

**THE P3 CANADA FUND**  
**FINANCIAL AGREEMENT**

This Financial Agreement made as of the 26<sup>th</sup> day of May, 2014.

**BETWEEN:**

**PPP CANADA INC., as manager of the P3 Canada Fund**

**("PPP Canada")**

**AND**

**THE CITY OF REGINA**

**(the "City")**

**WHEREAS** PPP Canada is a Parent Crown Corporation mandated to work with the public and private sectors to encourage further development of Canada's public-private partnership market;

**AND WHEREAS** the Government of Canada created the P3 Canada Fund (the "**P3 Canada Fund**") as a vehicle to provide funding to public-private partnerships in Canada;

**AND WHEREAS** PPP Canada has been created to improve the delivery of public infrastructure by achieving better value, timeliness and accountability to taxpayers through public-private partnerships to be funded by PPP Canada through the P3 Canada Fund;

**AND WHEREAS** the City has submitted to PPP Canada a proposal for the funding of the Project (as defined below) which qualifies for support under the P3 Canada Fund;

**AND WHEREAS** the City agrees to carry out the Project and PPP Canada wishes to provide financial support for the Project subject to the principles of value for money, timeliness and accountability to taxpayers;

**NOW THEREFORE**, in accordance with the principles set out above, PPP Canada and the City hereby agree as follows:

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## 1. INTERPRETATION

### 1.1 Definitions

A capitalized term in this Agreement has the meaning given to it in this Section.

**"Agreement"** means this contribution agreement.

**"Applicable Laws"** means all present and future laws, statutes, regulations, by-laws, treaties, judgments, decrees and binding judgments of relevant courts of law having the force of law, all present and future official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Relevant Authority.

**"Approval Date"** means June 15, 2012.

**"Business Day"** means a day other than a Saturday, Sunday or a statutory holiday in the Province of Ontario and in the Province of Saskatchewan.

**"Calendar Year"** means the period beginning January 1 of a year and ending December 31 of that year.

**"CEAA"** means the *Canadian Environmental Assessment Act*.

**"Claim"** means any claim, demand, action, proceeding or liability.

**"Confidential Information"** has the meaning given in Section 15.4.

**"Completion Date"** means the date on which PPP Canada receives a copy of the Substantial Completion Certificate from the Independent Certifier.

**"Contract"** means an agreement, indenture, contract, lease, deed of trust, licence, option, instrument or other commitment, whether written or oral, made between the City and a Third Party, whereby the Third Party agrees to supply a product or service in respect of the Project in return for consideration of any nature or kind.

**"Default"** has the meaning given in Section 11.1.

**"Direct Construction Costs"** has the meaning given in Schedule "B.1".

**"Dispute"** means any disagreement, failure to agree or other dispute between the Parties arising out of or in connection with this Agreement or in respect of any legal relationship associated with it or derived from it.

**"Effective Date"** means the date this Agreement is signed by the last Party.

**"Eligible Costs"** means those costs in respect of the Project which are eligible for funding by PPP Canada under this Agreement, as set out in Schedule "B.1", but specifically excludes those costs set out in Schedule "B.2".

**“Final Financial Model”** has the meaning given in the ITP.

**“Financial Close”** means the date that the City and Project Co have executed the Project Agreement.

**“Guidelines”** means the guidelines listed in Section 1.4, and each is a **“Guideline”**.

**“Independent Certifier”** means a Person who is an engineering consultant having strong expertise in wastewater projects and cost estimation who is independent from both the City and Project Co (and who will be impartial to the Parties), to provide certification services during the construction period of the Project, all as more particularly defined in the Project Agreement.

**“Independent Certifier Agreement”** means the agreement made between the City, Project Co and the Independent Certifier, appointed therein to carry out the functions and obligations conferred on the Independent Certifier under the Project Agreement, which include monitoring and certification services for the Project, as set out in Schedule 19 to the Project Agreement.

**“ITP”** means the Instruction to Proponents issued by the City as part of RFP No: 2245;

**“Management Committee”** means the committee established pursuant to Section 5.1 of this Agreement.

**“P3 Canada Fund”** has the meaning given thereto in the recitals of this Agreement.

**“Parties”** means PPP Canada and the City, and each is a **“Party”**.

**“Person”** means any individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, governmental authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

**“Project”** means the design, construction, financing, operating, maintenance and life cycle rehabilitation of a wastewater treatment plant, as described in Schedule “A”.

**“Project Agreement”** means the agreement to be entered into between the City and Project Co in respect of the Project and all schedules and other attachments thereto as the same may be amended, supplemented, or restated.

**“Project Co”** has the meaning given in the Project Agreement;

**“Project Component”** has the meaning given in Schedule “A”.

**“Project Implementation Costs”** has the meaning given in Schedule “B.1”

**“Proposal”** means the City’s application for funding in respect of the Project from PPP Canada through the P3 Canada Fund, submitted **June 14, 2012**.

**“Relevant Authority”** means any Canadian government, including any federal provincial or municipal government, and any government agency, ministry, tribunal, commission or other

authority including any regulated or other utility exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government.

**“Significant Change”** means, in respect of the Project:

- a) any material change to the Project, such as a change to its location, scope or timing, by the City, from what is described in Schedule “A”; or
- b) an increase to the estimated cost of any one Project Component as set out in Schedule “A” of more than 20%.

**“Substantial Completion”** has the meaning set out in the Project Agreement.

**“Third Party”** means any individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization or Relevant Authority, other than a Party to this Agreement, that participates in the implementation of the Project, including, without limitation, Project Co.

**“Value-for-Money Report”** or **“VfM Report”** means a public report prepared in respect of the Project that includes a description of the rationale, objectives and processes that led to the use of a P3 model and how the estimated value for money was measured and is expected to be achieved.

## **1.2 Entire Agreement**

This Agreement is made in respect of the P3 Canada Fund. This Agreement, including the Schedules hereto and the Guidelines, constitutes the entire agreement between the Parties with respect to the subject matter herein contained and supersedes all prior oral or written agreements, including the Conditional Financial Agreement between the City and PPP Canada, dated October 7, 2013.

## **1.3 Schedules**

The following Schedules are attached to, and form part of, this Agreement:

**Schedule “A”** – Detailed Description of the Project

**Schedule “B”** – Eligible Costs

**Schedule “C”** – Disposal of Assets and Reimbursement

**Schedule “D”** – Copy of Guidelines

## **1.4 Guidelines**

The following PPP Canada guidelines form part of this Agreement:

- a) the Reporting Guidelines, a current copy of which is appended to this Agreement as Schedule "D"; and
- b) the Communication Guidelines, a current copy of which is appended to this Agreement as Schedule "D".

The Parties will comply with the Guidelines. The Guidelines may be changed or modified only with the written agreement of both Parties.

## **1.5 Precedence**

In the event of a conflict within this Agreement:

- a) the part of this Agreement that precedes the signatures of the Parties will take precedence over the Schedules and the Guidelines; and
- b) the Schedules will take precedence over the Guidelines.

## **1.6 Accounting Principles**

In this Agreement, any accounting term has the meaning assigned to it, and all accounting matters will be determined in accordance with Canadian generally accepted accounting principles, or any successor standard thereto, adopted by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants, consistently applied.

## **1.7 Term of Agreement**

This Agreement will be effective as of the Effective Date and shall, subject to Section 1.8, terminate on the date of termination of the Project Agreement, subject to early termination in accordance herewith.

## **1.8 Survival**

The rights and obligations of the Parties hereunder which, by their nature, survive termination shall survive the termination of this Agreement.

## **2. PURPOSE**

### **2.1 Purpose of this Agreement**

This Agreement sets forth the terms and conditions upon which PPP Canada will make a contribution through the P3 Canada Fund to the Recipient in respect of the conduct and completion of the Project.

### **2.2 Project Description and Responsibility**

The City intends to enter into the Project Agreement with Project Co to Design, Build, Finance, Operate, Maintain (DBFOM) a wastewater treatment plant in Regina, Saskatchewan as a P3 as further described in Schedule "A".

### **3. PROJECT FINANCING**

#### **3.1 Contribution by PPP Canada**

- a) In respect of the Project, subject to the terms and conditions of this Agreement, PPP Canada shall make an aggregate contribution to the City equal to the lesser of either:
  - (i) 25% of the total Eligible Costs of the Project incurred by the City following the Approval Date; or
  - (ii) \$58.5 million.

For greater certainty, the Parties agree that under no circumstances whatsoever, and notwithstanding any other provision in this Agreement, will PPP Canada be required to contribute more than \$58.5 million to the Project.

