

**AGREEMENT TO DESIGN, BUILD AND FINANCE**

**REGINA REVITALIZATION INITIATIVE STADIUM PROJECT  
REGINA, SASKATCHEWAN**

**CITY OF REGINA**

and

**PCL REGINA STADIUM 2014 LTD.**

**May 7, 2014**

**TABLE OF CONTENTS**

1. DEFINITIONS AND INTERPRETATION ..... 1

    1.1 Definitions..... 1

    1.2 Section References ..... 16

    1.3 Schedules ..... 16

    1.4 Order of Precedence..... 17

    1.5 Entire Agreement ..... 17

    1.6 Currency..... 17

    1.7 Liquidated Damages ..... 17

    1.8 No Agency, Joint Venture, Partnership, Lease or Loan ..... 18

    1.9 Project Co’s Knowledge ..... 18

    1.10 Other Rules of Interpretation ..... 18

    1.11 Rule of Construction ..... 20

2. DESIGN, BUILD AND FINANCE..... 20

    2.1 Project Financing ..... 20

    2.2 Design and Build of Facility ..... 20

    2.3 Assumption of Risk..... 21

3. FINANCING..... 21

    3.1 Project Financing ..... 21

    3.2 Direct Lender Agreement ..... 21

    3.3 Condition Precedent..... 21

    3.4 Financing and Initial Performance Letter of Credit..... 21

    3.5 Release of Financing and Initial Performance Letter of Credit ..... 21

    3.6 Presentation of Financing and Initial Performance Letter of Credit..... 22

    3.7 Repayment of Proceeds..... 23

4. THE LANDS ..... 23

    4.1 Access and Use ..... 23

    4.2 Non-Exclusive License ..... 24

    4.3 Access, Inspection and Testing..... 24

    4.4 Status of Lands..... 24

    4.5 Acceptance of Lands and Utilities ..... 24

    4.6 Environmental Damage and Degradation ..... 25

    4.7 Commencement and Duration ..... 26

    4.8 No Access Fee..... 26

    4.9 Damage Outside of the Lands..... 27

    4.10 Utility Agreements..... 27

    4.11 Condition of the Lands..... 27

    4.12 Permitted Use..... 28

    4.13 Ownership of Improvements..... 28

    4.14 Uninterrupted Access and Use..... 28

    4.15 No Payment of Taxes on Lands ..... 29

    4.16 Access and Use Rights to Cease ..... 29

    4.17 Permits and Approvals..... 29

4.18 Liens..... 30

4.19 No Encumbrances on the Lands ..... 30

4.20 *The Builders’ Lien Act* (Saskatchewan)..... 31

5. DESIGN AND BUILD OF THE FACILITY ..... 32

5.1 Project Co’s Obligations ..... 32

5.2 Technical Requirements..... 32

5.3 Project Co’s Responsibility to Carry Out Technical Requirements ..... 32

5.4 Request for Information ..... 33

5.5 Project Co’s Designs, Plans and Schedule..... 33

5.6 Project Co Solely Responsible for Project..... 33

5.7 Project Co Solely Responsible for Project Costs ..... 34

5.8 Construction Within the Lands ..... 34

5.9 Detailed Designs ..... 34

5.10 Stop Work Order or Opening Up..... 35

5.11 Construction Delays..... 35

5.12 Independent Certifier ..... 35

5.13 Anticipated Milestone Payment..... 36

5.14 Certification of Milestone Progress ..... 36

5.15 Anticipated Substantial Completion ..... 37

5.16 Certification of Substantial Completion ..... 37

5.17 City Disputes Achievement of Substantial Completion Criteria ..... 38

5.18 Project Co Disputes a Notice of Failure to Achieve Milestone Criteria..... 38

5.19 Project Co Disputes a Notice of Failure to Achieve Substantial Completion  
Criteria ..... 39

5.20 Ramp Up Period..... 40

5.21 Final Completion ..... 41

5.22 Failure to Achieve Final Completion..... 42

6. MODIFICATIONS, CHANGE ORDERS AND SRFC DESIGN WORKS ..... 42

6.1 Modification of Technical Requirements ..... 42

6.2 Other Work by the City..... 43

6.3 Determination of Costs ..... 43

6.4 Project Co Recommendation ..... 43

6.5 SRFC Design Works ..... 43

6.6 SRFC Design Co-ordination..... 45

7. DEFECTIVE WORKS ..... 45

8. WARRANTY OBLIGATIONS..... 46

9. WARRANTY LETTER OF CREDIT ..... 47

10. PAYMENTS, HOLDBACKS AND TAXES ..... 48

10.1 Milestone Payments ..... 48

10.2 Substantial Completion Payment..... 48

10.3 Taxes ..... 50

10.4 Set-off ..... 52

10.5 Interest on Overdue Payments ..... 52

11. INSURANCE, DAMAGE AND DESTRUCTION..... 52

    11.1 Insurance Requirements..... 52

    11.2 Other Requirements ..... 53

    11.3 Evidence of Insurance..... 53

    11.4 City May Insure ..... 54

    11.5 Repair of Damage - Construction Period..... 54

    11.6 Substantial Completion Delayed..... 54

12. FORCE MAJEURE ..... 55

    12.1 Force Majeure During Construction Period..... 55

    12.2 Procedure on Force Majeure Event..... 56

13. RELIEF EVENT..... 56

    13.1 Relief Event Defined..... 56

    13.2 Relief Event During Construction Period..... 58

    13.3 Procedure on Relief Event ..... 59

14. PROJECT CO’S REPRESENTATIONS AND OBLIGATIONS..... 59

    14.1 Project Co’s Representations ..... 59

    14.2 Reporting Requirements ..... 60

    14.3 Meetings and Information Sessions ..... 61

    14.4 Records ..... 62

    14.5 Safety ..... 62

    14.6 Project Co’s Other Obligations..... 62

    14.7 Application of the BLA to Project Co ..... 62

15. CITY’S REPRESENTATIONS AND OBLIGATIONS ..... 63

    15.1 City’s Representations ..... 63

    15.2 City’s General Obligation..... 63

    15.3 Environmental Reports ..... 63

    15.4 Assistance with Permits and Utility Agreements..... 63

    15.5 Assistance with OH&S Orders ..... 64

    15.6 Retention and Release of Statutory Holdbacks..... 64

16. INDEMNITIES AND LIQUIDATED DAMAGES ..... 65

    16.1 Project Co’s Indemnities..... 65

    16.2 Project Co Indemnity - Taxes ..... 66

    16.3 City’s Indemnities..... 67

    16.4 Calculation of and Limitation on Claims..... 67

    16.5 Exclusivity of Specified Remedies ..... 68

    16.6 Conduct of Indemnity Claims..... 68

    16.7 Progress of Indemnity Claims..... 69

    16.8 Settlement of Indemnity Claims ..... 69

    16.9 Delay Liquidated Damages..... 70

    16.10 Maximum Liability ..... 70

17. DEFAULTS, REMEDIES AND TERMINATION EVENTS ..... 71

17.1	Exclusivity of Termination Provisions .....	71
17.2	City’s Step-in Rights.....	71
17.3	Termination Events.....	72
18.	TERMINATION.....	73
18.1	Termination by City.....	73
18.2	Termination by Project Co.....	74
18.3	Termination Upon Force Majeure .....	74
18.4	Consequences of Termination.....	74
18.5	Survival of Obligations .....	75
19.	TERMINATION PAYMENTS .....	75
19.1	Compensation on Termination For City Default or Convenience .....	75
19.2	Compensation for Project Co Default.....	76
19.3	Termination for Force Majeure.....	77
19.4	Termination While the City Holds Financing and Initial Performance Letter of Credit.....	78
19.5	Negative Amounts .....	78
20.	COMMUNICATIONS .....	78
20.1	Notices .....	78
20.2	Authority to Give Notices.....	79
20.3	Public Announcements .....	80
20.4	Confidential Information .....	80
20.5	Disclosure of Confidential Information.....	80
20.6	Public Disclosure of Agreement.....	80
20.7	Collection, Use and Disclosure of Personal Information.....	81
20.8	Facility Sponsorship and Naming Rights .....	81
21.	CONTRACT ADMINISTRATION .....	81
21.1	Contract Administration Representatives .....	81
21.2	Mutual Cooperation .....	82
22.	DISPUTE RESOLUTION .....	82
22.1	Dispute Resolution Procedure.....	82
22.2	Exception .....	82
22.3	Termination and Dispute Resolution Procedure .....	82
22.4	No Court Proceedings.....	83
22.5	Payments Where Amount in Dispute.....	83
23.	ASSIGNMENT, SUBCONTRACTING AND CHANGE IN OWNERSHIP .....	83
23.1	Assignment by Project Co .....	83
23.2	Subcontracting by Project Co .....	83
23.3	Change in Ownership.....	84
23.4	Assignment by the City.....	84
23.5	Enurement.....	84
24.	INTELLECTUAL PROPERTY .....	85

24.1 Intellectual Property ..... 85

25. GENERAL PROVISIONS ..... 85

25.1 Applicable Law and Jurisdiction ..... 85

25.2 Amendment and Waiver ..... 85

25.3 Severability ..... 85

25.4 Cumulative Remedies ..... 86

25.5 Costs..... 86

25.6 Additional Assurances ..... 86

25.7 Counterparts..... 86

25.8 Joint and Several ..... 86

**SCHEDULES**

- Schedule 1 - Change Orders
- Schedule 2 - Works Schedule
- Schedule 3 - Project Co’s Designs
- Schedule 4 - Project Co’s Management Systems and Plans
- Schedule 5 - Design and Plan Certification Process and Review Procedure
- Schedule 6 - Dispute Resolution Procedure
- Schedule 7 - Substantial Completion Criteria
- Schedule 8 - Insurance Requirements
- Schedule 9 - Lands
- Schedule 10 - Safety Requirements
- Schedule 11 - Payment Schedule
- Schedule 12 - Design and Construction Subcontractor Direct Agreement
- Schedule 13 - Warranty Letter of Credit
- Schedule 14 - Direct Lender Agreement
- Schedule 15 - Technical Requirements
- Schedule 16 - Form of Assignable Subcontract Agreement
- Schedule 17 - Works Report
- Schedule 18 - Payment Application
- Schedule 19 - Form of Independent Certifier Agreement
- Schedule 20 - RFP Proposal Extracts

**AGREEMENT TO DESIGN, BUILD AND FINANCE**

**REGINA REVITALIZATION INITIATIVE STADIUM PROJECT  
REGINA, SASKATCHEWAN**

**THIS AGREEMENT** is made this 7th day of May, 2014

**BETWEEN:**

**CITY OF REGINA**  
(the “City”)

**AND:**

**PCL REGINA STADIUM 2014 LTD.**  
(“Project Co”)

**PREAMBLE:**

Pursuant to a competitive procurement process, the City has selected Project Co to design, build and partially finance the Facility as a replacement for Mosaic Stadium in Regina, Saskatchewan.

The City and Project Co therefore agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, the following expressions have the following meanings (and, where applicable, their plurals have corresponding meanings):

“**Additional Items Notice**” has the meaning indicated in Section 5.21;

“**Affiliate**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Agreement**” means this agreement, including Schedules 1 to 16 and any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time;

“**Applicable Law**” means:

- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
- (b) any Authority Requirement; and
- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Saskatchewan,

in each case, in force in the Province of Saskatchewan, or otherwise binding on the City, any City Party, Project Co or any Project Co Party;

“**Assigned Intellectual Property**” has the meaning indicated in Section 24.1;

“**Associated Liabilities**” has the meaning indicated in Section 16.2(b);

“**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority;

“**BLA**” means *The Builders’ Lien Act* (Saskatchewan);

“**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in Saskatchewan, Alberta or Ontario;

“**Certificate of Milestone Progress**” has the meaning indicated in Section 5.14;

“**Certificate of Substantial Completion**” has the meaning indicated in Section 5.16;

“**Certification Services**” has the meaning indicated in Schedule 19 (Form of Independent Certifier Agreement);

“**Certification Services Variation**” has the meaning indicated in Schedule 19 (Form of Independent Certifier Agreement);

“**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Saskatchewan of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Saskatchewan in each case after the date of this Agreement;

“**Change Order**” has the meaning indicated in Schedule 1 (Change Orders);

“**Change Order Confirmation**” has the meaning indicated in Schedule 1 (Change Orders);

“**Change Order Directive**” has the meaning indicated in Schedule 1 (Change Orders);

“**Change Order Enquiry**” has the meaning indicated in Schedule 1 (Change Orders);

“**City**” means The City of Regina, a city continued pursuant to *The Cities Act* (Saskatchewan) and located in Saskatchewan, Canada;

“**City Default Termination Sum**” has the meaning indicated in Section 19.1(b);

“**City Party**” means, excluding Project Co and any Project Co Party:

- (a) any of the City’s agents, contractors and subcontractors of any tier, and its or their directors, officers and employees;

- (b) those for whom the City is legally responsible; or
- (c) any person exercising rights under an Identified Encumbrance,
- (d) any person exercising rights under an Identified Encumbrance, a grant contemplated by the third paragraph of Section 4.1 or a consent contemplated by the last sentence of Section 4.14,

and “**City Parties**” shall be construed accordingly;

“**City Representative**” means the person designated as such by the City on or prior to the date of this Agreement and any permitted replacement;

“**City’s Section 5.17 Notice**” has the meaning indicated in Section 5.17;

“**Claim Notice**” has the meaning indicated in Section 16.6;

“**Claim of Lien**” has the meaning indicated in Section 14.7;

“**Compliance Undertaking**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Conflict of Interest**” has the meaning indicated in Schedule 19 (Form of Independent Certifier Agreement);

“**Confidential Information**” has the meaning indicated in Section 20.4;

“**Contract Material**” has the meaning indicated in Schedule 19 (Form of Independent Certifier Agreement);

“**Construction Defect**” has the meaning indicated in Section 8(b);

“**Construction Defect Warranty Period**” has the meaning indicated in Section 8(d);

“**Construction Defect Warranty Work**” means the work required to correct Construction Defects identified pursuant to Section 8; and

“**Construction Equipment Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Construction Latent Defect**” has the meaning indicated in Section 8(f);

“**Construction Period**” means the time between the date hereof and the Substantial Completion Date (but excluding the day of the Substantial Completion Date);

“**Construction Period Termination**” means termination of this Agreement by the City under Section 19 prior to Substantial Completion;

“**Construction Year**” means the twelve (12) month period following the date hereof or the 12 month periods following each anniversary of the date hereof, as applicable;

“**Contract Price**” means \$[227,406,621.36] and is the cost of Project Co performing the Project Co Works;

“**COR**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Court**” means a court of law of competent jurisdiction;

“**Dangerous Occurrence**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**DBF Agreement Arbitration**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Default**” means any breach by Project Co or the City of any provision of this Agreement, including the material inaccuracy, when made, of any representation given by Project Co in Section 14.1 or the City in Section 15.1;

“**Default Notice**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Deficiency List**” has the meaning indicated in Section 5.21;

“**Delay Liquidated Damages**” has the meaning indicated in Section 16.9(a)(i);

“**Design and Construction Contract**” means the design and construction contract between Project Co and the Design and Construction Subcontractor dated on or about the date of this Agreement;

“**Design and Construction Subcontractor**” means PCL Construction Management Inc.;

“**Design and Construction Subcontractor Direct Agreement**” means the agreement to be entered into between the City, Project Co, the Design and Construction Subcontractor and the Design and Construction Subcontractor Guarantor substantially in the form of Schedule 12 (Design and Construction Subcontractor Direct Agreement);

“**Design and Construction Subcontractor Guarantor**” means PCL Construction Group Inc.;

“**Design and Plan Certification Process**” has the meaning indicated in Schedule 5 (Design and Plan Certification Process and Review Procedure);

“**Design Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Designated Change in Law**” means:

- (a) a change in Applicable Law directed specifically at the stadium construction industry in Saskatchewan or Canada or directed specifically at Project Co, the

