update thereto in the event that it is a supplemental meeting; and
 - (iv) to the extent known, matters to be addressed at the next scheduled Steering Committee meeting.
- (b) Items of urgent business can be added to the Agenda by any attendee for any meeting, as required.
- (c) Special meetings of the Steering Committee can be called at any time as long as all members are present for the purposes of timely decision-making. Decisions and discussions of all special meetings will be recorded and distributed with the minutes of the regularly scheduled meetings.
- (d) The Steering Committee will, where appropriate, cause the Development Manager to develop 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 the 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.

SCHEDULE D

ELIGIBLE COSTS AND INELIGIBLE COSTS

Capitalized terms used in this Schedule which are not otherwise defined in this Agreement shall have the meanings ascribed to them in the Development Management Agreement.

Eligible Costs

"**Eligible Costs**" means all actual and verifiable costs (without duplication) incurred by the Contributing Parties or CMLC 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) CMLC Fee;
- (b) all reasonable costs for the design reviews conducted by the City's corporate engineering team;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) the cost of securing any Permits or satisfying any development, building or other permit conditions;
- (g) costs of excavation, disposal of excavated materials and site preparation (other than the Site Remediation Costs);
- (h) Shared Site Remediation Costs;
- (i) 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);

- (j) all payments under or pursuant to the Construction Contracts or Consulting Contracts, including in respect of any Change Orders (except and to that the costs thereof constitute City Additional Costs or CSERELP Additional Costs);
- (k) 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;
- (l) the costs of machinery, supplies, plant, equipment and apparatus acquired or used in connection with the construction of the Project;
- (m) the costs of all Event Centre Equipment included in the Project Requirements;
- (n) all Fit Up Costs, other than the Initial Fit Up Costs;
- (o) costs for the removal and disposal of waste materials and debris;
- (p) 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;
- (q) all costs and expenses incurred to comply with all Applicable Laws;
- (r) costs for safety measures and programs (including all applicable equipment);
- (s) costs for sustainability measures and programs (including all applicable equipment);
- (t) premiums and deductibles paid by CMLC pursuant to any insurance policies it is specifically obligated to obtain in respect of the Project pursuant to the Development Management Agreement, excepting deductibles payable by CMLC in respect of any claim to the extent arising from or in respect of the negligence or wilful misconduct of CMLC;
- (u) other direct Project expenditures (without duplication), including for example a scale model and other public relations materials;
- (v) 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 CMLC;
- (w) expenditures directly associated with Joint Communications and CMLC Communications Activities related to the Project and signage as contemplated in the Development Management Agreement;

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

Ineligible Costs

"**Ineligible Costs**" means any of the following costs which are incurred by either of the Parties or CMLC 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 Party or CMLC, 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 CMLC Fee);
- (f) legal fees or disbursements in connection with negotiating this Agreement;
- (g) income, business or other taxes payable by a Party;
- (h) costs or expenses incurred by a 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); and
- (k) the Initial Site Remediation Costs (which are borne by CMLC).

SCHEDULE E

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 F

FORM OF DEVELOPMENT MANAGEMENT AGREEMENT