- b) The Parties acknowledge that PPP Canada's role in the Project is limited to making a financial contribution to the Project through the P3 Canada Fund and that PPP Canada will have no involvement in the design, construction, renovation, financing, testing, commissioning, maintenance and life cycle rehabilitation of Project. Further, PPP Canada has not had, and will not have, any role in selecting Project Co and/or negotiating the Project Agreement or any Contract, nor will it have any role in supervising the performance of Project Co or any other Third Party in respect of the Project.

#### **3.2 Commitments by the Recipient**

- a) The City is responsible for the complete, diligent, professional and timely implementation and completion of the Project, in accordance with the terms of this Agreement, and for all costs thereof, net of PPP Canada's contribution pursuant to this Agreement.
- b) The City will undertake, or cause to be undertaken, all work in respect of the design, construction, renovation, financing, testing commissioning, maintenance and life cycle rehabilitation of the Project in accordance with Applicable Laws applicable to the Project and/or any guidelines approved in advance by the Committee.
- c) The City will be responsible, either directly or through one or more Third Parties, for the operation, maintenance, repair and rehabilitation of the Project as set out in appropriate standards, during the term of the Project Agreement.

#### **3.3 Disclosure of Other Funding and Adjustments**

The City shall as soon as reasonably practicable inform PPP Canada of any other financial assistance, including grants, loans, repayable contributions, non-repayable contributions, loan guarantees, reductions in taxes imposed by any federal government authority, directly or indirectly, in respect of the Project. If, at any time, the Federal Government of Canada's total direct or indirect financial assistance in respect of the Project (which shall include contributions to be made by Crown corporations, including by PPP Canada hereunder) exceeds twenty five percent (25%) of total Eligible Costs of the Project, as determined by PPP Canada, acting reasonably, PPP Canada may reduce its contribution under this Agreement by an amount equal to the excess.

## **4. COMPLIANCE WITH ENVIRONMENTAL LEGISLATION**

### **4.1 Conditional Commitment**

It is expressly understood that this Agreement has been authorized and delivered by PPP Canada in reliance on environmental assurances and disclosures set forth in the Proposal, and that:

- a) where the Project does not require an environmental assessment be conducted, the City has provided evidence to PPP Canada from the Ministry of Environment for Saskatchewan that the requirement for an environmental assessment for the Project has been waived;
- b) where the Project does require an environmental assessment be conducted, such environmental assessment has been conducted and it demonstrates that the Project is unlikely to cause adverse environmental effects, taking into account the implementation of the mitigation measures identified in such environmental assessment;
- c) all of PPP Canada's commitments under this Agreement are conditional upon the adherence by the City with all Applicable Laws applicable to the Recipient in respect of environmental matters and with the City's implementation and adherence to the mitigation, monitoring and follow up measures;
- d) if unanticipated adverse environmental effects or additional requirements for mitigation of environmental effects are identified during the Project, the City will advise PPP Canada promptly. The City will ensure that further mitigation measures are undertaken as may be necessary in accordance with Applicable Laws;
- e) if a change that would trigger a re-assessment of the Project or an addendum to the assessment thereunder is proposed for, or made to, the Project, the Parties agree that despite any other provision of this Agreement, PPP Canada's obligations under this Agreement will be suspended until such re-assessment or addendum to the assessment thereunder is completed and it is determined that the Project as modified is unlikely to result in any significant environmental effects. In the event that a re-assessment is required for only a discrete component of the Project, the obligations in respect of the other components will not be suspended.

## **5. MANAGEMENT COMMITTEE**

### **5.1 Establishment**

Within sixty (60) days of the Effective Date, the Parties will have established a committee to administer and manage this Agreement (the "Management Committee" or "Committee"). Each Party agrees to appoint two (2) members to the Committee, drawn from among its senior officials, and agrees to notify the other in writing of the appointments within the sixty (60) day period. The Committee will exist until twenty-four (24) months after Substantial Completion.

### **5.2 Co-Chairs**

The Committee will be headed by two (2) co-chairs chosen from its members, one appointed by PPP Canada ("**PPP Co-chair**") and one appointed by the City ("**the City Co-chair**") and, together with the PPP Co-chair, the "**Co-chairs**" and each is a "**Co-chair**"). If a Co-chair is absent or

otherwise unable to act, the other Committee member appointed by a Party pursuant to Section 5.1, as the case may be, will replace her or him during such absence or inability to act, for the duration thereof.

### **5.3 Meetings**

Within thirty (30) days of its initial meeting, the Committee will establish written rules and procedures with respect to its meetings and those of its sub-committees, including rules for the conduct of meetings and the making of decisions.

### **5.4 Mandate**

The Committee will:

- a) monitor the Parties' compliance with this Agreement;
- b) monitor the progress of the Project by regularly reviewing pertinent information, including but not limited to the City's cash flows related to PPP Canada's financial contribution, the City's financial models for the Project, City's status reports, and audited financial statements;
- c) coordinate audit activities contemplated in Section 9 of this Agreement;
- d) determine the structure and content of the Value-for-Money Report to be prepared pursuant to Schedule "D" and Project evaluations;
- e) review the annual progress reports to be prepared pursuant to Schedule "D";
- f) review the implementation plan for the ongoing monitoring of the Project Agreement during the operating and maintenance period;
- g) review and, if appropriate, recommend changes to the Guidelines;
- h) establish sub-committees, as needed, for carrying out the responsibilities of the Committee; and,
- i) attend to any other function required by this Agreement or which is mutually agreed to by the Parties.

### **5.5 Recommendations and Decisions**

Decisions and recommendations of the Committee must be recorded in writing.

### **5.6 The Recipient's Role**

While the Committee exists, the City through the City Co-chair, agrees to:

- a) establish a fixed location where the Project will be managed by the City for its duration and maintain that location until the Committee's activities have concluded and, if a relocation is required, establish a new location;
- b) retain all documents relevant to the work of the Committee; and to make available on a confidential basis such documents as may be reasonably required and requested by a Party or the Committee or any of its members;



- c) ensure that any compliance audit initiated pursuant to Section 9 of this Agreement can be promptly carried out and that as soon as practical accounts and records be made available for inspection and audit;
- d) ensure that any audit conducted pursuant to the Project Agreement by the City or Project Co. is promptly carried out and the results thereof are reported to the Management Committee as soon as practical;
- e) notify the Committee promptly of any issue arising with respect to the Project that may reasonably be expected to materially and adversely affect its completion or the Project description as noted in Appendix "A";
- f) notify the Committee promptly of any Significant Change;
- g) provide debriefs on Project progress and highlight any material variances or scope changes;
- h) arrange any work site visits; and
- i) provide annual reports and the Value for Money Report in accordance with Schedule "D".

## **5.7 The Recipient's Role Post Committee**

After the Committee has ceased to exist, the City agrees to:

- a) notify PPP Canada of an issue arising with respect to the Project that may reasonably be expected to adversely affect its continued operation or the Project description as noted in Schedule "A";
- b) notify PPP Canada promptly of any Significant Change; and
- c) provide annual reports in accordance with Schedule "D".

## **6. CONTRACT PROCEDURES**

### **6.1 Project Agreement**

- a) The City confirms that the Project Agreement, and all related Contracts, will be awarded and managed in accordance with the City's relevant policies and procedure with respect to public-private partnership projects;
- b) The City acknowledges that it is completely responsible for the tendering process. Notwithstanding the foregoing, the City agrees that Contracts will be awarded and managed in a way that is:
  - i) transparent, competitive and consistent with value for money principles; and
  - ii) in accordance with the *Agreement on Internal Trade* and Canada's other international trade obligations.



- c) The City shall ensure that the Project Agreement shall be executed in substantially the same format as the RFP Version 4.0 draft issued on April 11, 2014. The City shall provide PPP Canada with a copy of the final Project Agreement, including all the schedules thereto, as soon as reasonably possible after execution of the same;
- d) Except as provided in the Proposal or the Project Agreement, the City shall not assign to a Third Party all or any of its responsibilities under this Agreement unless the City has obtained the prior written consent of PPP Canada;
- e) The City agrees that it will enforce all material terms and conditions of the Project Agreement;
- f) The City agrees to promptly provide written notice to PPP Canada if there is a Project Co Termination Event as defined in the Project Agreement, such notice to include details of the nature of the event; and,
- g) The City acknowledges that the breach by Project Co. of any term or condition of the Project Agreement shall not in any way be a defence by the City to any breach by the City of any term or condition hereunder.

## **6.2 Project Agreement Provisions**

The City shall ensure that the Project Agreement, including all its schedules or appendices, is consistent with, and incorporates, any relevant provisions of this Agreement. Without limiting the generality of the foregoing, the City shall include in the Project Agreement, the following provisions:

- a) requiring that proper and accurate accounts and records are maintained and that the City has the contractual right to audit them;
- b) requiring that Project Co has all requisite licenses, permits and certificates, including environmental, work, health and safety permits, from federal, provincial and local authorities necessary to conduct its business and to carry out the Project and that it will comply with all Applicable Laws in respect of the carrying out of the Project; and
- c) ensuring that the City, will at all times, and upon reasonable notice, have access to the Project sites and to any documentation that Project Co is required to maintain under the Project Agreement, for the purpose of ensuring compliance with this Agreement, including access to all facilities and information required for inspection and audit.