Project, the Facility or public-private arrangements of the nature of this Agreement;  
or

- (b) a change of a standard incorporated by reference in the Technical Requirements, which change requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which Project Co would not otherwise be required to perform in order to comply with its obligations under this Agreement,

provided that, in either case, such change was not reasonably foreseeable at the date of this Agreement by an experienced contractor carrying out activities similar to those to be carried out by Project Co or any Project Co Party in relation to the Project;

“**Detailed Designs**” has the meaning indicated in Section 5.9;

“**Direct Labour Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Direct Lender Agreement**” means the agreement to be entered into between the City, Project Co and one or more lenders (or any trustee or other representative of such lenders) which provide the Project Financing substantially in the form of Schedule 14 (Direct Lender Agreement);

“**Dispute**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Dispute Notice**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Dispute Resolution Procedure**” means the procedure set out in Schedule 6 (Dispute Resolution Procedure);

“**Dollar**” or “**\$**” means a Canadian dollar;

“**Electronic Data Room**” has the meaning set out in the RFP;

“**Encumbrance**” means, with respect to the Lands, any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims under the BLA or claims of any Governmental Authority;

“**Environmental Damage or Degradation**” means the presence of contamination in water, soil or air, in violation of any Applicable Law (including, without limitation, environmental laws enacted after the time at which the Hazardous Substance causing the contamination is first present), caused by any Hazardous Substance, and includes death or injury to plants, animals or human beings resulting in whole or in part from such contamination;

“**Environmental Reports**” means the following reports prepared by Clifton Associates Ltd.:

- (a) Phase I Environmental Site Assessment dated February 15, 2012;

- (b) Phase I Environmental Site Assessment dated July 26, 2013;
- (c) Phase II Environmental Site Assessment dated June 13, 2013;
- (d) Geotechnical Report dated October 18, 2012; and
- (e) Geotechnical Data Report dated July 12, 2013;

“**Equipment Defect**” has the meaning indicated in Section 8(c);

“**Estimate**” has the meaning indicated in Schedule 1 (Change Orders);

“**Estimate Dispute**” has the meaning indicated in Schedule 1 (Change Orders);

“**Estimated Cost to Achieve Final Completion**” has the meaning indicated in Section 5.21;

“**Expert**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Expert’s Conclusion**” has the meaning indicated in Schedule 5 (Design and Plan Certification Process and Review Procedure);

“**Facility**” means the new stadium facility that, pursuant to this Agreement, is to be built by Project Co on the Lands as a replacement for Mosaic Stadium in Regina, Saskatchewan;

“**Fee**” has the meaning indicated in Schedule 19 (Form of Independent Certifier Agreement);

“**Final Completion**” means full completion of all aspects of the Works in accordance with the Technical Requirements, as evidenced by a certificate issued by the Independent Certifier under Section 5.21;

“**Final Completion Holdback**” has the meaning indicated in Section 5.21;

“**Final Completion Letter of Credit**” has the meaning indicated in Section 5.21;

“**Final Completion Payment**” has the meaning indicated in Section 5.21;

“**Financing and Initial Performance Letter of Credit**” has the meaning indicated in Section 3.3;

“**Force Majeure Event**” means any war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic, or quarantine restriction that prevents, delays or interrupts the performance of any obligation under this Agreement, other than any obligation to pay any money, and provided such event does not occur by reason of:

- (a) the negligence of the party relying on the Force Majeure Event (or those for whom it is in law responsible); or
- (b) any act or omission of the party relying on the Force Majeure Event (or those for whom it is in law responsible) that is in breach of the provisions of this Agreement;

**“Force Majeure Termination”** means termination of this Agreement by either party under Section 18.3 on account of a Force Majeure Event;

**“GAAP”** shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next;

**“Good Industry Practice”** means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

**“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the City, any aspect of the performance of this Agreement or the operation of the Facility, in each case, to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction;

**“GST”** means the value added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada);

**“Hazardous Substance”** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance or emission that is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material or hazardous substance that is or becomes regulated by or under any Applicable Law or that is or becomes classified as hazardous or toxic by or under any Applicable Law;

**“HCSAS”** has the meaning indicated in Schedule 10 (Safety Requirements);

**“Heritage Find”** means property of archaeological, palaeontological (including human remains and burial sites) or heritage significance or historical resources located in, under or on the Lands;

“**Identified Encumbrances**” means:

- (a) all Encumbrances and interests that as of the Submission Date are registered against any of the titles listed in Schedule 9 (Lands); and
- (b) all unregistered utility rights of way, easements, leases and other similar interests that are set out in Schedule 9 (Lands);

“**Incurable Default**” means a Default that is by its nature or by reason of prevailing circumstances incapable of being cured in all material respects, but does not include any Default that is a failure to carry out a particular obligation by a particular date or within a particular period where it is possible to subsequently perform that obligation, albeit not by or within the relevant date or period;

“**Indemnifiable Taxes**” has the meaning indicated in Section 16.2(b);

“**Indemnified Party**” has the meaning indicated in Section 16.6;

“**Indemnifying Party**” has the meaning indicated in Section 16.6;

“**Indemnity Claim**” has the meaning indicated in Section 16.6;

“**Independent Certifier**” has the meaning indicated in Section 5.12;

“**Independent Certifier Agreement**” means the agreement to be entered into between the City, Project Co and the Independent Certifier upon selection of the Independent Certifier and relating to, *inter alia*, the obligations of the Independent Certifier as set out substantially in the form in Schedule 19 (Form of Independent Certifier Agreement);

“**Initiating Party**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Intellectual Property**” has the meaning indicated in Schedule 19 (Form of Independent Certifier Agreement);

“**Irrecoverable Tax**” has the meaning indicated in Section 10.3(c)(ii);

“**ISDA**” means the International Swaps and Derivatives Association;

“**LAFOIP**” means *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan);

“**Lands**” means the lands described in Schedule 9 (Lands) and municipally known as the Evraz Place property;

“**Lenders**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates pursuant to which the Project Financing is made available to Project Co;

“**Letter of Credit**” means a letter of credit presentable for payment at a bank in Regina, Saskatchewan issued by a bank authorized under Schedule 1 to the *Bank Act* (Canada) to do business in Canada (or issued by such other financial institution approved in advance by the City, who may grant or decline such approval in its absolute discretion), or by Alberta Treasury Branch or HSBC Bank Canada, having a senior, unsecured long-term credit rating of not less than A+ (with a stable outlook) or equivalent from one of (and no rating less than A+ (with a stable outlook) or equivalent from any other of) Standard & Poor’s, DBRS or Fitch Ratings (or any other major credit rating agency approved by the City, who may grant or decline such approval in its absolute discretion);

“**Longstop Date**” has the meaning indicated in 17.3(f);

“**Material Adverse Effect**” occurs when a Default:

- (a) creates a material risk to public security, public health or public safety or to the environment;
- (b) creates a material risk of significant liability to third parties on the part of the City; or
- (c) demonstrates a marked or persistent inability or unwillingness on the part of Project Co to adhere to its obligations under this Agreement;

“**Materials Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Milestone Criteria**” means the applicable milestone progress criteria for each Milestone Payment set out in Schedule 11 (Payment Schedule);

“**Milestone Payment Invoice**” has the meaning indicated in Section 10.1(b)(i);

“**Milestone Payments**” means each payment for the Project Co Works that becomes due to Project Co under Section 10.1;

“**Modifications**” means renovations, alterations, improvements or expansions of the Facility;

“**Non-Compliance Submission**” has the meaning indicated in Schedule 5 (Design and Plan Certification Process and Review Procedure);

“**Non-Default Termination Sum**” has the meaning indicated in Section 19.3(b);

“**Notice of Contravention**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Notice of Default**” means a notice from the City to Project Co or from Project Co to the City specifying a Default;

“**Notice of Failure to Achieve Milestone Criteria**” has the meaning indicated in Section 5.14;

“**Notice of Failure to Achieve Substantial Completion Criteria**” has the meaning indicated in Section 5.16;

“**Notice Period**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**OH&S**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**OH&S Conviction**” has the meaning indicated in Section 17.3(l);

“**OH&S Order**” means an order issued pursuant to OH&S;

“**Other Employer**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Overhead Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Own Forces Work**” has the meaning indicated in Schedule 1 (Change Orders);

“**Party Representative**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Payment**” means the Milestone Payments, the Substantial Completion Payment, the Ramp Up Payments and the Final Completion Payment to be paid or released by the City to Project Co under Section 10 or any SRFC Payment;

“**Payroll Burden Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Permits and Approvals**” has the meaning indicated in Section 4.17;

“**PPE**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Primary Exclusions**” has the meaning indicated in Schedule 8 (Insurance Requirements);

“**Prime**” means the rate of interest from time to time declared by Bank of Montreal (or its successor, in the event of a merger or amalgamation) as its prime rate for Canadian dollar commercial loans in Canada;

“**Prime Contractor**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Prohibited Act**” means:

- (a) offering, giving or agreeing to give to the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift, favour or consideration of any kind as an inducement or reward in relation

to the obtaining or performance of this Agreement or any other agreement with the City or any public body in connection with the Project;

- (b) entering into this Agreement or any other agreement with the City or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co or on its behalf;
- (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any other agreement with the City or any public body in connection with the Project; or
- (d) defrauding or attempting to defraud or conspiring to defraud the City or any other public body in connection with the Project;

“**Project**” means the design, build and finance of the Facility in accordance with the Technical Requirements and the completion of the Works;

“**Project Co**” means PCL Regina Stadium 2014 Ltd.;

“**Project Co Default Termination Sum**” has the meaning indicated in Section 19.2(b);

“**Project Co Party**” means:

- (a) the Design and Construction Subcontractor;
- (b) any person engaged by Project Co and/or the Design and Construction Subcontractor from time to time as may be permitted by this Agreement to procure or manage the provision of the Project;
- (c) any supplier or consultant of Project Co engaged by or through Project Co to perform any of the Project;
- (d) any SRFC Contractor which has entered into a SRFC Assigned Subcontract with Project Co;
- (e) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors; and
- (f) those for whom Project Co is legally responsible,

and “**Project Co Parties**” shall be construed accordingly;

“**Project Co Representative**” means the person designated as such by Project Co on or prior to the date of this Agreement and any permitted replacement;

“**Project Co Works**” means the design, construction, installation, testing, commissioning and completion of the Project in accordance with the Technical Requirements, excluding, for greater certainty, the SRFC Design Works;

“**Project Co’s Contact Organization**” means the Contact Organization named in the response to the RFP that culminated in Project Co’s Proposal;

“**Project Co’s Designs**” means Project Co’s design drawings and design reports for the Facility, set out in Schedule 3 (Project Co’s Designs), and including any amendments made from time to time in accordance with Section 5.5 (Project Co’s Designs, Plans and Schedule);

“**Project Co’s Management Systems and Plans**” means all of Project Co’s systems and plans set out in Schedule 4 (Project Co’s Management Systems and Plans), including any amendments made from time to time in accordance with Section 5.5;

“**Project Co’s Resubmission**” has the meaning indicated in Schedule 5 (Design and Plan Certification Process and Review Procedure);

“**Project Documents**” means this Agreement, any SRFC Assigned Subcontract and the Direct Lender Agreement;

“**Project Finance Amount**” means, at any time, the outstanding principal amount of the Project Financing together with all interest accrued thereon. For greater certainty, the Project Finance Amount excludes any makewhole or breakage costs and excludes committed amounts of the Project Financing which are not yet advanced or drawn down;

“**Project Financing**” means financing, of whatever nature, arranged by or on behalf of Project Co which, having regard to Schedule 11 (Payment Schedule), is sufficient to carry out and complete the Project; but not in any event exceeding the amount of Project Financing indicated in or by Project Co’s proposal in response to the RFP;

“**Project Financing Makewhole**” means:

- (a) the net cost of early termination of market-standard ISDA interest rate hedging arrangements and other breakage costs, unpaid commitment fees or other makewhole amounts payable by Project Co to the Lenders under the Project Financing; and
- (a) all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay, so long as such fees, costs and expenses are commercially reasonable in the circumstances of the financing and are not unreasonably punitive;

“**PST**” means the value added sales tax that is collected under the authority of *The Provincial Sales Tax Act* (Saskatchewan);

“**Ramp Up Events**” has the meaning indicated in Section 5.20(a);

“**Ramp Up Holdback**” has the meaning indicated in Section 5.20(b);

“**Ramp Up Letter of Credit**” has the meaning indicated in Section 5.20(b);

“**Ramp Up Payments**” means each payment that becomes due to Project Co upon completion of a Ramp Up Event pursuant to Section 5.20(c);

“**REAL**” means the Regina Exhibition Association Limited, the proposed operator of the Project following Substantial Completion;

“**Recoverable Tax**” has the meaning indicated in Section 10.3(c)(iii);

“**Relief Event**” has the meaning indicated in Section 13.1;

“**Remedial Action**” has the meaning indicated in Section 17.2;

“**Representative**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Residual Minor Deficiencies**” has the meaning indicated in Section 5.22;

“**Responding Party**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Review Procedure**” has the meaning indicated in Schedule 5 (Design and Plan Certification Process and Review Procedure);

“**RFI**” means a request for information submitted by Project Co to the City in accordance with the request for information form attached to Schedule 15 (Technical Requirements);

“**RFP**” means the request for proposals issued by the City in respect of the Project;

“**RFQ**” means the request for qualifications issued by the City in respect of the Project;

“**Schedule**” means a schedule to this Agreement;

“**SCSA**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Senior Executive**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Site Plans**” means the ‘*Project Specific Output Specifications Site Plan, Sheet Number G-100*’ dated May 29, 2013 and the ‘*AECOM PSOS Submission Site Serviceability Memorandum*’ dated May 29, 2013 as attached to Schedule 15 (Technical Requirements);

“**SRFC**” means the Saskatchewan Roughrider Football Club Inc.;

“**SRFC Assigned Subcontract**” means any subcontract for specific works in relation to SRFC Design Works completed by SRFC Contractors that is assigned by the City to Project Co pursuant to Section 6.5;

“**SRFC Contractors**” means any independent contractor (not being, for the avoidance of doubt, Project Co or any Project Co Party) or SRFC’s own forces engaged by the City to carry out any SRFC Design Works;

“**SRFC Design Works**” means those works or services in relation to the Facility, including the design works and design services for the SRFC Fit Out Works, but excluding the SRFC Fit Out Works and the Project Co Works, which are to be carried out by the SRFC Contractors prior to Substantial Completion;

“**SRFC Fit Out Works**” means the works carried out under any Change Order referred to in Section 6 of Schedule 1 (Change Orders);

“**SRFC Payments**” means the payments for the SRFC Design Works that become due to Project Co in accordance with Schedule 11 (Payment Schedule) and the payments for the SRFC Fit Out Works that become due to Project Co in accordance with any Change Order referred to in Section 6 of Schedule 1 (Change Orders) and Schedule 11 (Payment Schedule);

“**SRFC Subcontract**” has the meaning indicated in Schedule 16 (Form of Assignable Subcontract Agreement);

“**Step-In Date**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Step-In Notice**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Step-In Period**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Step-Out Date**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Step-Out Notice**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, including any supplier or any consultant, and any subcontractor of any other subcontractor at any tier, and includes any SRFC Contractor;

“**Subcontractor Work**” has the meaning indicated in Schedule 1 (Change Orders);

“**Submission Date**” means February 24, 2014;

“**Substantial Completion**” means the Facility has met the Substantial Completion Criteria, as evidenced by the issuance of the Certificate of Substantial Completion;

“**Substantial Completion Criteria**” means all of the criteria set out in Schedule 7 (Substantial Completion Criteria);

“**Substantial Completion Date**” means the date on which Substantial Completion is achieved;

“**Substantial Completion Payment**” means [REDACTED]

“**Substantial Completion Payment Invoice**” has the meaning indicated in Section 10.2(b)(i);

“**Substantial Completion Target Date**” means August 31, 2016, as such date may be amended from time to time in accordance with this Agreement;

“**Suitable Substitute Contractor**” has the meaning indicated in Schedule 14 (Direct Lender Agreement);

“**Technical Requirements**” or “**PSOS**” means all of the City’s requirements and specifications for the Project set out in Schedule 15 (Technical Requirements), pursuant to Section 6.1;

“**Temporary Work Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Term**” means the period from and including the date of this Agreement to the date of expiry of the Construction Defect Warranty Period;

“**Termination by Project Co**” means termination of this Agreement by Project Co under Section 18.2;

“**Termination Event**” has the meaning indicated in Section 17.3;

“**Termination for Convenience**” means termination of this Agreement by the City under Section 18.1(b);

“**Termination Payment**” means the applicable payment specified in Section 19 required to be made by the City to Project Co upon termination of this Agreement;

“**Third Party Arbitration**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**Third Party Input**” has the meaning indicated in Schedule 1 (Change Orders);

“**Third Party Litigation**” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“**TLC**” has the meaning indicated in Schedule 10 (Safety Requirements);

“**Total Cost of Materials and Labour**” has the meaning indicated in Schedule 1 (Change Orders);

“**Total Labour Cost**” has the meaning indicated in Schedule 1 (Change Orders);

“**Utility Agreements**” has the meaning indicated in Section 4.10;

“**Warranty Letter of Credit**” has the meaning indicated in Section 9(a);

“**Warranty Work**” means the work required to correct Construction Defects or Equipment Defects identified pursuant to Section 8;

“**Works**” means:

- (a) the Project Co Works;
- (b) the SRFC Design Works; and
- (c) following any Change Order referred to in Section 6 of Schedule 1 (Change Orders), the SRFC Fit Out Works;

“**Works Report**” means the monthly reporting obligations of Project Co as set out in Schedule 17 (Works Report); and

“**Works Schedule**” means Project Co’s schedule for construction of the Project, set out in Schedule 2 (Works Schedule), including any amendments made from time to time in accordance with Section 5.5.

