

SCHEDULE 19

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2014

BETWEEN:

THE CITY OF REGINA
(the “City”)

AND:

EPCOR WATER PRAIRIES INC., a corporation incorporated
under the laws of Saskatchewan
(“Project Co”)

AND:

[[■]], a corporation incorporated under the laws of [Saskatchewan]]
(the “Independent Certifier”)

WHEREAS:

- A. The City and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”, as the context requires), have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

NOW THEREFORE in consideration of the mutual covenants and agreements of the PA Parties and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Independent Certifier covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (ii) **“Certification Services Variation”** is any change to the Certification Services.
 - (iii) **“Conflict of Interest”** means any situation or circumstance (including in connection with the Project Agreement) where the Independent Certifier has contractual or other obligations to any of the PA Parties or any Project Co Party that could reasonably be expected to compromise, impair or be incompatible with the objective, unbiased and impartial exercise of independent judgment by the Independent Certifier.
 - (iv) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
 - (v) **“Fee”** means the fees payable by the City and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
 - (vi) **“Intellectual Property”** means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents,

copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.

- (vii) **“Project Agreement”** means that certain project agreement made on or about July 3, 2014 between the City and Project Co with respect to the design, build, finance, operations and maintenance of a wastewater treatment plant upgrade in Regina, Saskatchewan.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
 - (vii) words denoting any gender include all genders;
 - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
 - (ix) a reference to “\$” is to Canadian currency;
 - (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
 - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and

(xii) unless otherwise indicated, all time periods will be strictly construed.

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project or which might result in a Conflict of Interest arising.
- (d) The Independent Certifier shall make such observations and evaluations of any Works in order to certify any applicable Payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Section 9.4 and 9.5 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
 - (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

3.5 Authority to Act

- (a) The Independent Certifier:
 - (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and

- (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
 - (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
 - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
 - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to the Lands, including restrictions on any such access or protocols that are required; and
 - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
 - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
 - (i) at the date of this Independent Certifier Agreement, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as technical advisor to the Lender or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any Conflict of Interest or risk of Conflict of Interest arises, the Independent Certifier will notify the PA Parties immediately in writing of the Conflict of Interest or risk of Conflict of Interest and take such steps as may be required by either of the PA Parties to avoid or mitigate the Conflict of Interest or risk of Conflict of Interest.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services shall:
 - (i) possess a current professional designation with the Association of Professional Engineers & Geoscientists of Saskatchewan or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the certification and commissioning of comparable facilities;
 - (iii) have an understanding of the appropriate standards, guidelines and policies related to commissioning for wastewater facilities; and
 - (iv) have an understanding of any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but any pre-commissioning and post-commissioning activities.

- (c) The Independent Certifier shall furnish the City with evidence satisfactory to the City of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services.

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

4. ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier from the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred or whether, for purposes of the Milestone Payment, the Works are 40% complete.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
 - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the City Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or the City, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Lands and the Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Project Co as to safety and security for the Lands and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Lands; and
 - (iii) not causing any damage to the Lands or the Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. ROLE OF PPP CANADA INC.

5.1 Reliance by PPP Canada Inc.

- (a) The Independent Certifier acknowledges that the City may provide PPP Canada Inc. with copies of any reports, communications, certificates and other documentation to be delivered by the Independent Certifier to the PA Parties under this Independent Certifier Agreement and that PPP Canada Inc. is entitled to rely and will be relying on the contents of such reports, communications, certificates and other documentation in determining the amount and timing of payments by PPP Canada Inc. to the City.
- (b) The Independent Certifier further acknowledges that it owes a specific duty of care to PPP Canada Inc. in respect of any reports, communications, certificates and other documentation to be delivered by the Independent Certifier to the PA Parties under this Independent Certifier Agreement.

5.2 PPP Canada Not Liable

- (a) For greater certainty, the PA Parties and the Independent Certifier acknowledge that PPP Canada Inc. will not be liable for any of the obligations of the PA Parties or the Independent Certifier under this Independent Certifier Agreement.