## **7. PAYMENT CLAIMS**

### **7.1 Payment Claims**

- a) Subject to and in accordance with Section 3.1, the City may submit claim for payment ("Payment Claim") from and after Substantial Completion.
- b) The amount of each payment made by PPP Canada will be calculated as follows:
  - i) the total Eligible Costs in respect thereof, less any Eligible Costs previously paid (whether in respect of Direct Construction Costs or Project Implementation Costs), multiplied by

- ii) 25%.

but in no event shall the aggregate of all payments exceed \$58.5 million.

- c) Schedule "A" includes, in respect of each Payment Claim:

- i) a description thereof, including the anticipated date for completing it;
- ii) the estimated total costs to be incurred in completing it;
- iii) the estimated total Eligible Costs to be incurred in completing it; and
- iv) the federal contribution of any nature (including grants, loans, repayable contributions, non-repayable contributions, loan guarantees, reductions in taxes imposed by the federal government) by each Party and each Third Party and total contributions of all persons, per Fiscal Year.

## 7.2 Payment Conditions

- a) PPP Canada shall not have an obligation to make a payment to the City unless and until PPP Canada has received and is satisfied that:

- i) With respect to Eligible Costs which are Direct Construction Costs, a written request for disbursement from the City accompanied by:

- (A) a written certification from the City's Representative confirming that to the best of the City's Representative's knowledge after due inquiry, as of the date of making the written request for payment:

- I. Project Co. is entitled to be paid or has already been paid the Payment pursuant to the Project Agreement;

- II. that the Eligible Costs claimed by the City have been actually and properly incurred and, if applicable, have been paid or are payable to Project Co in accordance with the Project Agreement and are consistent with the Final Financial Model;

- III. the representations and warranties confirmed or made in this Agreement by the City are true and correct with the same effect as though such representations and warranties have been made on and as of the date of the written request for payment;

- IV. all covenants and other obligations of the City pursuant to this Agreement to be performed or complied with as of the date of the making of the payment have been performed or complied with as of the date of the written request for payment;

- V. no act or thing does or may materially and adversely affect the Project or the ability of the City to perform their obligations under this Agreement; and

- VI. no Default has occurred and is continuing.

- (B) a certified and true copy of the Independent Certifier written certification pursuant to Section 6.15 of the Project Agreement;
  - (C) a certified and true copy of any notice of non-conformance and list of minor deficiencies, if applicable;
  - (D) a copy of such documentation and/or information as may be reasonably requested by PPP Canada to support the claim for payment of Eligible Costs.
- ii) With respect to Eligible Costs which are Public Sector Implementation Costs, a written request for disbursement by the City accompanied by:
  - (A) a written certification from the City's Representative confirming that to the best of the City's Representative's knowledge after due inquiry, as of the date of making the written request for payment:
    - I. that the Eligible Costs claimed by the City are Project Implementation Costs that have been actually and properly incurred by the Recipient;
    - II. the representations and warranties confirmed or made in this Agreement with respect to the City are true and correct with the same effect as though such representations and warranties have been made on and as of the date of the written request for payment;
    - III. all covenants and other obligations of the City pursuant to this Agreement to be performed or complied with as of the date of the making of the payment have been performed or complied with as of the date of the written request for payment;
    - IV. no act or thing does or may materially and adversely affect the Project or the ability of the City to perform its obligations under the Project Agreement; and
    - V. no Default has occurred and is continuing.
  - (B) a listing of all invoices provided to the City for Public Sector Implementation Costs, of which PPP Canada will select a sample, advise the City of the sample and the City will provide to PPP Canada a copy of the invoice and the proof of payment of the sample.
- iii) Immediately prior to issuing the requested payment, PPP Canada shall electronically notify the City and the City shall forthwith, by return electronic communication,
  - (A) either confirm the validity of the circumstances in the certification, at which time PPP Canada shall issue the payment, or
  - (B) indicate the changes to the circumstances in the statutory declaration and also provide a plan setting out how the issues will be addressed, to the reasonable satisfaction of PPP Canada and agreement of both Parties. On approval of the plan by both Parties, PPP Canada shall issue the payment.

- iv) If in PPP Canada's opinion, acting reasonably, the City fulfills the requirements in Section 7.2 of this Agreement then PPP Canada shall reimburse its share of Eligible Costs and shall make its payment to the City within five (5) days of receipt of the Payment Claim.
- v) If the City holds back, or plans to hold back, a portion of the payment to Project Co for the Project under the Project Agreement in respect of the Substantial Completion Payment, the City will, in its claim to PPP Canada under this Section 7, inform PPP Canada in writing of the holdback, and PPP Canada may reduce its payment by an amount equal to 25% of the holdback. PPP Canada will pay to the City the amount of the payment reduction thirty (30) days after receipt from the City of notice that the holdback has been paid to Project Co.
- vi) PPP Canada acknowledges that, in lieu of the 30-Day Performance Test Holdback (as defined in the Project Agreement), the City may pay the full amount of the Substantial Completion Payment to Project Co and accept an irrevocable, unconditional, on sight letter of credit from Project Co in the amount of the 30-Day Performance Test Holdback. In such circumstance, PPP Canada agrees to pay to the City its full share of the Substantial Completion Payment in accordance with the provisions of this Agreement and the City agrees to reimburse PPP Canada, within five days of receipt of the funds, in an amount equal to 25% of the proceeds received by the City upon presentation of the 30-Day Performance Test Letter of Credit (as defined in the Project Agreement) as a result of Project Co's failure to successfully complete the 30-Day Performance Test (as defined in the Project Agreement).

### **7.3 Time Limits for Payment Claims**

The City may not submit a claim for payment under this Article 7 following the one year anniversary of Final Completion, and PPP Canada will have no obligation to pay any claim for payment made after such date, notwithstanding that further Eligible Costs may be incurred by the City.

### **7.4 Final Adjustments**

Prior to twelve (12) months after Substantial Completion, the City agrees to present to PPP Canada an official report on all outstanding financial items, including any amount that may have been claimed by the City for costs which are not Eligible Costs, as well as any Eligible Costs incurred by it that are unpaid at that time. The Parties will then jointly carry out a final reconciliation of all claims and payments in respect of the Project and make any adjustments required in the circumstances.

## **8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE RECIPIENT**

### **8.1 Representations and Warranties**

The City represents and warrants that:

- a) it has the legal power and authority to enter into, and perform its obligations under, this Agreement and the Project Agreement;

- b) this Agreement has been duly authorized and executed by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms;
- c) neither the making of this Agreement nor the compliance with its terms and terms of the Project Agreement will conflict with or result in breach of any of the terms, conditions or provisions of, or constitute a default under any indenture, debenture, agreement or other instrument or arrangement to which the City is a party or by which it is bound, or violate any of the terms or provisions of the City's constating documents or any license, approval, consent, judgment, decree or order or any Applicable Laws applicable to the City;
- d) except as otherwise disclosed to PPP Canada relating to Canadian Union of Public Employees, Local 21, contracting out grievance of February 12, 2013, no litigation, arbitration or administrative proceedings are current or pending or have been threatened, and so far as the City is aware no Claim has been made, which is likely to have an adverse effect on its performance of the Project or its compliance with its obligations under this Agreement;
- e) all factual matters contained in the Proposal were and continue to be true and accurate in all material respects, and all estimates, forecasts and other related matters involving judgment contained therein were prepared in good faith and to the best of its ability, skill and judgment;
- f) since the Approval Date, there has not been (a) any change in the assets, liabilities, financial condition or operations of the Project or the Recipient from that reflected in the Proposal, except changes in the ordinary course of affairs that are not, either individually or in the aggregate, materially adverse; (b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the Project or the properties or affairs of the City;
- g) the City owns all right, title and interest, including all Intellectual Property rights, in and to reports and other documents prepared in connection with this Agreement or the Project by or on behalf of the Recipient; and,
- h) to the best of the City's knowledge, no report or other document prepared in connection with this Agreement or the Project by or on behalf of the City infringes, and the City's performance of its obligations under this Agreement will not infringe, upon any of the intellectual property rights of any other Person and the City has not received any charge, complaint, Claim, demand, or notice alleging any interference, infringement, misappropriation or violation of the intellectual property rights of any other Person, nor does the City know of any valid grounds for any bona fide Claims.