**1.2 Section References**

References in this Agreement to Sections of this Agreement are to the correspondingly numbered provisions of this Agreement. References to Schedules are to the correspondingly numbered Schedules listed in Section 1.3.

**1.3 Schedules**

The following Schedules are for every purpose to be considered as part of this Agreement (and provisions of the Schedules are to be considered as provisions of this Agreement):

- Schedule 1 - Change Orders
- Schedule 2 - Works Schedule
- Schedule 3 - Project Co’s Designs
- Schedule 4 - Project Co’s Management Systems and Plans
- Schedule 5 - Design and Plan Certification Process and Review Procedure
- Schedule 6 - Dispute Resolution Procedure
- Schedule 7 - Substantial Completion Criteria
- Schedule 8 - Insurance Requirements
- Schedule 9 - Lands
- Schedule 10 - Safety Requirements
- Schedule 11 - Payment Schedule
- Schedule 12 - Design and Construction Subcontractor Direct Agreement

Schedule 13	-	Warranty Letter of Credit
Schedule 14	-	Direct Lender Agreement
Schedule 15	-	Technical Requirements
Schedule 16	-	Form of Assignable Subcontract Agreement
Schedule 17	-	Works Report
Schedule 18	-	Payment Application
Schedule 19	-	Form of Independent Certifier Agreement
Schedule 20	-	RFP Proposal Extracts

#### **1.4 Order of Precedence**

In the event of any conflict or inconsistency between the provisions in the body of this Agreement and the provisions of any Schedule, the provisions in the body of this Agreement shall govern. For greater certainty, upon the issuance of a Change Order Confirmation or Change Order Directive with respect to a Change Order, such Change Order shall be deemed incorporated into and become part of the body of this Agreement. In the event of any ambiguity, conflict or inconsistency between the provisions of this Agreement and the Direct Lender Agreement, the provisions of the Direct Lender Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

#### **1.5 Entire Agreement**

This Agreement is the entire agreement between the City and Project Co regarding the subject matter of this Agreement, and supersedes any previous agreements, negotiations and understandings, including, for greater certainty, the RFQ and the RFP in respect of the Project. There are no agreements, representations, warranties, terms, conditions or commitments regarding the subject matter of this Agreement except as expressed in this Agreement.

#### **1.6 Currency**

In this Agreement, all references to dollar amounts are in Canadian currency.

#### **1.7 Liquidated Damages**

Where any provision of this Agreement specifies or otherwise indicates an amount as liquidated damages, both the City and Project Co agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that either the City or Project Co will suffer as a result of the happening of the particular event and would be difficult or impossible to quantify upon the happening of the particular event.

**1.8 No Agency, Joint Venture, Partnership, Lease or Loan**

This Agreement is not intended to and does not:

- (a) constitute either party as the agent of the other for any purpose, or otherwise create any relationship of agency;
- (b) constitute or create any joint venture;
- (c) constitute or create any partnership;
- (d) constitute the relationship of landlord and tenant; or
- (e) constitute the relationship of lender and borrower;

and neither party shall allege or assert for any purpose that this Agreement constitutes or creates a relationship of agency, joint venture, partnership, landlord and tenant, or lender and borrower.

**1.9 Project Co's Knowledge**

Where any provision of this Agreement refers to the knowledge of or matters known to Project Co, the knowledge on the part of personnel of Project Co or the Design and Construction Subcontractor, provided such personnel are directly involved in the design or construction of the Project, shall be deemed to be knowledge of Project Co.

**1.10 Other Rules of Interpretation**

This Agreement shall be interpreted according to the following provisions, unless the context otherwise requires:

- (a) the table of contents, headings, marginal notes and references to them in this Agreement are for convenience of reference only, shall not constitute a part of this Agreement and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement;
- (b) all capitalized terms used in a Schedule shall have the meanings given to such terms in Section 1.1, unless stated otherwise in a particular Schedule, in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule;
- (c) the language of the Technical Requirements and other documents comprising this Agreement is in many cases written in the imperative for brevity and clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words "Project Co shall" immediately preceded the instructions, directions or obligations;
- (d) words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, 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;
- (e) unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
  - (f) unless otherwise provided in this Agreement, all accounting and financial terms used in this Agreement shall be interpreted and applied in accordance with Canadian GAAP;
  - (g) references to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned;
  - (h) references to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same;
  - (i) references to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute;
  - (j) references to persons shall include their successors and assigns and references to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization;
  - (k) a reference in this Agreement to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Law, has such right, power, obligation or responsibility at the relevant time;
  - (l) the words in this Agreement shall bear their natural meaning;
  - (m) references containing terms such as:
    - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole; and
    - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and

construed and interpreted to mean “includes without limitation” and “including without limitation”;

- (n) in construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach apply to the construction of this Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (o) where this Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (p) where this Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (q) where this Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (r) any reference to time of day or date means the local time or date in Regina, Saskatchewan; and
- (s) unless otherwise indicated, time periods will be strictly construed.

### **1.11 Rule of Construction**

This Agreement has been negotiated by the City and Project Co 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.

## **2. DESIGN, BUILD AND FINANCE**

### **2.1 Project Financing**

Project Co undertakes to arrange the Project Financing, as more particularly contemplated in Section 3.

### **2.2 Design and Build of Facility**

Project Co undertakes to design and build the Facility in accordance with the Technical Requirements and as more particularly set out in Section 5.

### **2.3 Assumption of Risk**

Except to the extent otherwise expressly allocated to the City by the provisions of this Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement are allocated to and are the exclusive responsibility of Project Co.

## **3. FINANCING**

### **3.1 Project Financing**

The arranging of the Project Financing is the sole responsibility of Project Co.

### **3.2 Direct Lender Agreement**

The City will, at the same time it enters into this Agreement, enter into the Direct Lender Agreement substantially similar to the form set forth in Schedule 14 (Direct Lender Agreement) and subject to the City's approval, acting reasonably.

### **3.3 Condition Precedent**

Project Co must, as a condition precedent to the City's obligations under this Agreement, deliver to the City within five (5) Business Days of the date hereof, an irrevocable, unconditional, on sight Letter of Credit in the amount of Ten Million (\$10,000,000) Dollars (the "**Financing and Initial Performance Letter of Credit**"), failing which this Agreement shall not come into effect and shall not create legal obligations. In the alternative, Project Co may, at its option and upon notification to the City, provide a Preferred Proponent Deposit (as defined in the RFP) which also satisfies the requirements of the Financing and Initial Performance Letter of Credit and shall provide the City within five (5) Business Days of the date hereof with such evidence satisfactory to fulfill this condition precedent.

### **3.4 Financing and Initial Performance Letter of Credit**

The Financing and Initial Performance Letter of Credit shall be held by the City as security for the obligations of Project Co to obtain the Project Financing and to design and build the Project.

### **3.5 Release of Financing and Initial Performance Letter of Credit**

The Financing and Initial Performance Letter of Credit must be maintained in effect by Project Co until Project Co has issued a notice to the City requesting the return of the Financing and Initial Performance Letter of Credit and the City, in its sole discretion, acting reasonably, is satisfied that Project Co has incurred direct out-of-pocket expenditures, including the cost of any materials that have been delivered to the Lands but not yet incorporated into the Project as fixtures, and the costs of any permits, of not less than Ten Million (\$10,000,000) Dollars in furtherance of the Project, exclusive of:

- (a) the cost of legal and financial advisors;

- (b) any costs incurred in connection with preparation of Project Co's proposal in response to the RFQ and the RFP;
- (c) design costs;
- (d) financing costs;
- (e) mobilization costs; and
- (f) any prepaid management or service fees.

The notice provided by Project Co shall include such supporting documentation as the City may reasonably require in order to substantiate and confirm that Project Co has incurred direct out-of-pocket expenditures of not less than Ten Million (\$10,000,000) Dollars and that the Financing and Initial Performance Letter of Credit should be released.

The City's Representative shall review the notice and, within ten (10) Business Days of receipt of such notice, advise Project Co that its requirements hereunder have been met and the release of the Financing and Initial Performance Letter of Credit is approved. Subject to Section 3.6, upon approval by the City for release of the Financing and Initial Performance Letter of Credit, the City shall thereafter surrender the Financing and Initial Performance Letter of Credit to Project Co within five (5) Business Days. The City will also surrender to Project Co the Financing and Initial Performance Letter of Credit if this Agreement is terminated other than under Section 18.1(a). If the City disputes Project Co's entitlement to the Financing and Initial Performance Letter of Credit, it shall notify Project Co in writing of that part of the notice (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the City shall be entitled to retain the Financing and Initial Performance Letter of Credit pending agreement or determination of Project Co's entitlement to the said amount in accordance with the Dispute Resolution Procedure. Should the Dispute Resolution Procedure determine that Project Co was entitled to, or becomes entitled to, the return of the Financing and Initial Performance Letter of Credit, the City shall reimburse Project Co for the direct costs incurred by Project Co beyond the date the Financing and Initial Performance Letter of Credit should have been returned to Project Co.

### **3.6 Presentation of Financing and Initial Performance Letter of Credit**

The City may present the Financing and Initial Performance Letter of Credit for payment if:

- (a) this Agreement is terminated by the City under Section 18.1(a);
- (b) Project Co fails to deliver a renewal of the Financing and Initial Performance Letter of Credit at least thirty (30) days before the expiry date specified in the Financing and Initial Performance Letter of Credit; or
- (c) any of the senior, unsecured long-term credit ratings of the issuer of the Financing and Initial Performance Letter of Credit becomes less than A+ (with a stable outlook) or

equivalent and Project Co fails to deliver, no later than twenty one (21) days after being so requested by the City, either:

- (i) a replacement of the Financing and Initial Performance Letter of Credit in the form of a Letter of Credit that does satisfy such a ratings requirement, or
- (ii) in the event that no issuer of a Letter of Credit then satisfies such a ratings requirement, equivalent cash collateral security from an issuer of a Letter of Credit identified herein, without regard to the rating of such institution at such time,

and only if the condition in Section 3.5 for release of the Financing and Initial Performance Letter of Credit has not been achieved prior to the occurrence of the event described in Section 3.6(a), (b) or (c), as the case may be.

Upon presenting the Financing and Initial Performance Letter of Credit for payment, the City may, subject to the obligations of the City under Section 3.7, retain the proceeds therefrom as liquidated damages.

### **3.7 Repayment of Proceeds**

If the City presents the Financing and Initial Performance Letter of Credit under Section 3.6(b) or (c), and if thereafter, but prior to termination of this Agreement, Project Co meets the conditions in Section 3.5 for release of the Financing and Initial Performance Letter of Credit, then the City shall within five (5) Business Days thereafter repay to Project Co, without interest (excepting only interest accruing pursuant to Section 10.5 after such repayment becomes due), the proceeds from presenting the Financing and Initial Performance Letter of Credit.

## **4. THE LANDS**

### **4.1 Access and Use**

Subject to the provisions of this Section 4.1, the City hereby provides Project Co with non-exclusive access to and use of, for the purpose of performing its obligations under this Agreement, all of the Lands, including all fixtures and improvements constructed thereon under this Agreement, and to the Facility.

Additionally, Project Co may, in furtherance of the Project, provide to any Project Co Party, a right of access to and use of the Lands and the Facility, but no such right of access and use shall have effect beyond the expiry of the Term or earlier termination of this Agreement.

Project Co acknowledges that the City may, without compensation to Project Co, grant utility rights of way, easements, leases or similar interests in land over the Lands in accordance with Section 6.2.

**4.2 Non-Exclusive License**

Project Co acknowledges and agrees that the City remains the owner of the Lands and that rights granted to Project Co and the Project Co Parties in Section 4.1 shall be non-exclusive and that the City and any person authorized by the City may occupy and possess the Lands.

**4.3 Access, Inspection and Testing**

Project Co acknowledges and agrees that at all times the City shall have full and free access to:

- (a) the Lands;
- (b) the Facility; and
- (c) on reasonable prior notice, any site occupied by Project Co or to which Project Co has access, where materials to be used in the Project are fabricated or stored;

for the purpose of inspecting the Lands or materials to be used in the Project, so as to be able to determine compliance by Project Co with the terms of this Agreement; and such access shall not of itself be construed as constituting disturbance or interference with Project Co's uninterrupted access to the Lands; provided however that Project Co may exercise reasonable control over such access for reasons of safety and operational efficiency. For the purpose of such inspection, the City may at all reasonable times and subject to the reasonable requirements of third party suppliers, perform any measurement, test or other observation or investigation. Project Co shall provide reasonable cooperation (but without obligation to incur unreasonable expenses) to facilitate any such measurements, tests or other observations or investigations. The City shall conduct all such measurements, tests, observations and investigations in a manner that will not materially disturb, interfere with or disrupt Project Co's ability to perform the Works.

**4.4 Status of Lands**

Except as expressly set out in this Agreement:

- (a) access to and use of the Lands are being provided to Project Co on an "as is" basis; and
- (b) the City provides no representations or warranties with respect to the Lands.

**4.5 Acceptance of Lands and Utilities**

- (a) Subject to Section 4.5(b), Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) performed all necessary due diligence and investigations and investigated and examined the Lands and their surroundings and any existing works on, over or under the Lands in accordance with Good Industry Practice, existing on the date hereof;

- (ii) in accordance with Good Industry Practice, satisfied itself as to the nature of the condition of the Lands, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
  - (iii) satisfied itself as to the adequacy of the rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement;
  - (iv) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands; and
  - (v) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (b) The City shall be responsible for any adverse geotechnical conditions on the Lands which materially impair the Works, except for any such geotechnical conditions:
- (i) that were described in, or were properly inferable, readily apparent or readily discoverable from the Environmental Reports; or
  - (ii) that are caused by Project Co or any Project Co Party.
- (c) The City shall be responsible for utilities located in, on or under the Lands, except for utilities that were described in, or were properly inferable, readily apparent or readily discoverable from the background information posted by the City to the Electronic Data Room.