6. CERTIFICATION QUALITY PLAN

6.1 Certification Quality Plan

- (a) The Independent Certifier must:
 - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the City Representative and the Project Co Representative;
 - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the City Representative and the Project Co Representative;
 - (iii) if satisfactory to each of the City Representative and the Project Co Representative, implement such certification quality plan; and
 - (iv) if not satisfactory to each of the City Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the City Representative and the Project Co Representative, and implement it if satisfactory to each of the City Representative and the Project Co Representative.

6.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
 - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the City Representative or the Project Co Representative.

7. SUSPENSION

7.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
 - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

7.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 7.1(a)(ii) valued as a Certification Services Variation under Section 10; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 7.1(a)(i).

7.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

8. INSURANCE AND LIABILITY

8.1 Independent Certifier's Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
 - (i) professional liability insurance:
 - (A) in the amount of \$5,000,000 per claim and \$5,000,000 in the aggregate, a deductible of not more than \$25,000 per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and

- (ii) commercial general liability insurance in the amount of \$5,000,000 per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$5,000 per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.
- (c) The Independent Certifier shall be added as a named insured under the insurance policy described in Section 3.4 of Schedule 11 (Insurance Requirements) to the Project Agreement.

8.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

9. PAYMENT FOR SERVICES

9.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for GST and PST), overheads and profit, all labour and materials, insurance costs and all other overhead including any fees or other charges required by law to perform the Certification Services. For clarity, all travel expenses are not to be included in the Fee.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$100,000 is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

10. CERTIFICATION SERVICES VARIATIONS

10.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “**Certification Services Variation Order**” under Section 10.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
- (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 10.1(a)(i), submit a written claim to each of the City Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 10.1.

10.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 10.1, the Fee will not be adjusted as a result of the relevant direction.

10.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

10.4 Certification Services Variation Procedure

- (a) The City Representative and the Project Co Representative may jointly issue a document titled “**Certification Services Variation Price Request**” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “**Certification Services Variation Price Request**”, the Independent Certifier must provide each of the City Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.

- (c) Each of the City Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 10.5.

10.5 Cost of Certification Services Variation

- (a) Subject to Section 10.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 7.1(a)(ii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “**Certification Services Variation Order**” in accordance with Section 10.4(c);
 - (ii) if Section 10.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the City Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

11. TERM AND TERMINATION

11.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
 - (i) the completion of the Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

11.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
 - (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

11.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 11.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

11.4 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
 - (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

11.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

11.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 11.5, the Independent Certifier will:
 - (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

11.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 11.3, 11.4 or 11.5 or otherwise), the Independent Certifier must:
 - (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
 - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

11.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

11.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 8, 9, 11.6, 11.7, 11.8, 12 and 13.8 and this Section 11.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

12. INDEMNITY

12.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 12.1 shall not extend:
 - (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom

it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 12.2);

- (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

12.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 12.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 12.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

13. GENERAL

13.1 Entire Agreement

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

13.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

13.3 Waiver

- (a) No waiver made or given by a party under or in connection with this Independent Certifier Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

13.4 Records

- (a) The Independent Certifier shall maintain, in an appropriate form, accurate and complete records in respect of performance by it of its obligations under this Independent Certifier Agreement and keep those records available for inspection by the PA Parties (including any representative designated by the PA Parties for that purpose) at all reasonable times upon reasonable notice.