## 8.2 Covenants

The City covenants and agrees that:

- a) it shall use the contribution from PPP Canada contemplated hereunder only for the Project;
- b) it shall ensure that the Project shall be conducted in a diligent, efficient, competent, professional and workmanlike manner, and at all times materially conforms to the Project Description set out in Schedule "A";

- c) it shall cause the Project to be carried out in compliance, in all material respects, with all Applicable Laws;
- d) it shall promptly notify PPP Canada of any Significant Change;
- e) subject to Section 14.3, it hereby grants PPP Canada a perpetual, non-exclusive, non-transferable and royalty-free license to use, reproduce, distribute, modify, adapt, change formats, display and translate all reports, documents or other information which is prepared and/or delivered by or on behalf of the City to PPP Canada pursuant to this Agreement in furtherance of the goals and objectives of PPP Canada and/or the P3 Canada Fund;
- f) the City agrees to promptly provide written notice to PPP Canada if there is a Termination Event as defined in the Project Agreement or a termination of the Independent Certifier Agreement, such notice to include details of the nature of the breach. The City acknowledges that the breach by Project Co of the Project Agreement or by the Independent Certifier of the Independent Certifier Agreement shall not in any way be a defence by the City to any breach by the City of any term or condition hereunder; and
- g) it shall, upon request from PPP Canada and on reasonable notice, provide accompanied access for designated representatives of PPP Canada to any part of the work under the Project Agreement, subject to access restrictions applicable to the City (such as leases) and to applicable workplace health and safety and other rules and regulations.

## **9. AUDIT**

### **9.1 Record Keeping**

The City will ensure that proper and accurate accounts and records in respect of the Project, as specified in the Guidelines, are kept for at least seven (7) years after the Completion Date and will, upon reasonable notice, make them available to PPP Canada for inspection and audit.

### **9.2 Annual Financial Statements**

The City agrees to reflect PPP Canada's contribution under this Agreement in its books and records, including any public accounts, in accordance with generally accepted accounting principles.

### **9.3 Audits**

PPP Canada may, at its expense, conduct a compliance audit of all accounts, records and claims for reimbursement relating to the Project and may undertake reviews of the City's administrative, financial and Payment Claim certification processes and procedures to ensure compliance with this Agreement. The City agrees to give PPP Canada access to all records as PPP Canada may reasonably require to carry out the reviews and audits.

Where audits of the Project have been performed by or for the benefit of the City, the Recipient will provide copies of Audit reports to PPP Canada for consideration and use in monitoring compliance with the terms of this Agreement.



In addition to compliance audits, PPP Canada may at any time, at its own expense, conduct an audit of actual costs claimed by the City as Eligible Costs under the Agreement. In the event that such audit reveals an underpayment by PPP Canada to the City, PPP Canada will promptly remit the amount of such underpayment to the City. In the event that such audit reveals an overpayment by PPP Canada to the Recipient, the City will promptly repay the amount of such overpayment to PPP Canada.

#### **9.4 Evaluation**

Following PPP Canada's fiscal year 2015-2016, PPP Canada will conduct a final evaluation of all activities it has undertaken in respect of the P3 Canada Fund, and shall be entitled to use the Project and the Project-related documentation as part of this evaluation process. If requested by PPP Canada, the City will participate fully in the final evaluation processes at its own expense.

Should the City conduct its own evaluation process in respect of the Project, PPP Canada will participate in such evaluation process at its own expense if it deems that the terms of its participation are reasonable.

### **10. SPECIAL CONDITIONS**

#### **10.1 Independent Certifier Confirmation**

Prior to the first advance of funds hereunder by PPP Canada, the Independent Certifier shall have confirmed to PPP Canada that:

- a) the Project has achieved Substantial Completion or has reached Completion in accordance with the Requirements of the Project Agreement, as evidenced by a copy of the appropriate certificate issued pursuant to the Requirements of the Project Agreement;
- b) it owes a specific duty of care to PPP Canada in respect of its deliveries to PPP Canada; and
- c) PPP Canada will not be liable for any of the responsibilities of the City under the Independent Certifier Agreement.

#### **10.2 Independent Certifier Agreement**

The Independent Certifier Agreement shall include the following provisions:

- a) PPP Canada will be a designated beneficiary of the agreement with the effect that PPP Canada will be able to rely upon all reports and certificates to be delivered by the Independent Certifier under the agreement;
- b) PPP Canada may request that the City arrange that certain matters be investigated and otherwise communicate with the Independent Certifier from time to time, and the City shall provide to PPP Canada any material prepared by the Independent Certifier resulting from such inquiries, requests and communications; and
- c) the Independent Certifier will maintain accurate and complete records related to all work performed under the Independent Certifier Agreement and, subject to the provisions of

this Agreement including Section 9, such records will be made available to PPP Canada upon request and reasonable prior notice.

### **10.3 City Covenants in Relation to Independent Certifier**

The City covenants that it shall:

- a) ensure that the Independent Certifier Agreement not be materially amended or assigned without the express written consent of PPP Canada; and
- b) provide PPP Canada with all of the Independent Certifier's reports and certificates delivered to the City.

## **11. DEFAULT**

### **11.1 Default**

Each of the following events shall constitute an event of default ("**Default**"):

- a) the City has failed to comply with any of the material terms or conditions of this Agreement and has failed to remedy such failure within thirty (30) days after written notice of same is sent to the City or within such longer period as may reasonably be required to remedy such failure as long as the City is diligently pursuing such remedy;
- b) the City has neglected or failed to pay PPP Canada amounts owing under this Agreement and has failed to remedy such failure within thirty (30) days after written notice of same is sent to the City;
- c) the City has knowingly given PPP Canada false or misleading information or has knowingly made a false or misleading statement to PPP Canada and the effect of such action is reasonably likely to have affected PPP Canada's decision to enter into this Agreement or to continue to make payments under this Agreement;
- d) the Project Agreement, or any Contract which is material to the completion of the Project, is terminated for any reason and not promptly replaced by a substantially similar agreement or arrangement;
- e) there occurs a breach of a material term or undertaking of the Project Agreement or any Contract which is material to the completion of the Project, which impairs or threatens to materially impair the completion of the Project and the City has failed to remedy or caused to be remedied such failure within thirty (30) days after written notice is sent to the City by PPP Canada requiring such remedy or within such longer period as may reasonably be required to remedy such breach as long as a remedy is being diligently pursued; and
- f) there is a Significant Change that the City has failed to remedy within thirty (30) days (or such longer period as may reasonably be required to remedy such Significant Change as long as the City is diligently pursuing such remedy) after written notice is sent from PPP Canada to the Recipient requiring such Significant Change to be remedied.



## **11.2 Remedies**

If PPP Canada, acting reasonably, determines that a Default has occurred then, notwithstanding any other remedy provided in law, PPP Canada may exercise one or more of the following remedies:

- a) terminate this Agreement, in whole or in part;
- b) suspend any obligation of PPP Canada to make any further payment hereunder, including monies due or accruing due which have not yet been paid;
- c) require the City to repay all or a portion of contribution made by PPP Canada hereunder, in the manner and amount set out in Schedule "C"; and/or
- d) terminate any obligation of PPP Canada to make further contribution, including paying any past, present or future obligation.

For greater clarity, all of the foregoing remedies are cumulative.

## **11.3 Remedy Process**

PPP Canada shall not exercise any one or more of the remedies set out in Section 11.2 unless:

- a) it gives the City thirty (30) Business Days prior notice thereof;
- b) the City does not file a notice of Dispute in accordance with Section 12.1(b) within such thirty (30) Business Days; and,
- c) if a notice of Dispute pursuant to Section 12.3(b) is filed by the City, the determination of the Dispute process confirms PPP Canada's right to exercise any one or more of the remedies set out in Section 12.2.

During the Dispute Resolution process, PPP Canada shall not be obligated to make any further payment, however if the determination of the Dispute process confirms that PPP Canada does not have the right to exercise any one or more of the remedies set out in Section 12.2, then PPP Canada's payments hereunder will resume and any missed payments will be made.