**4.6 Environmental Damage and Degradation**

- (a) The City shall be responsible for any Environmental Damage and Degradation on, in or under, or migrating to or from, the Lands, except for any such Environmental Damage and Degradation:
- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports; or
  - (ii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Environmental Damage and Degradation, Project Co shall immediately inform the City Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law in respect thereof:

- (i) at the City's cost pursuant to Section 4.6(e), in respect of Environmental Damage and Degradation for which the City is responsible pursuant to Section 4.6(a); and
  - (ii) at its own cost in respect of any Environmental Damage and Degradation for which it is responsible pursuant to Section 4.6(a).
- (c) Except to the extent required to prevent or mitigate an emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 4.6(b) in respect of Environmental Damage and Degradation for which the City is responsible pursuant to Section 4.6(a) until the City Representative has been given a reasonable opportunity to review the nature and extent of the Environmental Damage and Degradation and has instructed Project Co to proceed with such work.
- (d) In the event that the City wishes Project Co to perform actions in respect of any Environmental Damage and Degradation which are in addition to any required pursuant to Section 4.6(b), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 4.6(e).
- (e) If Sections 4.6(b) or 4.6(d) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of Environmental Damage and Degradation for which the City is responsible pursuant to Section 4.6(a) or as a result of any instructions given by the City pursuant to Section 4.6(d) and which would not otherwise be required under this Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 13.1, be treated as a Relief Event.
- (f) In the event that the City and Project Co do not agree as to the nature or extent of the Environmental Damage and Degradation or of the actions to be performed by Project Co pursuant to Section 4.6(b), either Party may refer the disagreement for resolution in accordance with Schedule 6 (Dispute Resolution Procedure).

**4.7 Commencement and Duration**

Subject to Section 4.16, Project Co's right to non-exclusive access to and use of the Lands and the Facility comes into effect upon the date of this Agreement and, unless otherwise provided in Schedule 15 (Technical Requirements), continues until the expiry of the Term or sooner termination of this Agreement. Such right to non-exclusive access and use (together with any right of access and use granted by Project Co pursuant to Section 4.1) automatically terminates upon any termination of this Agreement.

**4.8 No Access Fee**

No fee or other amount shall be payable by Project Co to the City for its right of access to and use of the Lands.

**4.9 Damage Outside of the Lands**

Project Co shall be responsible for and shall rectify any damage to lands or infrastructure outside of the Lands caused by Project Co or any Project Co Party in carrying out the Project.

**4.10 Utility Agreements**

Subject only to the City’s obligations under Section 15.4 and as otherwise set out in this Section 4.10, Project Co, utilizing the Site Plans, shall negotiate and arrange all agreements required in respect of utilities in order to carry out the Project (the “**Utility Agreements**”) on the following basis:

- (a) the Utility Agreements shall be in a form acceptable to the City, acting reasonably;
- (b) to the extent practicable, Project Co shall enter into the Utility Agreements in its own right, in which case:
  - (i) the Utility Agreements shall be expressly assignable to the City (including the automatic assignment contemplated by Section 4.10(b)(ii)) on the Substantial Completion Date or earlier termination of this Agreement or upon written request of the City;
  - (ii) Project Co shall be deemed to have assigned the Utility Agreements to the City on the Substantial Completion Date or earlier termination of this Agreement; and
  - (iii) Project Co shall execute and deliver any other documentation as may from time to time be required to give full effect to the assignment contemplated by Section 4.10(b)(ii);
- (c) where required by a utility, the City will be a party to the Utility Agreements and, if the utility requires the City to be a party to the Utility Agreements, then Project Co shall keep the City informed on an ongoing basis as to the negotiations with such utility; and
- (d) regardless of whether the City is a party to the Utility Agreements, Project Co shall, until the Substantial Completion Date or earlier termination of this Agreement, duly perform and carry out all obligations under the Utility Agreements, including, for greater certainty, the obligation to make any up-front payment required by the Utility Agreements.

**4.11 Condition of the Lands**

Subject to Sections 11.5 and 13.1(d), and subject to Project Co’s obligations under this Agreement to carry out the Project, Project Co shall maintain the Lands in good and proper order and repair throughout the duration of the Construction Period, and shall:

- (a) subject to Section 4.6, be responsible for repairing all damage to the Lands, however caused, excepting only damage caused by a Force Majeure Event or damage to the extent caused directly by the City or a City Party;

- (b) dispose of garbage from the Lands, in accordance with the requirements more particularly set out in the Technical Requirements and Applicable Laws;
- (c) adequately secure and protect the Lands from unauthorized access from third parties;
- (d) not stockpile any material on the Lands except for the purpose of carrying out construction, maintenance or repair activities under this Agreement;
- (e) not commit, or permit any Project Co Party to commit, any waste or nuisance on the Lands; and
- (f) promptly deal with any Environmental Damage or Degradation to the Lands in accordance with Section 4.6.

The City acknowledges and agrees that neither the Project, nor the observing and carrying out of the Technical Requirements by Project Co, shall of itself, constitute a breach of Project Co's obligations to maintain the Lands in good and proper order.

#### **4.12 Permitted Use**

Project Co covenants that it and any Project Co Party:

- (a) will use the Lands and the Facility to be constructed thereon only for the purposes of the Project, unless expressly permitted by the City; and
- (b) will not, from and after Substantial Completion, interfere with the Facility being continuously in operation, excepting such closures or partial closures as are expressly contemplated and authorized by the Warranty Work.

#### **4.13 Ownership of Improvements**

Project Co acknowledges that the Facility and all other fixed improvements that Project Co may from time to time construct upon the Lands shall be the property of the City.

#### **4.14 Uninterrupted Access and Use**

The City covenants that Project Co's access to and use of the Lands and the Facility pursuant to Section 4.1 shall be uninterrupted during the Term, shall be without any disturbance or interference from the City or any person claiming a right of access to or use of the Lands or the Facility from or under the City, and shall be adequate to enable Project Co to carry out the Project throughout the Construction Period subject to the following:

- (a) the Identified Encumbrances as defined in Section 4.10 (but subject in each case to the obligations of the City under Section 15.4);
- (b) the exercise by the City of any express right under and in accordance with this Agreement, including without limitation the City's right under Section 5.10 to direct Project Co to cease construction, the City's rights under Section 6.2 to undertake additional improvements or

to accommodate additional utilities, the City's right under Section 4.3 to access to and use of the Lands for inspection purposes, and the City's step-in rights under Section 17.2;

- (c) any interference including, without limitation, an injunction issued by a Court or action by protesters, to the extent attributable to a negligent or wrongful act or omission by Project Co or those for whom Project Co is legally responsible.

The City shall defend its title to the Lands against any person claiming any interest adverse to the City in the Lands, except where such adverse interest arises as a result of a negligent or wrongful act or omission of Project Co or any Project Co Party. Unless expressly otherwise stated by the City, any entry upon the Lands by the City in accordance with the provisions of this Agreement or by any third party through written consent of the City shall not constitute a breach of this covenant of uninterrupted access to and use of the Lands, provided that such entry does not materially adversely interfere with or disturb Project Co's carrying out of the Project.

#### **4.15 No Payment of Taxes on Lands**

Pursuant to *The Cities Act* (Saskatchewan), the Lands will be exempt from all property taxes, special taxes, local improvement taxes and requisitions that may be imposed. For greater certainty, Project Co shall not be responsible for the costs or payment of any of the aforementioned taxes.

#### **4.16 Access and Use Rights to Cease**

Upon any termination of this Agreement, Project Co shall cease to have any right of access to and use of the Lands other than as is available to any member of the public, and if Project Co fails to comply with this Section 4.16, then it shall indemnify the City against any damages, losses or costs incurred by the City in consequence of such failure.

Notwithstanding the foregoing, if termination of this Agreement occurs during the Construction Period, the City shall permit Project Co reasonable access and use of the Lands to, as soon as reasonably practical and in any event no later than one (1) month following termination of this Agreement, to demobilize and remove any of Project Co's equipment and materials from the Lands, and, unless this Agreement was terminated by the City pursuant to Section 18.1(b) or by Project Co pursuant to Section 18.2, Project Co shall indemnify the City against any damages, losses or costs incurred by the City in consequence of Project Co accessing and using the Lands after termination of this Agreement.

#### **4.17 Permits and Approvals**

Subject only to the City's obligations under Section 15.4 and as otherwise set out in this Section 4.17, Project Co shall arrange all permits and approvals required to carry out the Project, including all municipal building permits and development approvals (the "**Permits and Approvals**"), on the following basis:

- (a) to the extent practicable, Project Co shall apply for the Permits and Approvals in its own right, in which case:

- (i) the Permits and Approvals shall be expressly assignable to the City (including the automatic assignment contemplated by Section 4.17(a)(ii)) upon expiry of the Term or earlier termination of this Agreement;
  - (ii) Project Co shall be deemed to have assigned the Permits and Approvals to the City upon expiry of the Term or earlier termination of this Agreement; and
  - (iii) Project Co shall execute and deliver any other documentation as may from time to time be required to give full effect to the assignment contemplated by Section 4.17(a)(ii);
- (b) where required by a regulator, the City will be the applicant for the Permits and Approvals and if the regulator requires the City to be the applicant for the Permits and Approvals, then Project Co shall keep the City informed on an ongoing basis as to the discussions with such regulator;
  - (c) regardless of whether the City or Project Co is the applicant for the Permits and Approvals, Project Co shall promptly forward to the City any communication it receives from any regulator or Governmental Authority with respect to the Permits and Approvals; and
  - (d) regardless of whether the City is the applicant for the Permits and Approvals, Project Co shall, until the end of the Term or earlier termination of this Agreement, duly perform and carry out on behalf of the City all obligations of the City under the Permits and Approvals.

#### **4.18 Liens**

Project Co shall promptly pay all proper accounts for work done, service provided or materials furnished under all contracts it enters into relating to the Project, excepting those sums required to be retained under the provisions of any Applicable Law, and shall not by any act or omission cause, encourage, suffer or allow any lien or claim under any such statute or in equity to be made against the City or filed or registered against the Lands or the Facility by reason of work, services or materials supplied or claimed to have been supplied to Project Co or anyone holding any interest through or under Project Co except where such lien or claim is caused by the City withholding any amount payable under this Agreement except to the extent disputed by the City in good faith.

#### **4.19 No Encumbrances on the Lands**

- (a) The City covenants that it will not grant or permit to be granted any Encumbrance that results in the City being in breach of its obligations set out in Section 4.14 (Uninterrupted Access and Use).
- (b) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered upon or against the Lands or any part thereof or any interest therein, including any lien or claim contemplated in Section 4.18 due to an act or omission of Project Co or any Project Co Party.
- (c) Project Co shall promptly notify the City of any Encumbrance which is not an Identified Encumbrance as soon as it becomes aware thereof.

- (d) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party which has not been consented to in writing by the City, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within ten (10) Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, the City will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (e) In the event that the Lands or any part thereof or any interest therein is or becomes subject to any Encumbrance which is not an Identified Encumbrance and which is not due to an act or omission of Project Co or any Project Co Party, prior to performing obligations under any such Encumbrance, Project Co shall notify the City of any such Encumbrance and the City shall:
  - (i) cause the Encumbrance to be removed, vacated or discharged;
  - (ii) perform the required obligations thereunder; or
  - (iii) instruct Project Co to perform the required obligations thereunder.
- (f) If Section 4.19(e) requires Project Co to perform obligations under an Encumbrance which performance imposes costs or delays on performance of the Works, such performance shall, subject to and in accordance with Section 13.1, be treated as a Relief Event.

**4.20 *The Builders' Lien Act (Saskatchewan)***

- (a) The Parties acknowledge that the provisions of Sections 4.18 and 4.19 shall apply to claims for lien made against the Lands or any interests therein pursuant to the BLA and shall also apply to notices given to or claims made against the City, any person or Governmental Authority having an interest in the Lands or in respect of the holdbacks under the BLA as though such notice or claim were an Encumbrance against the Lands as referred to therein.
- (b) Project Co shall withhold from each Subcontractor, including from any SRFC Contractor pursuant to a SRFC Assigned Subcontract, the holdbacks required under the BLA and shall deal with such holdbacks in accordance with the BLA.
- (c) Project Co shall, as a condition of final payment under any subcontract for which lien rights or rights in respect of the holdback may be claimed under the BLA, require that a certificate of substantial performance under Part IV of the BLA for such subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.

- (d) Project Co shall follow the requirements of the BLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co shall promptly provide the City with a copy of any materials which are provided to the Lenders in connection with enquiries or investigations in respect of notices or claims under, or to evidence compliance with, the BLA.
- (f) During the Construction Period, Project Co shall, at its own cost, and in addition to but without duplication of the reporting requirements set out in Section 4.20(e), perform the obligations under any Encumbrance, subject to Section 4.19(e), and deliver to the City certificates from Project Co in form and substance satisfactory to the City, acting reasonably, confirming that no claims for liens or notices of lien under the BLA have been received by Project Co or any Project Co Party which have not been released, discharged or vacated in accordance with the requirements of the BLA, that the requirements of the BLA have been complied with and all holdback and trust obligations under the BLA have been satisfied in respect of the Project operations, together with supporting documentation confirming the foregoing in form and substance satisfactory to the City, acting reasonably.

## **5. DESIGN AND BUILD OF THE FACILITY**

### **5.1 Project Co's Obligations**

Project Co agrees to design and build the Facility in accordance with the Technical Requirements, Project Co's Designs and Project Co's Management Systems and Plans, and to use reasonable endeavors to comply with the Works Schedule. In the event of any inconsistency among the Technical Requirements, Project Co's Designs and Project Co's Management Systems and Plans, the higher standard or specification shall apply; but in no event shall anything in Project Co's Designs or Project Co's Management Systems and Plans detract from Project Co's absolute obligation to design and build the Facility in accordance with the Technical Requirements.

### **5.2 Technical Requirements**

Subject only to Section 5.4 and notwithstanding any other provision of this Agreement, Project Co's obligation to design and build the Facility in accordance with the Technical Requirements is absolute, and cannot be modified or waived except by amendment of the Technical Requirements made in accordance with Section 6.1. If Project Co asserts that any aspect of the Technical Requirements is uncertain or ambiguous, either party may require that the interpretation of that aspect of the Technical Requirements be determined pursuant to the Dispute Resolution Procedure. The City acknowledges that it is responsible for the adequacy and suitability of the Technical Requirements.

### **5.3 Project Co's Responsibility to Carry Out Technical Requirements**

Subject to Section 5.4 or as expressly stated otherwise in this Agreement, no consultation with or inspection or test or approval or comment (whether under the procedure contemplated by Section 5.9 or otherwise) or purported direction by or on behalf of the City, and no information of any kind or nature whatsoever furnished by the City, shall relieve Project Co from its exclusive responsibility for ensuring that the Project complies with the Technical Requirements or shall estop

the City from asserting any non-compliance with the Technical Requirements. In the event of any failure by Project Co to comply with the Technical Requirements, Project Co shall not assert any duty of care or contributory negligence on the part of the City in relation to such failure.

#### **5.4 Request for Information**

Project Co may submit an RFI to the City and, upon receipt thereof, the City shall within a reasonable time determine if a particular design element or construction specification of Project Co complies with the Technical Requirements. If the City so agrees with the RFI, then such design element or construction specification shall be deemed to comply with the Technical Requirements, provided that the City must consider such RFI only where:

- (a) the RFI is in relation to a specific design element or construction specification;
- (b) the pertinent Technical Requirements are capable of differing interpretations in relation to the specific design element or construction specification;
- (c) Project Co has established that it would be exposed to significant risk of material expense or delay if its interpretation of the pertinent Technical Requirements ultimately proved to be incorrect; and
- (d) Project Co has not submitted multiple or generalized RFI's under this Section 5.4 such that, in the reasonable opinion of the City, Project Co is attempting to use this Section 5.4 to transfer to the City total or partial responsibility for ensuring that the Project meets the Technical Requirements.