13.5 Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Independent Certifier Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Independent Certifier Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to the City:

The City of Regina
2476 Victoria Avenue
P.O. Box 1790
Regina, Saskatchewan
S4P 3C8

Fax: (306) 777-6818
Attn.: Brent Sjoberg, Deputy City Manager & COO

If to Project Co:

EPCOR Water Prairies Inc.
9469 Rosedale Road NW
Edmonton, AB
T5K 0A5

Fax: [REDACTED]
Attn.: [REDACTED]

If to the Independent Certifier:

[Address]

Fax: [REDACTED]
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 13.5(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 13.5(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 13.5(e), 13.5(f) and 13.5(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the 3rd Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 13.5.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

13.6 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which consent each PA Party may give or withhold in its absolute discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 13.6, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

13.7 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Saskatchewan and the laws of Canada applicable therein and shall be treated in all respects as a Saskatchewan contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Saskatchewan and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with

this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

13.8 Confidentiality

- (a) The Independent Certifier must ensure that:
 - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
 - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

13.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 13.9(b).

13.10 Amendment

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

13.11 Severability

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Independent Certifier Agreement. If any such provision of this Independent Certifier Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Independent Certifier Agreement as near as possible to its original intent and effect.

13.12 Enurement

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

13.13 Counterparts

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any party providing its signature in faxed form shall promptly forward to such party an original signed copy of this Independent Certifier Agreement which was so faxed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF this Independent Certifier Agreement has been executed by the parties on the date first above written.

THE CITY OF REGINA

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

EPCOR WATER PRAIRIES INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

[INDEPENDENT CERTIFIER]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

APPENDIX A

CERTIFICATION SERVICES

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following services:

- (a) Develop and implement the Certification Quality Plan that identifies the processes and outcomes of the Certification Services.
- (b) Implement a review and verification process for the construction compliance, including:
 - (i) conducting monthly inspections of the Works; and
 - (ii) receiving and reviewing monthly progress reports from Project Co and/or the Design and Construction Subcontractor delivered pursuant to Section 16.2 of the Project Agreement.
- (c) Certify that the Works are 40% complete for purposes the Milestone Payment.
- (d) Certify Substantial Completion and Final Completion, including:
 - (i) upon receipt of notice from Project Co requesting the issuance of the Certificate of Substantial Completion or the Certificate of Final Completion, as applicable, considering such request and issuing the applicable certificate or the Notice of Failure to Achieve Substantial Completion or Notice of Failure to Achieve Final Completion, as applicable; and
 - (ii) considering the views and comments of both Project Co and the City prior to any such certification.
- (e) If applicable, determine whether 30-Day Performance Test has been successfully completed for purposes of release of the 30-Day Performance Test Holdback.
- (f) Issue monthly status reports detailing compliance reviews to both parties to the Project Agreement, including:
 - (i) Executive Summary;
 - (1) Summary;
 - (2) Issues;
 - (ii) Design Status;
 - (iii) Schedule;
 - (1) Master Schedule;

- (2) Permits and Approvals;
- (3) Subcontract Status;
- (iv) Certificate;
 - (1) Consultant's Compliance;
 - (2) QA/QC;
 - (3) Cash flow Tracking;
- (v) Changes;
 - (1) Change Order Directives;
 - (2) Change Orders;
 - (3) Cash Allowance Tracking;
- (vi) Commissioning;
- (vii) Dispute Items Log;
- (viii) Deficiencies;
- (ix) Substantial Completion, together with Deficiency Log; and
- (x) Final Completion, together with Deficiency Log.
- (g) Prepare the Deficiency List and any revisions made thereto.
- (h) Be the first-point-of-call for dispute resolution when requested to so by Project Co or the City.
- (i) Prepare any estimates required under the Project Agreement, including an estimate of the cost to achieve Final Completion.

APPENDIX B

INDEPENDENT CERTIFIER FEE

[NTD: To be developed having reference to the Independent Certifier’s proposal.]

1. **Fee for Certificate Services:** \$[■] plus G.S.T.

2. **Hourly Rate for Additional Services:**

<u>Personnel</u>	<u>Hourly Rate</u>

3. **Disbursements:**

[NTD: To be determined.]

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

The following personnel shall be involved in the performance of the Certification Services:

[NTD: Independent Certifier to insert names and titles of relevant individuals.]