## **12. DISPUTE RESOLUTION**

### **12.1 Dispute Resolution**

Except as otherwise provided in this Agreement, any Dispute will be resolved as follows:

- a) the Parties shall attempt to resolve any Dispute by negotiation thereof between the Chief Executive Officer of PPP Canada and the City's Representatives;
- b) if, at any time, the Dispute remains unsolved, either Party may initiate a mediation in respect of the Dispute by providing written notice to the other Party to schedule the mediation. Such a request will include the name of three (3) proposed mediators and, if the Parties cannot agree on the mediator to be appointed within ten (10) Business Days of

receipt of such notice, then upon further notice of either Party, the Dispute may be referred to final and binding arbitration in accordance with Section 12.1(c). The mediator's fees, costs and expenses shall be borne equally by the Parties. Such mediator and the Parties shall hold the mediation within ten (10) Business Days of the mediator's appointment

- c) if, for any reason, the Dispute has not been resolved as provided in Section 12(1)(a) and (b), either Party may provide written notice written to the other Party that the Dispute shall be resolved by referral to a final and binding arbitration between the Parties pursuant to *The Arbitration Act* (Saskatchewan). The arbitration shall be conducted by a single arbitrator, the place of arbitration shall be Regina, Saskatchewan, and the language of the arbitration shall be English. If the Parties cannot agree upon the appointment of the single arbitrator within ten (10) Business Days of receipt of the notice to arbitrate, either Party may apply to a Judge of the Court of Queen's Bench in Saskatchewan, to appoint same. The decision and any award of the arbitrator, including his/her decision as to the costs of the arbitration and who shall bear same, shall be final and binding on the Parties and there shall be no appeal therefrom. The Parties shall have ninety (90) days from the decision of the arbitrator to comply with the decision;
- d) the time limits referred to in this Section may be abridged or extended by mutual agreement of the Parties; and
- e) if a Dispute is subject to arbitration, except for any action necessary to enforce the award of the arbitrator, or any actions initiated by the insurer of either of the Parties, and subject to the provision of Section 12.1, the provisions of this Section are a complete defence to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any Dispute arising under or in connection with the Agreement.

## 12.2 Referral

Any payments contemplated to be made by a Party hereunder which are related to a Dispute will be suspended, together with the obligations related to such issue, pending resolution.

## 13. INDEMNITY AND LIMITATIONS

### 13.1 Indemnification

The City agrees to indemnify and hold harmless PPP Canada and its directors, employees, agents and advisors (the "**Indemnified Parties**") from and against any and all liabilities, losses, Claims, actions, costs and expenses (including legal fees and disbursements) ("**Losses**") suffered or incurred by them as a result of or arising directly or indirectly out of or in connection with this Agreement or the Project Agreement, except such Losses as may result from the wilful misconduct, fraud or negligent acts or omissions of an Indemnified Party.

### 13.2 Limitations

- a) In no event shall either Party have any liability for any indirect, incidental, special, or consequential damages, however caused and on any theory of liability (including negligence), arising out of this Agreement, including but not limited to loss of anticipated

profits, even if such Party has been advised of the possibility of such damages. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

- b) Save and except for the provisions of Section 13.1, neither Party shall be liable to the other for damages in excess of the aggregate amount of the contribution actually paid to the City by PPP Canada pursuant to this Agreement.
- c) By accepting or approving of any documents, certificates, agreements or other instruments pursuant to this Agreement or the Project, including in respect of the design, construction, maintenance or financing of the Project, PPP Canada is not warranting or representing, and shall not be deemed to have warranted or represented, as to the accuracy, completeness, suitability, fitness, sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation by PPP Canada to anyone with respect thereto.

## **14. GENERAL**

### **14.1 Recovery of Funding**

The City agrees, at the request of PPP Canada, to reimburse PPP Canada for its contributions made hereunder in the manner and amount set out in Schedule "C" upon the occurrence of one or more of the following events:

- a) the sale, transfer of ownership, lease, license or disposal of, whether direct or indirect, of all or substantially all of the infrastructure asset other than to another City controlled corporation;
- b) the infrastructure asset ceases to operate as a P3; or
- c) within a Calendar Year the Project generates net revenues to the City from the sale of treatment process by-products, which exceed the City's expenses for the operation, maintenance, rehabilitation and life-cycle costs of the wastewater treatment plant, sewer services and drainage services.

Upon the occurrence of the event(s) noted in Section 14.1(a), (b) or (c), then in addition to the reimbursement to PPP Canada as noted above, PPP Canada may elect to:

- i. terminate this Agreement ; and/or
- ii. terminate any obligation of PPP Canada to make any further payment or suspend any obligation of PPP Canada to make any further payment hereunder in respect of a Building(s) that are impacted by the event(s); including paying any past, present or future obligation.

## 14.2 Debts Due to PPP Canada

Any amount owed to PPP Canada under this Agreement will constitute a debt due to PPP Canada, which the City agrees to reimburse PPP Canada forthwith on demand. Debts due to PPP Canada will accrue interest in accordance with the *Interest and Administrative Charges Regulations*, SOR/96-188 to the *Financial Administration Act*, R.S.C. 1985, c. F-11. Any debt due to PPP Canada may be set-off against any amounts payable by PPP Canada to the City.

## 14.3 Confidentiality

- a) In this Section, "Confidential Information" means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party. "Confidential Information" also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.
- b) Each Party will hold in confidence any Confidential Information, provided that the provisions of this Section will not restrict either Party from disclosing such information to its professional advisors, provided such advisors are subject to similar confidentiality obligations and in the case of PPP Canada's advisors are not otherwise involved with the Project, to the extent necessary to enable the Party to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the City may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement, provide to Third Parties Confidential Information as necessary for the City's performance of this Agreement.
- c) The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
  - (i) which the other Party confirms in writing is not required to be treated as Confidential Information;
  - (ii) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
  - (iii) to the extent any Person is required to disclose such Confidential Information by Applicable Laws, provided that such Person shall take all reasonable steps to limit such disclosure and any subsequent disclosure of such Confidential Information;
  - (iv) to the extent such Confidential Information is aggregated with similar information from other projects and is not attributed to the City, the Project, Project Co or other Third Parties party to a Contract; or,
  - (v) contained in the public report prepared in respect of the procurement phase of the Project in accordance with the standard practice for public-private partnerships in Canada.

- d) Unless otherwise required by any Applicable Laws or any Relevant Authority having jurisdiction (but only to that extent), neither Party will without the consent of the other Party make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto.
- e) The City recognizes the necessity for PPP Canada to provide verification and reporting pursuant to the requirements of Her Majesty the Queen in right of Canada (in this Section, the "**Federal Crown**") applicable to entities disbursing public funds and consents to the disclosures reasonably necessary to effectively report to the Federal Crown. The City shall cooperate with PPP Canada to enable PPP Canada to effectively report to the Federal Crown, provided however that PPP Canada shall not disclose Confidential Information received from the City to the Federal Crown unless such Confidential Information is aggregated with similar information from other projects and is not attributed to the City, Project Co or other Third Parties party to a Contract, in which case the information will be deemed not to be Confidential Information.

#### 14.4 Interpretation

In this Agreement, including the recitals and Schedules hereto, except where expressly stated to the contrary or the context otherwise requires:

- a) the headings to Articles, Sections, Subsections, Schedules and Appendices are for convenience only and will not affect the construction or interpretation of this Agreement;
- b) each reference in this Agreement to "Section", "Schedule" and "Article" is to a Section of, a Schedule to or Article to this Agreement;
- c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- d) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, officer, agency or similar body;
- e) words importing the singular include the plural and vice versa, and words importing gender include all genders;
- f) in the event that any time period referred to in this Agreement shall fall upon a day which is not a Business Day, such time period shall be deemed to expire on the first Business Day thereafter;
- g) references to time of day or date mean the local time or date in Ottawa, Ontario;
- h) all references to amounts of money mean lawful currency of Canada; and
- i) the words "include" and "including" are to be construed as meaning "include without limitation" and "including without limitation".

#### **14.5 No Benefit**

No member of the House of Commons or the Senate of Canada will be admitted to any share or part of any Contract made pursuant to this Agreement, or to any benefit arising from it.

#### **14.6 No Agency**

No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between PPP Canada and the City or between PPP Canada, the City and a Third Party.

#### **14.7 No Authority to Represent**

Nothing in this Agreement is to be construed as authorizing any Third Party to contract for, or to incur any obligation on behalf of, a Party or to act as agent for a Party.

#### **14.8 Assignment**

Neither Party may transfer or assign its rights or obligations under this Agreement to any Person without the prior written consent of the other Party, acting reasonably.

#### **14.9 Values and Ethics Code**

No Person governed by any post-employment, ethics and conflict of interest guidelines or policies of PPP Canada or the City shall derive a direct benefit from this Agreement unless that Person complies with the applicable provisions of the guideline or policy.

#### **14.10 Severability**

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction except that if:

- a) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and
- b) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of such determination or this Section the basic intentions of the Parties in this Agreement are entirely frustrated, the Parties will use reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

#### **14.11 Lobbyists and Agent Fees**

The City warrants that any Person it has hired, for payment, to speak to or correspond with PPP Canada on the City's behalf concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the *Lobbying Act*, R.S. 1985, c.44 (4<sup>th</sup> Supp.), is registered pursuant to that Act. Furthermore, the City warrants that no payment or other compensation that is contingent or calculated upon the contribution hereunder or negotiating the whole or any part of the terms of this Agreement will be paid to a Person.

#### **14.12 Communications**

The Parties agree to follow and comply with the Guidelines in respect of Communications.