#### **5.5 Project Co's Designs, Plans and Schedule**

Project Co may, in accordance with the procedures set out in Schedule 5 (Design and Plan Certification Process and Review Procedure), amend Project Co's Designs, Project Co's Management Systems and Plans or the Works Schedule with the City's prior written consent, such consent not to be unreasonably withheld (it being reasonable for the City to withhold consent to any amendment that would result in a material reduction in quality, health and safety standards, durability, functionality or aesthetics). If Project Co asserts that the City has unreasonably withheld consent, either party may require that the matter be determined by the Dispute Resolution Procedure.

Notwithstanding the foregoing, Project Co may make amendments to non-critical path items in the Works Schedule without obtaining the City's prior written consent, provided that Project Co provides the City with advance written notice of each such amendment.

#### **5.6 Project Co Solely Responsible for Project**

Except for the obligations of the City specifically set out in this Agreement, Project Co is solely responsible for doing all things of any nature whatsoever required to complete the Project, including without limiting the generality of the foregoing:

- (a) subject to the obligations of the City set out in Section 15.4:

- (i) the obtaining of all required Permits and Approvals as contemplated by Section 4.17; and
  - (ii) all required arrangements, as more particularly contemplated by Section 4.10, relating to utilities; and
- (b) complying with all Applicable Laws.

**5.7 Project Co Solely Responsible for Project Costs**

Except as expressly set out in this Agreement, Project Co is solely responsible for paying all costs, fees and charges of any nature whatsoever required to complete the Project, excepting only:

- (a) the costs, fees and charges of the City’s own personnel, consultants and professional advisors;
- (b) the costs, fees and charges of any mediation or arbitration pursuant to the Dispute Resolution Procedure, which are specifically provided for in Schedule 6 (Dispute Resolution Procedure); and
- (c) any costs, fees, charges or payments the responsibility for which has been expressly allocated to the City under this Agreement.

The City shall not be obligated to pay any costs, fees or charges in relation to the Project except as expressly set out in Section 10 or elsewhere in this Agreement.

**5.8 Construction Within the Lands**

Project Co agrees to construct the Project entirely within the Lands and acknowledges that it has fully familiarized itself with the Project and the Lands and has satisfied itself that no other land outside the Lands will be required for the Project.

**5.9 Detailed Designs**

Project Co shall, in accordance with the procedures set out in Schedule 5 (Design and Plan Certification Process and Review Procedure), provide the City with copies of all detailed designs (including, design reports, detailed design drawings, shop drawings, as-built drawings, construction specifications and any modifications to any detailed designs previously provided to the City) for the Project as they are prepared (the “**Detailed Designs**”) and invite comment from the City on the Detailed Designs, all in accordance with the procedures set out in Schedule 5 (Design and Plan Certification Process and Review Procedure). Project Co shall not commence work on any component of the Project if such work has not been addressed in Detailed Designs provided to the City in accordance with this Section 5.9. The parties expressly intend and agree that neither comment by the City nor failure by the City to comment or otherwise participate in any manner in respect of the procedure prescribed by Schedule 5 (Design and Plan Certification Process and Review Procedure) shall detract from Project Co’s absolute responsibility under Section 5.3 to carry out the Project in accordance with the Technical Requirements.

### 5.10 Stop Work Order or Opening Up

The City may at any time direct Project Co to cease any construction or open up any Works already constructed that it considers to be not in accordance with the Technical Requirements. If it is subsequently determined that the Works were in accordance with the Technical Requirements, then such direction shall, subject to Section 13.1, constitute a Relief Event under Section 13.1(b).

### 5.11 Construction Delays

If the progress of the Project falls materially behind the Works Schedule, Project Co shall immediately so advise the City and shall in a timely manner advise the City of its remedial plan for bringing the Project back on schedule. If Project Co fails to achieve Substantial Completion by the Substantial Completion Target Date, Project Co shall (subject to adjustment of the dates in Sections 5.11(a) and (b) below pursuant to Section 11.6, Section 12.1(b) or Section 13.2(b)) provide the City:

- (a) within thirty (30) days thereafter, Project Co's plan for achieving Substantial Completion no later than the Long Stop Date; and
- (b) from and after such thirty (30) day period, weekly progress and activity reports, including a statement of Project Co's current expectation of when Substantial Completion will be achieved and all contingencies to which that expectation is subject.

### 5.12 Independent Certifier

- (a) **Selection of the Independent Certifier:** Within twenty (20) Business Days of this Agreement, Project Co and the City shall meet to develop an approach to a procurement process to identify qualified parties to perform the role of the Independent Certifier hereunder, and to select an Independent Certifier among such qualified parties. At least one hundred (100) days prior to the date Project Co anticipates that the first Milestone Payment to Project Co pursuant to Schedule 11 (Payment Schedule) will be due, the City shall, in accordance with the City's public procurement policies and with input from Project Co, retain an independent certifier acceptable to both parties, acting reasonably (the "**Independent Certifier**").

The Independent Certifier shall perform (i) a separate assessment of the Project to determine if each Milestone Criteria has been met for each of the Milestone Payments, (ii) an assessment of the Project to determine if the Substantial Completion Criteria have been met, and (iii) an inspection of the Project for the ongoing process of verifying deficiencies identified on the Deficiencies List after Substantial Completion in accordance with Section 5.21. The Independent Certifier shall be retained in accordance with the following:

- (i) the Independent Certifier must be an engineering consultant having strong expertise in DBF (design, build and finance) projects, with a preference towards experience in similar stadium projects;
- (ii) the Independent Certifier must agree to carry out and discharge the responsibilities contemplated by this Section 5.12, and Sections 5.13, 5.16, 5.21 and 5.22, as the

case may be, and be available to carry out and discharge such responsibilities promptly and within the timelines contemplated in this Agreement;

- (iii) the Independent Certifier must carry the insurance as stated in Section 3 of Schedule 8 (Insurance Requirements);
- (iv) Project Co shall ensure that the Independent Certifier is added as an “Other” insured pursuant to Section 3 of Schedule 8 (Insurance Requirements);
- (v) all fees and expenses of the Independent Certifier are to be paid by each party in accordance with Section 5.12(b);
- (vi) the Independent Certifier shall be impartial to the City and Project Co when required to make any recommendation, determination or assessment; and
- (vii) the Independent Certifier, the City, and Project Co shall, upon complying with the requirements of this Section 5.12, enter into the Independent Certifier Agreement.

**(b) Payments to the Independent Certifier:**

- (i) First, Project Co is responsible for and shall pay all fees and expenses of the Independent Certifier from the time the Independent Certifier is retained until the time when Project Co has paid a total of \$200,000 (inclusive of taxes) to the Independent Certifier. Project Co shall be required to provide evidence to the City of such payments totaling Project Co’s \$200,000 share (inclusive of taxes) of the cost of the Independent Certifier.
- (ii) Second, upon Project Co providing evidence of payment of the \$200,000 share of the cost of the Independent Certifier described above to the satisfaction of the City, acting reasonably, the City shall be responsible for and shall pay all further fees and expenses of the Independent Certifier until the Project has achieved Final Completion.
- (iii) All payments shall be made by the parties to the Independent Certifier in accordance with the terms of the Independent Certifier Agreement.

**5.13 Anticipated Milestone Payment**

No later than twenty (20) Business Days prior to the target date of a scheduled Milestone Payment pursuant to Schedule 11 (Payment Schedule), Project Co shall request an inspection by the Independent Certifier and shall provide the City with the results of that inspection.

**5.14 Certification of Milestone Progress**

If the Independent Certifier, having completed the inspection referred to in Section 5.13, is satisfied that the Project has satisfied the applicable Milestone Criteria, the Independent Certifier shall promptly issue to Project Co and the City a certificate certifying that Milestone Progress has

been achieved (the “**Certificate of Milestone Progress**”). The City shall thereafter pay the applicable Milestone Payment in accordance with Section 10.1.

If the Independent Certifier, having completed the inspection referred to in Section 5.13, determines that the Project has not satisfied the Milestone Criteria, then the Independent Certifier shall issue to Project Co and to the City a notice stating that the Certificate of Milestone Progress has not been issued and specifying any outstanding matters that must be attended to before the Certificate of Milestone Progress can be issued (the “**Notice of Failure to Achieve Milestone Criteria**”).

After receiving a Notice of Failure to Achieve Milestone Criteria, when Project Co anticipates that the Project will satisfy the Milestone Criteria, Project Co shall again engage the process set out in Sections 5.13 and 5.16, with the exception that the time periods contemplated in Section 5.13 shall in each case be reduced to three (3) Business Days.

### **5.15 Anticipated Substantial Completion**

No later than one hundred (100) days prior to the date Project Co anticipates the Project will satisfy the Substantial Completion Criteria, Project Co shall notify the City, including an indication of the work still intended to be completed by Project Co for the Project to achieve Substantial Completion.

Project Co shall request an inspection by the Independent Certifier and shall provide the City with the results of that inspection.

### **5.16 Certification of Substantial Completion**

If the Independent Certifier, having completed the inspection referred to in Section 5.15, is satisfied that the Project has satisfied the Substantial Completion Criteria, the Independent Certifier shall promptly issue to Project Co and the City a certificate certifying that Substantial Completion has been achieved (the “**Certificate of Substantial Completion**”). The City shall thereafter pay the Substantial Completion Payment in accordance with Section 10.2.

If the Independent Certifier, having completed the inspection referred to in Section 5.15, determines that the Project has not satisfied the Substantial Completion Criteria, then the Independent Certifier shall issue to Project Co and to the City a notice stating that the Certificate of Substantial Completion has not been issued and specifying any outstanding matters that must be attended to before the Certificate of Substantial Completion can be issued (the “**Notice of Failure to Achieve Substantial Completion Criteria**”).

After receiving a Notice of Failure to Achieve Substantial Completion Criteria, when Project Co anticipates that the Project will satisfy the Substantial Completion Criteria, Project Co shall again engage the process set out in Sections 5.15 and 5.16, with the exception that the time periods contemplated in Section 5.15 shall in each case be reduced to three (3) Business Days.

**5.17 City Disputes Achievement of Substantial Completion Criteria**

If the Certificate of Substantial Completion has been issued, but the City considers that the Project has not satisfied the Substantial Completion Criteria, the City may provide a notice to Project Co (the “**City’s Section 5.17 Notice**”), which notice must set out the outstanding matters that, in the City’s opinion, must be attended to before the Project will satisfy the Substantial Completion Criteria, and in that event:

- (a) the City and Project Co will work cooperatively together to arrive at a mutually agreeable plan for Project Co to promptly rectify the City’s concerns;
- (b) the difference of opinion and the question of whether and on what date the Project achieved the Substantial Completion Criteria shall be resolved pursuant to the Dispute Resolution Procedure;
- (c) if it should be determined pursuant to the Dispute Resolution Procedure that by reason of the concerns identified by the City in the City’s Section 5.17 Notice the Project had not achieved the Substantial Completion Criteria on the date of issuance of the Certificate of Substantial Completion, then:
  - (i) the arbitrator making that determination shall determine the date on which the Project achieved the Substantial Completion Criteria and award a credit to the City of amounts, calculated for the period starting from the later of the Substantial Completion Target Date and the date of issuance of the Certificate of Substantial Completion to the date that the arbitrator determines that the Project achieved the Substantial Completion Criteria, that the City would not have paid to Project Co had the Certificate of Substantial Completion been issued on the date that the arbitrator determines the Project achieved the Substantial Completion Criteria; and
  - (ii) Project Co shall as soon as practicable and at its expense rectify such of the City’s concerns as have not yet been rectified in order to ensure that the Project satisfies the Substantial Completion Criteria.

In the event that Project Co notifies the City that it disputes the concerns identified by the City but intends to address such concerns as requested by the City while reserving the right to dispute such concerns, then Project Co may seek, through the Dispute Resolution Procedure, a determination that the work done by Project Co in response to the City’s concerns was work done pursuant to a Change Order Directive.

**5.18 Project Co Disputes a Notice of Failure to Achieve Milestone Criteria**

In circumstances where the Independent Certifier has issued a Notice of Failure to Achieve Milestone Criteria, Project Co may, if Project Co considers that the Project satisfied the Milestone Criteria on the date of issuance of such Notice of Failure to Achieve Milestone Criteria, notify the City, which notice must reference the outstanding matters listed in such Notice of Failure to Achieve Milestone Criteria and set out how the Project satisfies those items, and in that event:

- (a) Project Co shall as soon as practicable address the matters listed in such Notice of Failure to Achieve Milestone Criteria and work to achieve an Certificate of Milestone Progress in accordance with the process set out in Sections 5.13 and 5.14;
- (b) the difference of opinion and the question of whether and on what date the Project achieved the Milestone Criteria shall be resolved pursuant to the Dispute Resolution Procedure;
- (c) if it should be determined pursuant to the Dispute Resolution Procedure that the Project satisfied the Milestone Criteria prior to the date of issuance of the Certificate of Milestone Progress, then:
  - (i) the arbitrator making that determination shall determine the date on which the Project achieved the Milestone Criteria and award a credit to Project Co that Project Co would have received from the City in accordance with the terms of this Agreement if the Certificate of Milestone Progress had been issued on the date that the arbitrator determines that the Project had achieved the Milestone Criteria, excepting all amounts paid to Project Co by the City in respect of the Project subsequent to the issuance of the Certificate of Milestone Progress; and
  - (ii) Project Co may seek through the Dispute Resolution Procedure a determination that the work done by Project Co to address the matters listed in the Notice of Failure to Achieve Milestone Completion Criteria shall be deemed to be work done pursuant to a Change Order Directive.

**5.19 Project Co Disputes a Notice of Failure to Achieve Substantial Completion Criteria**

In circumstances where the Independent Certifier has issued a Notice of Failure to Achieve Substantial Completion Criteria, Project Co may, if Project Co considers that the Project satisfied the Substantial Completion Criteria on the date of issuance of the Notice of Failure to Achieve Substantial Completion Criteria, notify the City, which notice must reference the outstanding matters listed in the Notice of Failure to Achieve Substantial Completion Criteria and set out how the Project satisfies those items, and in that event:

- (a) Project Co shall as soon as practicable address the matters listed in the Notice of Failure to Achieve Substantial Completion Criteria and work to achieve Substantial Completion in accordance with the process set out in Sections 5.15 and 5.16;
- (b) the difference of opinion and the question of whether and on what date the Project achieved the Substantial Completion Criteria shall be resolved pursuant to the Dispute Resolution Procedure;
- (c) if it should be determined pursuant to the Dispute Resolution Procedure that the Project satisfied the Substantial Completion Criteria prior to the date of issuance of the Certificate of Substantial Completion, then:
  - (i) the arbitrator making that determination shall determine the date on which the Project achieved the Substantial Completion Criteria and award a credit to Project Co that Project Co would have received from the City in accordance with the terms

of this Agreement if the Certificate of Substantial Completion had been issued on the date that the arbitrator determines that the Project had achieved the Substantial Completion Criteria, excepting all amounts paid to Project Co by the City in respect of the Project subsequent to the issuance of the Certificate of Substantial Completion; and

- (ii) Project Co may seek through the Dispute Resolution Procedure a determination that the work done by Project Co to address the matters listed in the Notice of Failure to Achieve Substantial Completion Criteria shall be deemed to be work done pursuant to a Change Order Directive.

## **5.20 Ramp Up Period**

- (a) **Ramp Up Events:** On or before May 31, 2017, the City shall cause REAL to conduct two (2) Facility test events as follows:

- (i) Ramp up event #1: Facility test event at 50% capacity; and
- (ii) Ramp up event #2: Facility test event at 75% capacity.

(collectively, the “**Ramp Up Events**”)

The Ramp Up Events will be conducted by REAL in accordance with the Technical Requirements. Project Co will arrange for its representative(s) to provide full support of the Ramp Up Events, including pre and post Ramp Up Event testing and inspection and will ensure all Project Co Representatives are in attendance at the Ramp Up Events.