#### **14.13 Amendments**

Subject to Section 1.4, this Agreement may only be amended in writing by the Parties.

#### **14.14 Notice**

Any notice, information or document provided for under this Agreement will be effectively given if delivered or sent by electronic mail or by letter, postage or other charges prepaid. Any notice that is delivered will be deemed to have been received on delivery, and any notice mailed will be deemed to have been received eight (8) calendar days after being mailed. A Party may change the address below by notifying the other Party in writing.

Any notice to PPP Canada must be sent to both:

100 Queen Street, Suite 630

Ottawa, Ontario K1P 1J9

**Attention: Chief Executive Officer**

**Facsimile No.: 613-947-2289**

**e-mail: John.McBride@p3canada.ca**

Any notice to the City will be addressed to:

City of Regina, Queen Elizabeth II Court

2476 Victoria Avenue, PO Box 1790 Regina, Saskatchewan, S4P 3C8



**Attention: Deputy City Manager and Chief Operating Officer**

**Facsimile No.: 306-777-6560**

**e-mail: bsjoberg@regina.ca**

**Phone: 306-777-7317**

Each Party may change the address that it has stipulated by notifying the other Party of the new address in writing.

#### **14.15 Applicable Laws / Forum**

- a) This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Saskatchewan and the laws of Canada applicable in Saskatchewan which will be deemed to be the proper law of this Agreement.
- b) Except where the Parties utilize the dispute resolution procedure set out in Section 12 of this Agreement, the courts of the Province of Saskatchewan (in this Section, collectively, the "**Court**") shall have the exclusive jurisdiction to entertain and determine all Disputes, Claims, suits, actions and other proceedings of any nature or kind arising out of or in connection with this Agreement including, without limitation, specific performance, injunction, declaration of damages or otherwise, both at law and in equity (in this Section, collectively, an "**Action**"), and each of the Parties do and shall irrevocably submit to the exclusive jurisdiction of the Court and hereby waives, and will not assert by way of motion, as a defence, or otherwise, in any Action, any Claim that: (i) that Party is not subject to the jurisdiction of the Court; (ii) the Action is brought in an inconvenient form; (iii) the venue of the Action is improper; or (iv) any subject matter of the Action may not be enforced in or by the Court. In any suit, action or proceeding brought to obtain a judgment for the recognition or enforcement of any judgment rendered in any Action, no Party will seek any review with respect to the merits of any Action, whether or not that Party appears in or defends that Action.

#### **14.16 Further Assurances**

Each Party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

#### **14.17 Construction**

- a) This Agreement and all of the other agreements or documents relating hereto have been drafted and negotiated by the Parties with the benefit of legal representation and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not apply to the construction or interpretation of this Agreement or any of the other agreements or documents relating hereto.
- b) Unless otherwise specified in this Agreement, words describing material or terms that have a well-known technical or trade meaning shall be construed in accordance with the



well-known meaning generally recognized by Canadian professionals and engineers practicing in the subject matter of the Project.

#### **14.18 Force Majeure**

The dates and times by which either Party is required to perform any obligation under this Agreement shall be postponed automatically to the extent, for the period of time, and to the degree that the Party is prevented from so performing by circumstances beyond its reasonable control. Said circumstances shall include acts of nature, strikes, lockouts, riots, acts of war, epidemics, government regulations imposed after the fact, fire, power failures, earthquakes or other disasters. A Party seeking relief under this Section shall, as promptly as possible under the circumstances, provide the other Party with written notice of the circumstances, and its anticipated scope and time of postponement of its obligations.

#### **14.19 Language**

This Agreement has been drafted in the English language at the express wish of the Parties. Le présent document a été rédigé dans la langue anglaise à la volonté expresse des parties.

#### **14.20 Fees and Expenses**

Each Party shall bear its own expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel and accountants, and in no event shall the other Party be responsible for such costs.

#### **14.21 Counterpart Signature**

This Agreement may be signed in counterpart, and the signed copies will, when attached, constitute an original agreement.

This Agreement has been executed by the Parties as of the dates provided below.

14.22 Electronic Signature

Any party to this Agreement may deliver an executed copy of this Agreement by facsimile or electronic transmission but that party shall immediately deliver to the other party an originally executed copy of this Agreement. Delivery of this Agreement by facsimile or electronic transmission constitutes valid and effective delivery.

PPP Canada Inc.

The City of Regina

Original signed by:

Original signed by:

John McBride, Chief Executive Officer  
for PPP Canada Ltd.

Jim Nicol, City Clerk for the City of  
Regina



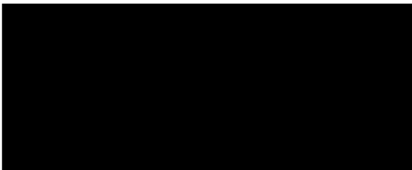
A handwritten signature in cursive script, likely belonging to Jim Nicol.



Date: May 26, 2014

Date: May 23, 2014

Gregory Smith, Chief Financial Officer  
for PPP Canada Ltd.



Date: May 26, 2014

## **SCHEDULE A – DETAILED DESCRIPTION OF THE PROJECT**

### **Description of Project**

The Project involves the upgrade of the City's wastewater treatment plant ("WWTP"). The Project is required to meet the new wastewater standards imposed by the province of Saskatchewan, to meet future capacity requirements and to upgrade the facility and its components that have reached the end of their lifecycle. The City's economy is expanding at a rapid pace and will require this plant to support its future population growth.

The new WWTP will be capable of serving a population of 258,000 or an average annual flow rate of 92 million liters (ML)/day (increased from 70 ML/day) and a peak hourly wet weather flow rate of 450 ML/day.

Effluent quality will improve based on the following new effluent limits: Ammonia - 4/10 mg/L (summer/winter); Total Nitrogen - 10/14 mg/L (summer/winter); Total Phosphorus - 0.75 mg/L; Bacteria – 100/200 E.coli /100 mL (summer/winter); Total Suspended Solids – 15 mg/L and Carbonaceous Biochemical Oxygen Demand – 15 mg/L.

Although a preliminary design has been completed for the upgraded WWTP, the Project does not preclude Proponents from selecting alternate treatment processes and technologies. One of the advantages of the design-build-finance-operate-maintain delivery model is the innovation that occurs by having integrated design, construction and operations teams working on the design of the Project. Performance-based specifications are therefore being developed that maximize the opportunity for innovation by the Proponents. A detailed description of the upgraded plant can therefore not be provided at this point in time. A general description of the plant, as anticipated by the City, follows.

It is envisaged that the existing primary treatment plant will be upgraded, and a new secondary treatment plant constructed that will include nutrient removal. Effluent disinfection will be provided, possibly from a new disinfection facility rather than an upgraded existing facility. The existing sludge treatment processes are in need of upgrade. It is anticipated that existing structures will be re-used as part of the Project, but retrofitted with new equipment. It is envisaged that some of the existing treatment lagoons will be repurposed for wet weather flow/peak flow management, although this will be at the discretion of the Proponents. It is possible that some of the existing infrastructure at the WWTP may not be required and could be decommissioned. Examples might include the settled sewage pumping station and the tertiary treatment plant.

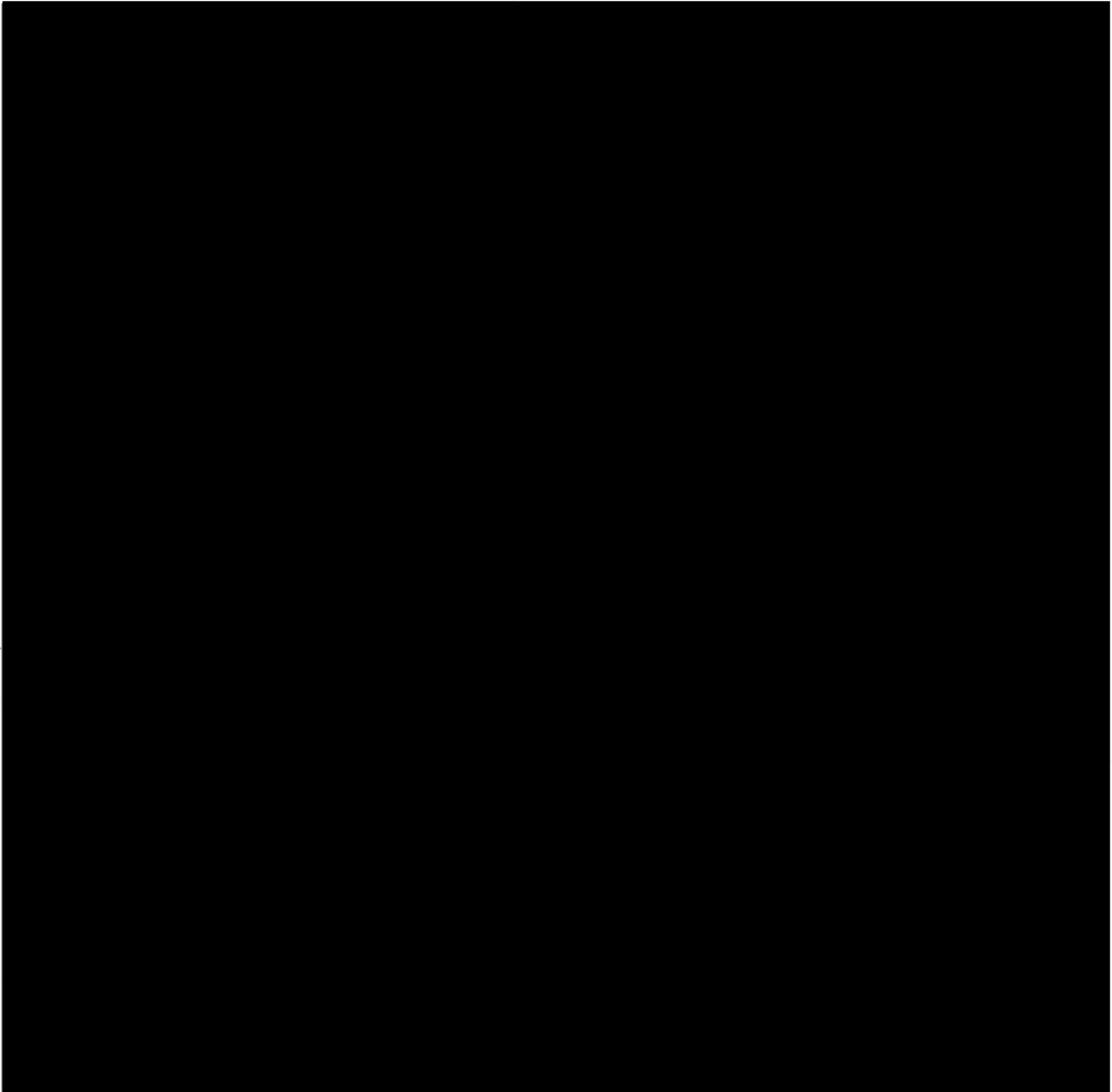
The total base construction cost for the Project is estimated at \$204.1M, of which is roughly 65% new construction. The bulk of the new construction cost relates to the new secondary treatment plant that is required for ammonia and nutrient removal.


The Project includes all work, services and materials required of Project Co under the Project Agreement for the design, construction, financing, operation, and maintenance of the City's waste water treatment plant.

## 1. Scope

Project Co. will be required to design, build, finance, operate and maintain the WWTP. As part of its operational requirements, Project Co. will be required to assume operations of the WWTP shortly after the commencement of construction. Existing city staff will be transferred to Project Co. at this time. Throughout the operations and maintenance phase, Project Co. will be responsible for energy and chemical efficiency, effluent and biosolids quality compliance, routine and major maintenance and the renewal of the infrastructure to meet hand back requirements at the end of the Project Agreement.

Specifically Project Co, during the design and build, will be responsible for the following Project Components:





### Operations and Maintenance ("O&M")

During the term of the Operating Period as defined in the Project Agreement, Project Co will be required to provide the O&M as defined in Schedule 18 of the Project Agreement, which generally includes but is not limited to the following:

- carrying out day to day operation of the wastewater treatment plant;
- carrying out regular maintenance at the wastewater treatment plant;
- carrying out renewal work on infrastructure to meet hand back requirements; and
- complying with all regulatory permits and approvals.

The Project Agreement shall provide that Project Co will be required to hand-back the infrastructure to the City in the condition specified in the Project Agreement.

### Finance

Project Co is responsible for arranging all financing (other than that provided by the City as defined in the Project Agreement) sufficient to carry out and complete the Project as set out in the Project Agreement for the design and construction of the works. Project Co is also required to provide long-term equity and debt financing and is responsible for the overall financial management of the public-private partnership for the term of the Project Agreement.

## **2. Location**

The Project includes the upgrade of the existing primary and secondary treatment processes, the decommissioning and replacement of Tertiary Treatment, repurposing the treatment lagoons for wet weather/peak flow management, and new construction of additional treatment processes be constructed at Regina, Saskatchewan.

### **Timing**

The Project is expected to reach Substantial Completion on or before December 31, 2016. The operations and maintenance phase of the contract will run for thirty (30) years following Financial Close.

### **Payment Claims**

## SCHEDULE B – ELIGIBLE COSTS

### B.1 Eligible Costs

- (i) Subject to and excluding costs listed in Section B.2 of this Schedule “B”, Eligible Costs will consist of Direct Construction Costs and Public Sector Implementation Costs as defined below.
- (a) “Direct Construction Costs” shall mean those costs of the Project based on explicit estimates provided by Project Co, as contained in the Final Financial Model and to be incurred during the construction and commissioning period including:
- i. Costs of construction including permits, building construction, site servicing, seismic upgrades and other construction on project related structures and works performed by Project Co;
  - ii. Costs of furniture, fixtures and equipment;
  - iii. Costs of repairing damaged units during the decanting process;
  - iv. Bid preparation costs, including the fees paid to non-legal professionals, including project managers, technical personnel, consultants and contractors specifically engaged to undertake surveying, design, engineering, manufacturing or construction of infrastructure assets for the Project, and related facilities and structures;
  - v. Costs associated with the special purpose vehicle;
  - vi. Costs of environmental assessment, remediation activities, mitigation measures and follow-up to any environmental assessment; and
  - vii. Construction financing costs, including interim financing fees and debt service accounts.
- (b) “Public Sector Implementation Costs” shall mean the actual costs incurred by the City to implement the Project successfully as a public-private partnership, excluding legal costs, provided that these costs are directly and incrementally linked with the Project and were incurred after June 15, 2012 including:
- i. Fees paid to non-legal professionals, including project managers, technical personnel, consultants and contractors specifically engaged to undertake surveying, design, engineering, manufacturing or construction of infrastructure assets for the Project, and related facilities and structures;
  - ii. Commissioning costs;
  - iii. Disbursements
  - iv. procurement options analysis costs; and
  - v. Site clearing costs.

Public Sector Implementation Costs are limited to a maximum of 15% of total Eligible Costs.

## **B.2 Costs that are not Eligible Costs**

The following are not Eligible Costs:

- (a) costs incurred before the Approval Date of June 15, 2012;
- (b) costs incurred for developing a business case or proposal for funding from PPP Canada and/or the P3 Canada Fund;
- (c) the cost of purchasing land and associated real estate and other fees;
- (d) the cost of leasing land, buildings, equipment and other facilities;
- (e) financing charges and interest payments on loans other than construction loans during the construction period;
- (f) services or works normally provided by the City, incurred in the course of implementing the Project, except those specified as Eligible Costs;
- (g) the cost of general repairs and maintenance of a Project and related structures, unless they are part of a larger capital expansion project tied to capital expansion;
- (h) the cost of any goods and services which are received through donations or in kind;
- (i) employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the City, and more specifically costs relating to services delivered directly by permanent employees of the City, or of a Crown Corporation or corporation owned and controlled by the City, except in cases where the City can demonstrate value for money and that the costs are incremental;
- (j) Provincial sales tax, Goods and Services Tax or Harmonized Sales Tax, for which the City is eligible for a rebate, and any other costs eligible for rebates; and
- (k) legal fees.



## **SCHEDULE C – DISPOSAL OF ASSETS AND REIMBURSEMENT**

### **C.1 Reimbursement**

In connection with the events described in subsection 11.2(c) or 14.1, the City will reimburse PPP Canada, on demand, the contributions made by PPP Canada under this Agreement, in the proportions set forth herein below:

<b>Time of Occurrence of Event</b>	<b>Return of contribution</b>
The period of time commencing on the Completion Date and ending immediately prior to the date 2 years after the Completion Date	100%
The period of time commencing on the date 2 years after the Completion Date and ending immediately prior to the date 5 years after the Completion Date	90%
The period of time commencing on the date 5 years after the Completion Date and ending immediately prior to the date 10 years after the Completion Date	80%
The period of time commencing on the date 10 years after the Completion Date and ending immediately prior to the date 15 years after the Completion Date	70%
The period of time commencing on the date 15 years after the Completion Date and ending immediately prior to the date 20 years after the Completion Date	50%
The period of time commencing on the date 20 years after the Completion Date and ending immediately prior to the date 25 years after the Completion Date	30%

### **C.2 Notice**

The City shall promptly notify PPP Canada in writing at any time during the term of this Agreement of the occurrence of an event described in Sections 11 or 14.1, and shall enclose with such notice the payment contemplated in Section 11.2(c) or 14.1, as applicable, calculated in the manner set out in Section C.1 of this Schedule.