- (b) **Ramp Up Security:** On or before the Substantial Completion Date, Project Co, at its election, shall either: (i) deliver, or cause be delivered, to the City an irrevocable, unconditional, on sight Letter of Credit in the amount of three million (\$3,000,000) Dollars (the “**Ramp Up Letter of Credit**”); or, in the alternative, (ii) agree that the City shall be entitled to hold back the equivalent value of the Ramp Up Letter of Credit from the Substantial Completion Payment (the “**Ramp Up Holdback**”). The City shall deal with and be entitled to draw on the Ramp Up Letter of Credit or the Ramp Up Holdback, as applicable, subject to the terms of Sections 5.20(c) and 5.20(d).
- (c) **Ramp Up Payments:** Following each Ramp Up Event, the City’s entitlement to draw on the Ramp Up Letter of Credit shall decrease by one million five hundred thousand (\$1,500,000) Dollars, or in the alternative, the City shall release and advance to Project Co from the Ramp Up Holdback same amount within five (5) Business Days thereafter. Should a Ramp Up Event not occur, the relevant Ramp Up Letter of Credit or Ramp Up Holdback amount, as applicable, shall be carried forward and decreased upon the date of the next successful Ramp Up Event unless the cause of an unsuccessful Ramp Up Event was the fault of the City or any City Parties. Notwithstanding the above, the Ramp Up Letter of Credit or the Ramp Up Holdback, as applicable, will be decreased to zero ninety (90) days after the Substantial Completion Date except for any amount required to rectify Ramp Up Deficiencies identified by the Independent Certifier in Section 5.20(d).

- (d) **Ramp Up Deficiencies:** All deficiencies that are identified by the Independent Certifier as a result of the Ramp Up Events (other than deficiencies set out in the Independent Certifier's Deficiency List on the Substantial Completion Date which are subject to the Final Completion Letter of Credit or the Final Completion Holdback, as applicable) shall be subsequently remedied and completed by Project Co in accordance with Section 5.21 in order to achieve Final Completion. If the Final Completion Letter of Credit or the Final Completion Holdback, as applicable, is insufficient to rectify any Ramp Up Deficiencies in addition to those contained in the Deficiencies List, the City shall be entitled to satisfy such additional amounts via the Ramp Up Letter of Credit or the Ramp Up Holdback, as applicable, in the same manner and process as set out in Section 5.21.

## 5.21 Final Completion

Upon issuing the Certificate of Substantial Completion, the Independent Certifier shall also issue to Project Co and the City a list of deficiencies (the "**Deficiency List**") required to be rectified for Final Completion and the Independent Certifier's estimate of the cost to achieve Final Completion ("**Estimated Cost to Achieve Final Completion**"). The City may, within five (5) Business Days of receipt of the Deficiency List, provide a notice (the "**Additional Items Notice**") to Project Co and the Independent Certifier of any additional items that, in the opinion of the City, are required to be rectified for Final Completion. Project Co may, within five (5) Business Days of receipt of the Additional Items Notice, communicate to the City and the Independent Certifier its opinion on the additional items required to be rectified for Final Completion. The Independent Certifier will consider the Additional Items Notice and Project Co's response thereto and, to the extent that it agrees with the City, adjust the Deficiency List and its Estimated Cost to Achieve Final Completion accordingly.

Following achievement of Substantial Completion, Project Co shall diligently proceed to Final Completion. Upon the issuance of the Deficiency List, Project Co, at its election, shall either: (i) deliver, or cause to be delivered, to the City an irrevocable, unconditional, on sight Letter of Credit in the amount of twice the amount of the Estimated Cost to Achieve Final Completion (the "**Final Completion Letter of Credit**"); or, in the alternative, (ii) agree that the City shall be entitled to hold back the Estimated Cost to Achieve Final Completion from the Substantial Completion Payment (the "**Final Completion Holdback**"). Project Co shall, within thirty (30) days after the issuance of the Deficiency List, prepare and deliver to the City a comprehensive workplan and schedule acceptable to the City, acting reasonably, designed to achieve Final Completion within a reasonable time thereafter. Following delivery and acceptance of such workplan and schedule, Project Co shall keep the City fully advised of all activity and progress in carrying out the workplan, including fulfilling its reporting obligations under Section 14.2.

When Project Co has advised the City in writing that Final Completion has been achieved and requested that the City inspect for Final Completion, the Independent Certifier will, within five (5) Business Days after receiving Project Co's request, carry out an inspection (which shall be carried out jointly with Project Co if so requested by Project Co). Following the inspection, the Independent Certifier will, if all items on the Deficiency List have been rectified (including those deficiencies discovered from any Ramp Up Event): (i) issue a certificate confirming Final Completion; and (ii) direct the City to release its Final Completion Letter of Credit to Project Co within five (5) Business Days thereafter (the "**Final Completion Payment**").

**5.22 Failure to Achieve Final Completion**

If Final Completion is not achieved within one hundred and twenty (120) days after Substantial Completion (or such longer period as may be agreed by the City, acting reasonably, but in any event not exceeding twelve (12) months after Substantial Completion), the City shall request that the Independent Certifier provide an estimate of the cost of achieving Final Completion based on the work that Project Co has not completed by the date of such request (“**Residual Minor Deficiencies**”). The City may, by notice to Project Co, elect to complete the Residual Minor Deficiencies required to achieve Final Completion and, in that event, may retain as liquidated damages from the Final Completion Letter of Credit or the Final Completion Holdback, as applicable, up to twice the amount of the Independent Certifier’s estimate of the cost to complete Residual Minor Deficiencies and the balance of the Final Completion Letter of Credit or the Final Completion Holdback, if any, shall be released to Project Co without interest.

**6. MODIFICATIONS, CHANGE ORDERS AND SRFC DESIGN WORKS****6.1 Modification of Technical Requirements**

If, during the Construction Period, the City wishes to modify the Works, the Project or the Technical Requirements, it shall proceed in accordance with Schedule 1 (Change Orders). Upon a Change Order Confirmation or a Change Order Directive being issued by the City pursuant to Schedule 1 (Change Orders) in respect of the Works, the Project or the Technical Requirements:

- (a) Schedule 15 (Technical Requirements) or any other affected Schedule shall be amended accordingly;
- (b) except as otherwise agreed between the City and Project Co (including without limitation any arrangement proposed by Project Co under Section 6.1(c) and agreed to by the City), Project Co shall be entitled to payment from the City on a progress basis, invoiced and paid on a monthly basis, of the reasonable incremental costs, if any, of carrying out the Works, the Project or the Technical Requirements, including, if the Change Order will delay Substantial Completion, any costs to Project Co occasioned by the delay in Substantial Completion, which payment shall be made following the Substantial Completion Target Date for these incurred costs; and
- (c) if Project Co anticipates that the Change Order will delay Substantial Completion, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, Project Co may propose to the City that such extraordinary measures be taken by Project Co at the City’s expense.

The City shall not, without the prior written consent of Project Co, pursue any Change Orders that singularly or in the aggregate involve an alteration in the scope of the Project of such magnitude that it could reasonably be expected to materially impact the Project Financing or Project Co’s ability to achieve Substantial Completion by the Substantial Completion Target Date or otherwise materially and adversely alter the risk profile of the Project.

**6.2 Other Work by the City**

The City shall be at liberty during the Construction Period to undertake additional improvements or accommodate additional utilities within the Lands and within lands adjacent to the Lands but in that event:

- (a) the City shall take all commercially reasonable measures to minimize interference with or disruption to Project Co's carrying out of the Project and the Technical Requirements; and
- (b) if the activities of the City or its contractors in carrying out the additional improvements do interfere with or disrupt Project Co's carrying out of the Project, the Technical Requirements (including without limitation as a result of damage caused to the Facility or as a result of any defect in the additional improvements), such interference or disruption shall, subject to Section 13.1, constitute a Relief Event under Section 13.1(h).

Project Co shall provide all reasonable cooperation (but without obligation to incur material expense unless underwritten by the City) to facilitate the City's carrying out of the additional improvements or to accommodate the additional utilities.

**6.3 Determination of Costs**

All payments on account of Change Orders under Section 6.1 or 6.2 and adjustments of Schedule 11 (Payment Schedule) shall be calculated in accordance with the provisions of Schedule 1 (Change Orders).

**6.4 Project Co Recommendation**

If Project Co wishes to recommend modification of the Works, the Facility or the Technical Requirements, it may submit an RFI in accordance with Section 5.4.

**6.5 SRFC Design Works**

- (a) The City reserves the right to carry out SRFC Design Works. The City at any time during the Construction Period may, in its sole discretion, enter into a SRFC Subcontract with a SRFC Contractor, or accept an assignment of any SRFC Subcontract, and thereafter assign any SRFC Subcontract to Project Co.
- (b) In connection with the SRFC Design Works, the City:
  - (i) may enter into a design contract with a SRFC Contractor under conditions of contract which are substantially in the form attached as Appendix A (Design Contract) to Schedule 16 (Form of Assignable Subcontract Agreement);
  - (ii) shall enter into separate assignable subcontract agreements with each SRFC Contractor under conditions of contract which are substantially in the form attached as Schedule 16 (Form of Assignable Subcontract Agreement) and provide for compliance by SRFC Contractors with Section 6.5(c) and all directions of Project Co in respect of any matter regarding health and safety on the Lands, methods and

manner of construction (where applicable), and coordination and scheduling of the SRFC Design Works during the performance of the Works, as such relate to the SRFC Assigned Subcontract; and

- (iii) shall ensure that the SRFC Contractors obtain insurance coverage as would be required by a prudent subcontractor and substantially in accordance with the requirements of Schedule 8 (Insurance Requirements), coordinates such insurance with the insurance coverage of Project Co and in any event, such insurance shall provide for general liability insurance of not less than \$10,000,000 per occurrence and in the aggregate.
- (c) In connection with the SRFC Design Works, Project Co shall:
- (i) where the City has assigned to Project Co any SRFC Assigned Subcontract,
    - (A) provide for the methods and manner of carrying out the SRFC Design Works and the coordination and scheduling of the SRFC Design Works with the Project Co Works to be performed under this Agreement; and
    - (B) for the SRFC Contractors and in respect to such SRFC Design Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety on the Lands;
  - (ii) afford SRFC Contractors reasonable opportunity to introduce and store their products and use their tools and equipment to execute the SRFC Design Works;
  - (iii) participate with the City and the SRFC Contractors, as applicable, in reviewing their construction schedules when directed to do so by the City;
  - (iv) where part of the Project Co Works is affected by or depends upon, for its proper execution or to achieve Substantial Completion, the SRFC Design Works, promptly report to the City in writing and prior to proceeding with that part of the Project Co Works any readily apparent deficiencies in the SRFC Design Works. Failure by Project Co to so report shall invalidate any claims against the City by reason of such readily apparent deficiencies;
  - (v) ensure the performance of the SRFC Design Works by the SRFC Contractors under any SRFC Assigned Subcontract; and
  - (vi) be responsible to manage the SRFC Design Works so as to not invalidate or void any warranty made in favour of Project Co or from a Project Co Party equipment or supplier.
- (d) Claims, disputes and other matters in question between Project Co and SRFC Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 6 (Dispute Resolution Procedure).

- (e) Implementing the SRFC Design Works performed by SRFC Contractors on and to the Works performed by Project Co will not relieve Project Co from its obligations under this Agreement with respect to the Works, except to the extent expressly described in any Change Order Confirmation.

**6.6 SRFC Design Co-ordination**

- (a) Should the contract for the SRFC Design Works be awarded to a party at arms-length from Project Co, the City and Project Co agree that Project Co shall be entitled to provide feedback to the City and the SRFC Contractor on those engineering, systems and structure aspects of the SRFC Design Works that impact or require a co-ordinated interface with the Project Co Works. For clarity, such feedback shall not include comments on the architectural components of the SRFC Design Works.
- (b) The review and consultation described at Section 6.6(a) shall occur at 30%, 60% and 90% stages of development of the SRFC Design Works.
- (c) As compensation for the design review and consultation process described above, the City shall pay to Project Co its actual Direct Costs of such process to a maximum of \$10,000 for each such review and a maximum of \$30,000 in aggregate.
- (d) Following assignment of the SRFC Design Works contract to Project Co in accordance with Schedule 16, Project Co shall not be entitled to revise such design without the prior written approval of the City and SRFC.

**7. DEFECTIVE WORKS**

- (a) During the Construction Period, Project Co shall promptly remove from the Facility and replace or re-execute defective Works that fail to conform to the Technical Requirements whether or not the defective Works has been incorporated in the Works and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of Project Co. The correction of defective Works shall be at Project Co's expense. Project Co shall rectify, in a manner acceptable to the Independent Certifier, all defective Works and deficiencies throughout the Works, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any defective Works so as not to interfere with or derogate from the Works Schedule, provided that Project Co shall prioritize the correction of any defective Works that, in the sole discretion of the City, is determined to adversely affect the day to day operation of the Facility.
- (b) During the Construction Period, Project Co shall promptly make good other contractors' work destroyed or damaged by such correction of defective Works at Project Co's expense.
- (c) During the Construction Period, if in the opinion of the Independent Certifier after consultation with Project Co it is not practical to correct defective Works or Works not performed as provided in the Technical Requirements, the City may deduct from the Contract Price the difference in value between the work as performed and that called for by this Agreement. If the City and Project Co do not agree on the difference in value, they

shall refer the matter to the Independent Certifier for a determination and the determination will be issued as a Change Order.

**8. WARRANTY OBLIGATIONS**

- (a) Project Co represents, warrants and covenants that:
  - (i) the Works shall conform to the requirements of this Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Saskatchewan;
  - (ii) the Works shall be free of defects, including design defects, errors and omissions; and
  - (iii) materials and equipment shall be of good quality and in compliance with this Agreement.
- (b) Any deficiency, defect or error in the Works or non-compliance of the Works with the requirements of this Agreement shall collectively be referred to as a “**Construction Defect**”.
- (c) Any deficiency, defect or error in the materials and equipment supplied in connection with the Works shall be referred to as an “**Equipment Defect**”.
- (d) For a period of one (1) year from the Substantial Completion Date Project Co shall at its expense correct and make good all Construction Defects arising in respect of the Works (the “**Construction Defect Warranty Period**”).

For all work to correct any Construction Defect, the Construction Defect Warranty Period shall be extended for a further year from the date of the last work completed in respect of such correction. Despite any extension of the Construction Defect Warranty Period under this Section 8(d), the Construction Defect Warranty Period will terminate on the 2<sup>nd</sup> anniversary of the Substantial Completion Date. For clarity, any extension of the Construction Defect Warranty Period for the purposes of a correction shall only apply to the deficient, defective or non-compliant Works and not the Works as a whole.

- (e) During the Construction Defect Warranty Period, Project Co shall at its expense correct and make good, and cause any third party supplier who provided such material or equipment to correct and make good, all Equipment Defects. Project Co shall obtain warranties from the manufacturers of the equipment for the duration(s) and in accordance with the applicable requirements specified in the Technical Requirements in the name of and to the benefit of Project Co. Where, in respect of an equipment warranty, the Technical Requirements do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and shall use commercially reasonable efforts to ensure that such equipment warranties extend for as long a period from the Substantial Completion Date as can be obtained from the applicable manufacturer, but in any event such equipment warranties shall extend no less than one (1) year from the Substantial Completion Date.

Each equipment warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than fifteen (15) days prior to the Substantial Completion Date and shall be in effect from the Substantial Completion Date. Project Co shall ensure that each equipment warranty is fully assigned to the City, at no cost or expense to the City, at the end of the Construction Defect Warranty Period.

- (f) In addition to the obligation to correct and make good Construction Defects during the Construction Defect Warranty Period, Project Co, shall, at its expense, correct and make good, for up to fifteen (15) years from the Substantial Completion Date, any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works (“**Construction Latent Defect**”), provided the City gives Project Co written notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to *The Limitations Act* (Saskatchewan). For greater certainty, Construction Latent Defects do not include Equipment Defects.
- (g) As a component of the Substantial Completion Criteria, the Design and Construction Subcontractor and the Design and Construction Subcontractor Guarantor shall be required to undertake, warrant and certify that they will make good and correct such warranty obligations of Project Co pursuant this Section 8, as set out in the Design and Construction Subcontractor Direct Agreement.
- (h) The warranties described in this Section 8 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any items of equipment or material called for elsewhere in the Technical Requirements or otherwise provided by any manufacturer of such equipment or material.
- (i) If Project Co fails to correct and make good any and all Construction Defects in accordance with Sections 8(d) and 8(e) and in the time period specified, without prejudice to any other right or remedy the City may have, the City may correct such Construction Defect at Project Co’s expense.