## **SCHEDULE D – GUIDELINES**

### **REPORTING - GUIDELINES**

Capitalized terms not otherwise defined in these Guidelines have the meanings attributed thereto in the Financial Agreement between PPP Canada and the City, dated the [day] of [month], 2014 (the "Agreement"). Unless otherwise provided therein, the City acknowledges and agrees that any other agreement or instrument related to the Project that is/are entered into by the Parties is/are subject to these Guidelines.

#### **1.1 ANNUAL PROGRESS REPORT**

Save as herein provided, an annual progress report in respect of the immediately preceding Calendar Year must be submitted by the City to PPP Canada no later than June 30th in each year of the term of this Financial Agreement. In the event that the Effective Date is between January 1<sup>st</sup> and June 30<sup>th</sup>, the first annual progress report must be submitted to PPP Canada by June 30th of the following year, that is, not in the same calendar year as the Effective Date. Each annual progress report shall include the following:

- a) an introductory section providing a general description of the Project focusing on major achievements during the applicable Calendar Year;
- b) detailed summary information on the Project's progress during the applicable Calendar Year;
- c) an overview of the status of both expected and unanticipated significant environmental issues related to the Project and the mitigation strategies to deal with these concerns undertaken or proposed during the applicable Calendar Year;
- d) an update of Project benefits (environmental, economic, social, cultural, safety, etc.) along with results or successes achieved during the Calendar Year;
- e) an explanation of any significant variations from cost projections in the Agreement, along with the intended course of action to remedy the situation;
- f) any areas of significant concern or risk factors and proposed mitigation strategies affecting the schedule or the budget of the Project;
- g) any issues or risk factors that may materially affect completion of the Project as originally proposed;
- h) details on matters of significance to the continued operation of the Project and of any Significant Changes within the past year;
- i) details of the sale, lease, license or disposal, whether direct or indirect, of all or substantially all of the wastewater treatment plant;
- j) details if the Project ceases to operate as a P3; and
- k) highlights of communication activities of the Project during the applicable Calendar Year.

#### **1.2 PUBLIC PROJECT REPORT**

The Recipient will submit to PPP Canada, within a reasonable time after Financial Close, a public Value for Money Report.

#### **1.3 RETENTION OF INFORMATION**

PPP Canada information is subject to the Government of Canada's Management of Government Information Policy and, consequently, the *Library and Archives of Canada Act*. The City acknowledges that some or all information provided to PPP Canada pursuant to the Agreement or these Guidelines may

be transferred to the National Archives at the end of any retention period therefore set out in the Agreement as a result of its historical value. The City acknowledges that copies of audit(s), and information therefrom, are subject to the provisions governing Confidential Information in the Agreement and may be made available to third parties under Applicable Laws, including access to information legislation, and/or posted on PPP Canada or Government of Canada websites.

## COMMUNICATIONS GUIDELINES

### 1. SCOPE

- (a) These Guidelines establish the principles and practices that will guide all public communications, public announcements and other public events related to PPP Canada's involvement and role in the Project and/or the Agreement. Public communications, public announcements and other public events may include, without limitation, news conferences, public announcements or other official ceremonies, or communications products such as speeches, press releases, websites, advertising, promotional material, value for money reports, case studies or signage ("**Communication Activities**" and each is a "**Communication Activity**"). The first Communication Activity for the Project will be a joint public event with media participation to mark the signing of the Agreement, accompanied by a joint news release issued by the Parties (the "**First Communication Activity**").
- (b) Unless otherwise provided therein, the City acknowledges and agrees that any other agreement or instrument related to the Project that is/are entered into by the Parties is/are subject to these Guidelines.

### 1.1 GUIDING PRINCIPLES

- (a) The Parties agree that Canadians have a right to transparency and public accountability, which is best served by full information about the public benefits of the P3 Canada Fund or other PPP Canada investments being available to Canadians.
- (b) In respect of the Project, the Parties agree:
  - (i) to ensure open, transparent, proactive and effective communications with the public are achieved through appropriate and consistent Communication Activities that recognize the respective contributions of the Parties;
  - (ii) to jointly undertake and collaborate on all Communication Activities relating to the First Communication Activity;
  - (iii) where a Communication Activity is to be jointly undertaken by the Parties, to provide equal prominence and visibility to both Parties; and
  - (iv) where a Communication Activity is to be undertaken by only one Party, to properly acknowledge the other Party's involvement in the Project in such communications.
- (c) Notwithstanding the terms of these Guidelines, the Parties acknowledge and agree that the City is solely responsible for all operational communications in respect of the Project, including calls for tender and construction and public safety notices.

## 1.2 COMMUNICATION ACTIVITIES

- (a) Within the earlier of (i) 60 days of the Effective Date and (ii) such date which is immediately prior to the First Announcement, the City will provide to PPP Canada for its review a communications plan demonstrating how the City will undertake all Communication Activities, whether undertaken alone by the City or jointly undertaken with PPP Canada, during the term of the Project. In addition, the communications plan will forecast potential Communication Activities, whether undertaken alone by the City or jointly undertaken with PPP Canada, set out anticipated communications other than Communication Activities, and identify communications risks associated with the Project. The Recipient may amend or update its communications plan at any time, and, if so, will promptly provide PPP Canada with the amended or updated copy thereof.
- (b) Following the First Communication Activity, the Parties will undertake Communications Activities, whether alone by one Party or jointly by both Parties, after funding decisions are made and/or upon completion of key Project milestones.
- (c) Either Party may request that the other participate in joint Communication Activities. Such joint Communication Activities will:
  - (i) be organized jointly by the Parties;
  - (ii) if required by the nature of the Communication Activity, include mutually-agreed upon messages and quotes from representatives of the Parties;
  - (iii) take place at a mutually agreed date and, if required by the nature of the Communication Activity, location;
  - (iv) if required by the nature of the Communication Activity, involve a designated representative of each Party; and
  - (v) if required by the nature of the Communication Activity, be governed by the Table of Precedence of Canada, as established by Canadian Heritage, or other mutually agreed protocol.
- (d) The City shall provide, if available, professional quality audio-visual material about the Project to PPP Canada to support wider communications and case studies about public-private partnerships, P3 Canada Fund investments and other PPP Canada investments. The Parties acknowledge that the provision and use of such materials will be subject to the license granted by the City to PPP Canada pursuant to Section 8.2(e) of the Agreement.
- (e) All Communication Activities, including any Project-related signage, will reflect the Government of Canada's communications policy, including the Official Languages Act (Canada), and applicable federal, provincial and/or territorial identity graphics guidelines, including the Federal Identity Program.
- (f) All Communication Activities made through electronic media, such as web sites or management information systems, will follow the same guiding principles as those established for "traditional" Communication Activities.

### 1.3 SIGNAGE

- (a) The City shall provide and install temporary signage bearing an appropriate inscription indicating the provision of funding by PPP Canada and/or the Government of Canada (as may be directed by PPP Canada) to the Project.
- (b) Upon Substantial Completion, the City will provide and install a permanent plaque or sign at a fixed location at each Building, which bears an appropriate inscription indicating the provision of funding by PPP Canada and/or the Government of Canada (as may be directed by PPP Canada) to the Project. Where there is no appropriate location for signage to be affixed, a plaque or permanent sign will be installed at another acceptable and appropriate fixed location.
- (c) PPP Canada will provide the City with the necessary information to design and construct any temporary or permanent signage.
- (d) All temporary or permanent signage will be located in a prominent location on or about the Project site and will be clearly visible to users, visitors and/or passersby.

### 1.4 PUBLIC PROJECT REPORT

The City will make public the Value for Money Report.

### 1.5 NOTIFICATION

- (a) PPP Canada and the City shall consult with each other in respect of any proposed Communication Activities. The Party proposing to undertake a Communication Activity shall provide notice thereof to the other Party, which notice will include a detailed description of the proposed Communication Activity and the proposed text thereof (if any), 15 Business Days prior to its undertaking. Within such 15 Business Day period, the Party receiving the notice may review and comment on the nature and contents of the proposed Communication Activity. In the event that a Communications Activity must be undertaken by a Party as a result of, or in response to, a public safety or other emergency event, such Party may provide fewer than 15 Business Days notice thereof to the other Party, provided that: (i) a public safety or other emergency event exists; and (ii) it has reasonably determined the amount of notice of the Communication Activity to be given.
- (b) The City will share information promptly with PPP Canada on significant emerging media and stakeholder issues relating to the Project. PPP Canada will advise the City promptly, where appropriate, about media inquiries it receives concerning the Project.

### 1.6 COST ALLOCATION

Unless otherwise arranged, the Parties shall each pay their own direct costs (e.g., staff time, transportation, per diems, etc.) associated with the application of this Guideline.