**9. WARRANTY LETTER OF CREDIT**

- (a) As security for Project Co’s warranty obligations during the Construction Defect Warranty Period, Project Co shall deliver, or cause to be delivered, to the City, an irrevocable letter of credit (the “**Warranty Letter of Credit**”) substantially in the form of Schedule 13 (Warranty Letter of Credit). The initial amount of the Warranty Letter of Credit shall be five (5%) percent of the value of the Works. On the first anniversary of the Substantial Completion Date, the Warranty Letter of Credit shall be reduced to an amount equal to five (5%) percent of the value of the corrected Works described in Section 8(d) which are subject to an extended warranty period.
- (b) Project Co shall deliver the Warranty Letter of Credit no later than ten (10) days prior to the Substantial Completion Date.

- (c) The City shall be entitled to draw on the Warranty Letter of Credit, from time to time, in an amount equal to the damages suffered by the City for any costs incurred by the City in accordance with Section 8 in respect of the Facility.
- (d) The City shall release and deliver the full amount of the Warranty Letter of Credit, less the amount of any warranty claims then outstanding, if any, on the second anniversary of the Substantial Completion Date.

## **10. PAYMENTS, HOLDBACKS AND TAXES**

### **10.1 Milestone Payments**

- (a) The City shall pay to Project Co the Milestone Payments in the amounts specified in Schedule 11 (Payment Schedule), subject to the conditions described in Schedule 11 (Payment Schedule), adjustments and applicable holdbacks, including any BLA holdbacks and, if applicable, PST holdbacks, to be made by the City in accordance with this Agreement. The City acknowledges that the payment target dates for the Milestone Payments are set out in Schedule 11 (Payment Schedule).
- (b) After being issued a Certificate of Milestone Progress, Project Co shall advance to the City:
  - (i) an invoice for the amount of the Milestone Payment owing by the City to Project Co for such Milestone Payment (the “**Milestone Payment Invoice**”); and
  - (ii) the applicable Milestone Payment Application in accordance with Schedule 18 (Payment Application).

Project Co shall comply with all requirements of Schedule 11 (Payment Schedule) in respect of Milestone Payment Invoice’s and shall include with each Milestone Payment Invoice such supporting documentation as the City may reasonably require in order to substantiate and confirm the amount requested in connection with the applicable Milestone Payment.

- (c) GST and PST, where applicable, shall be invoiced on each Milestone Payment Invoice from Project Co, together with Project Co’s GST and PST registration number, where applicable.
- (d) The City’s Representative shall review each Milestone Payment Invoice submitted in accordance with this Section 10.1. Within five (5) Business Days of receipt by the City of the applicable Milestone Payment Invoice, the City’s Representative shall determine, and advise Project Co, whether the Milestone Payment Invoice is approved by the City, in which case the City shall pay the amount stated in such Milestone Payment Invoice within five (5) Business Day thereafter.

### **10.2 Substantial Completion Payment**

- (a) The City shall pay to Project Co the Substantial Completion Payment in the amount specified in Schedule 11 (Payment Schedule), subject to the conditions described in

Schedule 11 (Payment Schedule), adjustments and applicable holdbacks, including any BLA holdbacks and, if applicable, PST holdbacks, to be made by the City in accordance with this Agreement. The City acknowledges that the payment target date for the Substantial Completion Payment is set out in Schedule 11 (Payment Schedule).

- (b) After being issued the Certificate of Substantial Completion, Project Co shall advance to the City:
  - (i) the Warranty Letter of Credit in accordance with Section 9;
  - (ii) an invoice for the amount of the Substantial Completion Payment owing by the City to Project Co for such Substantial Completion Payment, including any deductions and withholdings therefrom (the “**Substantial Completion Payment Invoice**”); and
  - (iii) the Substantial Completion Payment Application in accordance with Schedule 18 (Payment Application).

Project Co shall comply with all requirements of Schedule 11 (Payment Schedule) in respect of the Substantial Completion Payment Invoice and shall include with each Substantial Completion Payment Invoice such supporting documentation as the City may reasonably require in order to substantiate and confirm the amount requested in connection with the Substantial Completion Payment.

- (c) GST and PST, where applicable, shall be invoiced on the Substantial Completion Payment Invoice from Project Co, together with Project Co’s GST and PST registration number, where applicable.
- (d) The City’s Representative shall review the Substantial Completion Payment Invoice submitted in accordance with this Section 10.2. Within five (5) Business Days of receipt by the City of the Substantial Completion Payment Invoice, the City’s Representative shall determine, and advise Project Co, whether the Substantial Completion Payment Invoice is approved by the City, in which case the City shall pay the amount stated in the Substantial Completion Payment Invoice within five (5) Business Day thereafter.
- (e) Within twenty one (21) days of the end of the month in which Substantial Completion occurs, the City shall pay to Project Co all GST payable in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the construction of the Works for remittance to the Canada Revenue Agency, which amount, if any, shall be set out in the Substantial Completion Payment Invoice and shall reflect the capital cost of construction of the Works set out in the financial model, which shall serve as a reasonable estimate of the full consideration for such Substantial Completion. For clarity, the amount of each payment made by the City to Project Co pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada) does not include any GST amounts already paid by the City to Project Co on each of the Milestone Payments and the Substantial Completion Payment.

**10.3 Taxes**

**(a) GST and PST**

- (i) Project Co will be required to be registered for GST and, if applicable, Saskatchewan PST.
- (ii) In the event that the City is or becomes obligated, in connection with this Agreement, to collect from Project Co and remit any amounts in respect of GST or, if applicable, PST, or any successor goods and services tax or harmonized sales tax pursuant to Part IX of the *Excise Tax Act* (Canada) or any successor legislation, then Project Co shall pay such amounts to the City within thirty (30) days of receipt by Project Co of an invoice for such amounts containing the information required by the applicable legislation. Project Co acknowledges and agrees that any amounts paid by Project Co to the City pursuant to this Agreement (including payments in kind in the form of property or services) are exclusive of PST or GST (as applicable).

**(b) PST Holdback**

- (i) Project Co shall provide to the City evidence that all Project Co Parties are either resident for Saskatchewan PST or have placed required PST payment security with Saskatchewan Ministry of Finance to avoid any PST holdbacks.
- (ii) If the evidence required in Section 10.3(b)(i) is insufficient to the City, the City shall be entitled to holdback and retain from each applicable Payment an amount equal to the PST until the cumulative holdback amounts are released upon:
  - (A) the issuance of the Certificate of Substantial Completion; and
  - (B) Project Co producing to the City a clearance certificate from the Saskatchewan Ministry of Finance evidencing that Project Co (if applicable) and all Project Co Parties have paid all required PST amounts,at such time the City shall release and advance the holdback amounts to Project Co, without interest or deduction.

**(c) Changes in Recoverability of Tax Credits**

- (i) The City will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from the coming into effect or repeal (without re-enactment or consolidation) in Saskatchewan of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Saskatchewan in each case after the date of this Agreement. Project Co will pay to the City from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from the coming into effect or repeal (without re-

enactment or consolidation) in Saskatchewan of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Saskatchewan in each case after the date of this Agreement.

- (ii) For the purposes of this Section 10.3(c), the term “**Irrecoverable Tax**” means PST or an irrecoverable sales tax levied by the Legislative Assembly of Saskatchewan in lieu of all or a portion of PST incurred by Project Co, if applicable, in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such PST, or after obtaining an input tax credit, is required to pay an additional amount to the Canada Revenue Agency equal to all or part of the input tax credit claimed.
- (iii) For the purposes of this Section 10.3(c), the term “**Recoverable Tax**” means PST incurred by Project Co, if applicable, in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such PST.

**(d) Information and Assistance Provided by Project Co**

- (i) Project Co shall, at the City’s request and cost, assist the City in applying for and obtaining all remissions and credits of GST or PST, as the case may be, to which the City entitled.
- (ii) The City may apply for a global or general exemption, waiver, remission, or refund of some or all taxes which may otherwise be applicable in relation to this Agreement. Project Co shall, at the City’s request and cost, assist the City in making any applications for such global or general exemption, waiver, remission or refund and shall provide the City with such documentation as the City may reasonably require to support such application and, in any event, shall provide such consent as the City may require. Any exemption, waiver, remission, refund or other recovery of taxes obtained by the City through such application shall accrue to the sole benefit of the City.
- (iii) Project Co will provide the City with any information reasonably requested by the City from time to time in relation to the GST or PST, as the case may be, chargeable in accordance with this Agreement and payable by the City to Project Co from time to time.

**(e) Residency – *Income Tax Act (Canada)***

- (i) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a non-resident (as defined in the *Income Tax*

*Act* (Canada)) without the City's prior written consent, which consent may be withheld in the City's sole discretion.

**(f) Taxes – General**

- (i) Project Co shall not, without the prior written consent of the City (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause the City to have (or result in the City having) any obligation to deduct, withhold or remit any taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Agreement or under any of the Project Documents.

**10.4 Set-off**

The City is entitled to set off against any Milestone Payment, the Substantial Completion Payment and the Final Completion Payment only an amount:

- (a) finally determined to be payable by Project Co to the City under this Agreement; or
- (b) paid by the City under and in accordance with any statute in respect of any lien or claim arising from any act or omission of Project Co or any Project Co Party in relation to the Project.

The City, upon becoming aware that it is or may become obligated to pay and before paying an amount contemplated by Section 10.4(b) such that a right of set-off may arise under Section 10.4(b), shall give Project Co such advance notice as may be practicable in the circumstances (without exposing the City to any risk of being obliged to pay the same amount twice), with a view to affording Project Co an opportunity to dispute (provided the City is satisfied the dispute is bona fide), or make arrangements to remove or eliminate, the lien or claim.

**10.5 Interest on Overdue Payments**

Any amount payable under this Agreement and not paid when it becomes due shall bear interest at Prime plus two (2%) percent, without compounding, from the due date of the amount payable until the date (or dates) of payment. Where pursuant to the Dispute Resolution Procedure a disputed amount is determined to have been payable, then subject to any contrary determination pursuant to the Dispute Resolution Procedure, interest at Prime plus two (2%) percent, without compounding, shall be payable from the date when such amount ought to have been paid until the date (or dates) of payment.

**11. INSURANCE, DAMAGE AND DESTRUCTION**

**11.1 Insurance Requirements**

Project Co shall:

- (a) maintain in place all of the insurance specified in Sections 2 and 3 of Schedule 8 (Insurance Requirements); and
- (b) require and ensure that all Project Co Parties maintain and provide evidence as reasonably requested by the City of the insurance required in Section 3 of Schedule 8 (Insurance Requirements), as applicable.

**11.2 Other Requirements**

All insurance required under Section 11.1:

- (a) shall be primary and shall not require the pro rata sharing of any loss by any insurer of the City or REAL; and
- (b) shall be endorsed to provide the City with thirty (30) days advance written notice of cancellation or any material change restricting coverage (with the exception of the automobile insurance coverage required under Schedule 8 (Insurance Requirements)).

**11.3 Evidence of Insurance**

Project Co shall deliver or cause to be delivered to the City:

- (a) in relation to the insurance required for the Construction Period, evidence satisfactory to the City, acting reasonably, (which evidence may include detailed insurance cover notes and detailed certificates of insurance and written confirmation from Project Co's insurance broker that all insurance required by this Section 11 and contained within Schedule 8 (Insurance Requirements) are in effect and comply with the insurance requirements in this Agreement) of all insurance policies required to be obtained and maintained by Project Co, the Design and Construction Subcontractor, including Project Co Parties, and those other subcontractors identified by notice from the City at least five (5) days prior to Project Co making any entry upon the Lands for the purpose of commencing construction; and
- (b) not less than thirty (30) days prior to expiration of any then current policy, documentation evidencing to the satisfaction of the City, acting reasonably, the renewal, extension or replacement of such insurance and as soon as reasonably practicable and, in any event, within thirty (30) days after expiration of any then current policy, certified copies of policies or certificates of insurance evidencing to the satisfaction of the City, acting reasonably, the renewal, extension or replacement of such insurance.
- (c) Project Co shall promptly notify the City when it has knowledge or actual notice that the insurance required under this Agreement will not be renewed or may be restricted by the insurer(s) on risk.

Delivery to and examination by the City of any policy of insurance or certificate or other form of documentation evidencing such insurance shall not relieve Project Co of any of its obligations pursuant to the provisions of this Section 11 and Schedule 8 (Insurance Provisions) and shall not operate as a waiver by the City of any rights.

**11.4 City May Insure**

If Project Co at any time fails to furnish the City with evidence of all required insurance in the manner specified by Section 11.3, or if subsequent to providing evidence of all required insurance Project Co's insurance is subject to a material change restricting coverage or is cancelled, the City may upon five (5) Business Days' notice to Project Co, obtain the required insurance not so evidenced or so restricted or cancelled, and may set off the cost of the insurance so obtained against any amount payable to Project Co under this Agreement.

**11.5 Repair of Damage - Construction Period**

Project Co shall repair all damage to the Facility during the Construction Period, of whatever nature and however caused, excepting only:

- (a) damage caused by a Force Majeure Event (in which case Sections 12.1 and 12.2 apply);
- (b) Environmental Damage or Degradation described in Section 4.6(a); or
- (c) damage caused by the City or any City Party.

**11.6 Substantial Completion Delayed**

If damage to the Facility during the Construction Period causes Substantial Completion to be delayed beyond the Substantial Completion Target Date, then if:

- (a) the damage was not caused by Project Co or any Project Co Party;
- (b) Project Co takes all reasonable action to diligently repair the damage and mitigate the delay; and
- (c) Project Co maintained any insurance required by Section 11.1 that is relevant to the damage;

the Works Schedule and the dates in Sections 5.11 and 17.3(f) shall be adjusted to take account of the period during which Project Co is taking all reasonable action to diligently repair the damage and mitigate the delay, no non-performance of any obligation under this Agreement shall give rise to a Termination Event, to the extent that and for so long as performance of the obligation is prevented by the circumstances described above, and the City will, to the extent the damages occasioned to Project Co by the delay is not insured against, compensate Project Co for the damages occasioned by Substantial Completion being delayed beyond the Substantial Completion Target Date, in which event the Substantial Completion Target Date shall not be adjusted, but the City shall, upon Substantial Completion, pay to Project Co its damages resulting from Substantial Completion being delayed beyond the Substantial Completion Target Date, including any interest amounts accrued and paid, or which became payable, in accordance with the Project Financing during the period of the delay by Project Co to the Lenders up to and including such date, together with interest thereon at the rate payable on such debt, which, but for the delay, would have been paid by the City to Project Co, subject to Project Co's obligation to take reasonable steps to mitigate the delay and to mitigate its damages.

**12. FORCE MAJEURE****12.1 Force Majeure During Construction Period**

If a Force Majeure Event occurs during the Construction Period, then notwithstanding any other provision of this Agreement:

- (a) to the extent that and for so long as either party is prevented by the Force Majeure Event from performing any obligation under this Agreement, that party is relieved from any liability or consequence under this Agreement arising from its inability to perform or delay in performing that obligation;
- (b) if the Force Majeure Event wholly or substantially prevents Project Co from proceeding with the Project for a period of at least ten (10) days, then the Works Schedule and the dates in Sections 5.11, and 17.3(f) shall be adjusted to take account of the period during which Project Co is prevented by the Force Majeure Event from proceeding with the Project;
- (c) no non-performance of any obligation under this Agreement shall give rise to a Termination Event, to the extent that and for so long as performance of the obligation is prevented by the Force Majeure Event;
- (d) the Substantial Completion Target Date shall not be adjusted, but if by reason of the Force Majeure Event, Substantial Completion is delayed until beyond the Substantial Completion Target Date, then the City shall upon Substantial Completion pay to Project Co its damages resulting from Substantial Completion being delayed beyond the Substantial Completion Target Date by the Force Majeure Event, including any interest amounts accrued and paid, or which became payable, in accordance with the Project Financing during the period of the Force Majeure Event owed by Project Co to the Lenders up to and including such date, together with interest thereon at the rate payable on such debt, which, but for the Force Majeure Event, would have been paid by the City to Project Co, subject to Project Co's obligation to take reasonable steps to mitigate the delay caused by the Force Majeure Event and to mitigate its damages;
- (e) no damages are payable under Section 12.1(d) to the extent that the damages are covered (or would have been covered but for Project Co's failure to comply with Section 11) by insurance maintained by or for the benefit of Project Co; and
- (f) if Project Co anticipates that the Force Majeure Event will delay Substantial Completion, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, Project Co may propose to the City that such extraordinary measures be taken by Project Co at the City's expense.

## 12.2 Procedure on Force Majeure Event

Upon either party becoming aware of the occurrence of a Force Majeure Event that may prevent that party from performing any obligation under this Agreement, that party shall, in a timely manner, give the other party notice of the Force Majeure Event, including reasonable details of the anticipated effect of the Force Majeure Event upon performance of that party's obligations under this Agreement, and thereafter the parties shall, on an ongoing basis, consult with each other with a view to remedying or mitigating the Force Majeure Event and, if applicable, rebuilding the Facility or otherwise addressing the consequences of the Force Majeure Event.

Except to the extent that damage caused to the Facility by a Force Majeure Event is insured against or required to be insured against by Project Co, the City shall be responsible for repairing the damage, provided that:

- (a) the City may in its discretion, having regard to the nature and extent of the damage and acting reasonably, decline to repair the damage and upon such decision being taken shall promptly notify Project Co; and
- (b) if the City, pursuant to Section 12.2(a), declines to repair the damage, that shall, subject to Section 13.1, constitute a Relief Event under Section 13.1(m) (but without prejudice to any termination right arising under Section 18.3).

## 13. RELIEF EVENT

### 13.1 Relief Event Defined

In this Agreement, "**Relief Event**" means any of the following events that prevents, delays, interrupts or renders more expensive to Project Co the performance of any obligation of Project Co under this Agreement:

- (a) breach of any provision of this Agreement by the City;
- (b) in the circumstances specified in Section 5.10, a stop work order issued or opening up requested by the City where the Works are found to be compliant with the Technical Requirements, unless such stop work order or opening up was reasonable in the light of other defects or non-compliance previously discovered by the City in respect of the same or a similar component of the Works or subset of the Works;
- (c) a Designated Change in Law coming into effect after the Submission Date;
- (d) a requirement pursuant to Sections 4.6(b)(i) or 4.6(d) for Project Co to perform, at the City's expense, any alteration, addition, demolition, extension or variation in the Works or to suspend or delay performance of the Works upon the discovery of Environmental Damage or Degradation, which alteration, addition, demolition, extension or variation in the Works or suspension or delay in the performance of the Works would not otherwise be required under this Agreement;

- (e) the presence in, under or on the Lands, of Heritage Finds, which presence was unknown to Project Co at the Submission Date;
- (f) an order granted by a Court directly resulting from:
  - (i) a third party claim of an interest in the Lands or a portion thereof; or
  - (ii) any other proceeding related to the Project brought against the City or to which the City is a party;
- (g) a general strike or other labour disruption in Saskatchewan that is applicable broadly to the stadium facilities construction industry in Saskatchewan or is directed at the City, other than a strike or other labour disruption involving employees of Project Co or any Project Co Party;
- (h) in the circumstances specified in Section 6.2(b), interference with or disruption of Project Co's carrying out of the Project or the Technical Requirements;
- (i) in the circumstances specified in Section 17.2(e), any Remedial Action (as defined in Section 17.2) taken by the City;
- (j) if, despite Project Co taking all commercially reasonable measures to mitigate any cost, delay or inconvenience (including providing the City with timely notice of the cost, delay or inconvenience encountered), Project Co incurs increased costs, or Project Co's activities in carrying out the Project are delayed or prevented as a result of any encumbrances, other than Identified Encumbrances, that pertain to the Lands;
- (k) protest actions by persons protesting the construction of the Project or any other protest action on the Lands, provided that Project Co uses commercially reasonable efforts to mitigate the effect of such protest actions;
- (l) the presence on or around the Lands of animal or plant species protected by applicable environmental laws, which presence was unknown to Project Co at the Submission Date;
- (m) in the circumstances specified in Section 12.2, a failure by the City to repair, within a timeframe that is reasonable having regard to the circumstances, damage caused by a Force Majeure Event;
- (n) a Designated Change in Law or a change in the regulatory requirements (as defined in Schedule 15 (Technical Requirements)) after submission of Project Co's Proposal that was not reasonably anticipated at the time of submission of Project Co's Proposal and that Project Co is required to comply with pursuant to this Agreement;
- (o) the breach by a party (other than the City) of its obligations under a Utility Agreement to which Project Co is not a party due to Section 4.10(c) being applicable;
- (p) any delay in, or failure of the performance of any of its obligations by the City in the Equipment Procurement and Coordination Plan;

- (q) any failure by the City to assign any SRFC Assigned Subcontract by October 1, 2015;
- (r) any failure by the City to deliver any Change Order Enquiry contemplated in Section 6 of Schedule 1 (Change Orders) by November 1, 2015; or
- (s) any failure by the City to deliver technical information relating to the underslab services on the Facility's event level where the SRFC Fit Out Works will be performed by August 1, 2014,

but excluding, in any case, any event to the extent caused by the negligence, willful misconduct or unlawful act of Project Co or any Project Co Party or any act or omission of Project Co in breach of the provisions of this Agreement.

### **13.2 Relief Event During Construction Period**

If a Relief Event occurs during the Construction Period, then notwithstanding any other provision of this Agreement:

- (a) to the extent that and for so long as Project Co is prevented by the Relief Event from performing any obligation under this Agreement, Project Co is relieved from any liability or consequence under this Agreement arising from its delay in performing that obligation;
- (b) if the Relief Event wholly or substantially prevents Project Co from proceeding with the Project for a period of at least ten (10) days, or if multiple Relief Events when taken together wholly or substantially prevent Project Co from proceeding with the Project for a period of at least ten (10) days and each such Relief Event wholly or substantially prevents Project Co from proceeding with the Project for a period of at least two (2) days, then the Works Schedule and the dates in Section 5.11 and 17.3(f) shall be adjusted to take account of the period during which Project Co is prevented by the Relief Event from proceeding with the Project;
- (c) no non-performance of any obligation of Project Co under this Agreement shall give rise to a Termination Event, to the extent that and for so long as performance of the obligation is prevented by the Relief Event;
- (d) the Substantial Completion Target Date shall not be adjusted, but if by reason of the Relief Event, Substantial Completion is delayed until beyond the Substantial Completion Target Date, then the City shall upon Substantial Completion pay to Project Co its damages resulting from Substantial Completion being delayed beyond the Substantial Completion Target Date by the Relief Event, including any interest amounts accrued and paid, or which became payable, in accordance with the Project Financing during the period of the delay owed by Project Co to the Lenders up to and including such date, together with interest thereon at the rate payable on such debt, which, but for the delay, would have been paid by the City to Project Co, subject to Project Co's obligation to take reasonable steps to mitigate the delay and to mitigate its damages;
- (e) if Project Co anticipates that the Relief Event will delay Substantial Completion, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, Project

Co may propose to the City that such extraordinary measures be taken by Project Co at the City's expense;

- (f) if the Relief Event, when aggregated with the effect of any other Relief Event or Relief Events occurring in the same Construction Year and not previously claimed for by Project Co will increase Project Co's net cost of carrying out the Project by at least twenty five thousand (\$25,000) Dollars, then subject to Section 13.3 and subject in every case to Project Co's obligation to take reasonable steps to mitigate the increase in its costs, and without duplicating any amount payable under Section 13.2(d), the City shall, as soon as practicable following receipt from Project Co of appropriate documentation establishing the amount payable, pay to Project Co, without duplication:
  - (i) if the Relief Event is a breach by the City of any of its obligations under this Agreement, the amount payable under the indemnity in Section 16.3;
  - (ii) if the effect of the Relief Event is tantamount to a change in the Technical Requirements, the amount that would have been payable by the City if the change in the Technical Requirements had been a Change Order governed by Section 6.1 and requested by the City pursuant to a Change Order Directive;
  - (iii) in any other case, Project Co's reasonable damages; and
- (g) no damages are payable under this Section 13.2 to the extent that the damages are covered (or would have been covered but for Project Co's failure to comply with Section 10) by insurance maintained by or for the benefit of Project Co.

### **13.3 Procedure on Relief Event**

Upon Project Co becoming aware of the occurrence of an event that is or may be or is likely to become a Relief Event, it shall, within five (5) Business Days after becoming aware of such occurrence, give the City notice of the Relief Event, including reasonable details of the anticipated effect of the Relief Event upon Project Co's performance of its obligations under this Agreement, and thereafter the parties shall on an ongoing basis communicate and consult with each other with a view to monitoring, remedying, mitigating or otherwise addressing the consequences of the Relief Event. Failure by Project Co to provide such notice in such manner shall not thereafter disqualify Project Co from providing notice of and claiming relief under the Relief Event, but the City may in that event assert a claim for damages arising from such failure.

## **14. PROJECT CO'S REPRESENTATIONS AND OBLIGATIONS**

### **14.1 Project Co's Representations**

Project Co represents and warrants to the City as of the date hereof that:

- (a) Project Co is a corporation duly incorporated and validly existing, in good standing, and registered and otherwise lawfully authorized to do business under the laws of Alberta, and has the requisite capacity, power and authority to enter into and perform its obligations under this Agreement;

- (b) this Agreement has been duly authorized on behalf of Project Co, and upon its execution and delivery constitutes a legal, valid and binding obligation of Project Co;
- (c) all shareholdings in Project Co and in the ultimate parent corporation of Project Co at the date hereof been disclosed to the City;
- (d) Project Co is relying only on its own inspections, investigations and due diligence in relation to the risks assumed by it under the provisions of this Agreement and is not relying on any information received from or representation made by the City, with the exception only of the City's representations in Section 15.1;
- (e) Project Co has made plain and true disclosure to the City of all facts and circumstances regarding Project Co, its shareholders, its intended subcontractors and the Project Financing that might reasonably be material to the willingness of the City to enter into this Agreement with Project Co having regard to the information requested by the City in the RFP;
- (f) Project Co is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada);
- (g) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of Project Co's ability to perform its obligations under this Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (h) Project Co is registered under the *Excise Tax Act* (Canada) and its registration number is 81047 9030;
- (i) if applicable, Project Co is registered under *The Provincial Sales Tax Act* (Saskatchewan); and
- (j) Project Co is registered with the Saskatchewan Workers' Compensation Board.

## **14.2 Reporting Requirements**

In addition to all specific reports and notices required by the Technical Requirements, Project Co shall provide the following reporting to the City during the Construction Period:

- (a) within ten (10) Business Days' following the end of each calendar month from the date of this Agreement until the date of Final Completion, a Works Report on the progress of the Project in accordance with Schedule 17 (Works Report);
- (b) a monthly report including all information which must be provided to any Governmental Authority with respect to meeting the Permits and Approvals, any safety requirements and

- obligations and/or any environmental requirements and obligations, all in a form and format prescribed or approved from time to time by the City, acting reasonably;
- (c) an officer's certificate, delivered on an annual basis, confirming that the representations and warranties set out in Section 14 remain true and correct in all material respects as at the date of such officer's certificate;
  - (d) copies of its quarterly financial statements (if available) and annual financial statements (each of which may be delivered in confidence), in each case prepared in accordance with generally accepted accounting principles;
  - (e) when reasonably requested by the City, copies of financial reporting provided from time to time to any arm's-length lender providing all or any part of the Project Financing;
  - (f) any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party, at law or in equity, that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Agreement;
  - (g) such other periodic reports as the City may from time to time reasonably require; and
  - (h) a response delivered in a timely manner to any inquiry reasonably made by the City in relation to any aspect of the Project, the Technical Requirements, this Agreement or the business of Project Co to the extent directly related to the Project, the Technical Requirements or this Agreement;

provided that, to the extent that such reporting includes commercially sensitive information, it may be delivered to the City expressly in confidence and marked as confidential. All information, reports, documents and records in the possession of, or available to, Project Co, which are required to be provided to or available to the City hereunder, shall be subject and open to inspection and audit by the City at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless the City and Project Co otherwise agree. The City's rights pursuant to this Section 14.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Agreement.

### **14.3 Meetings and Information Sessions**

- (a) Upon the City's receipt of monthly Works Reports during the Construction Period pursuant to Section 14.2(a), the City shall have the option to convene a meeting between Project Co's Representative and the City's Representatives on not less than five (5) Business Days' notice to discuss such Works Report. Project Co may invite any Project Co Parties as it requires from time to time to attend such meetings and to provide briefings to the City's Representatives. Unless otherwise agreed to by the Parties, the meetings to discuss the Works Reports shall be held in person and the Parties shall meet at the City's offices.
- (b) Any one of Project Co Representatives or the City's Representatives may convene a special meeting at any time. Special meetings of the Parties may be convened on not less than

three (3) Business Days' notice to the other Party's representatives identifying the agenda items to be discussed at the special meeting, provided that, in an emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

#### **14.4 Records**

Project Co shall, following execution of this Agreement and for a period of two (2) years following expiry of the Term or earlier the termination of this Agreement:

- (a) maintain, in an appropriate form, full accounting and other records in respect of performance by it of its obligations under this Agreement; and
- (b) keep those records available for inspection by the City (including any representative designated by the City for that purpose) at all reasonable times upon reasonable notice, for the purpose of determining Project Co's compliance with this Agreement.

Apart from the right of inspection in Section 14.4(b) and the obligation of Project Co under Section 18.4(b) upon termination of this Agreement, the records of Project Co shall be in the exclusive custody and control of Project Co, and the City shall have no general right to access or obtain copies of such files and records. Project Co shall not be required to hand over to the City copies of any records that constitute proprietary information in the nature of trade secrets.

#### **14.5 Safety**

Project Co shall observe all safety requirements specifically set out in Schedule 10 (Safety Requirements) or in the Technical Requirements, and shall in all respects and at all times carry out the Technical Requirements with due regard for public safety.

#### **14.6 Project Co's Other Obligations**

Project Co covenants to do all things specified in the Schedules to be done by Project Co, in such manner and at such times as specified in the Schedules. Project Co shall take all such actions in the context of the Project as are from time to time required in order to allow the City, other governmental authorities, police services, park administrative officers and conservation officers and emergency response services to carry out their respective statutory duties in relation to the Facility.

#### **14.7 Application of the BLA to Project Co**

- (a) The BLA applies to the Project, including Project Co's requirement to satisfy the statutory holdback requirements under the BLA in respect of the Works.
- (b) For the purposes of interpreting the "**Claim of Lien**" provisions under Part V of the BLA, the claim shall be deemed to be a claim of lien in the event that the claim of lien is registered as required by section 50 of the BLA no later than 40 days after the date that the Certificate of Substantial Performance was published. Project Co shall maintain and retain all records and information relevant to any BLA matters in accordance with the requirements of such act.

**15. CITY'S REPRESENTATIONS AND OBLIGATIONS**

**15.1 City's Representations**

The City represents and warrants to Project Co as of the date hereof that:

- (a) the City has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorized on behalf of the City, and upon execution and delivery constitutes a legal, valid and binding obligation of the City;
- (c) the City has no actual knowledge of any material inaccuracies or materially misleading statements in any reports, studies or other information formally made available by the City to Project Co, except as expressly identified in written communications between the City and Project Co (including any written communications, prior to incorporation or other legal creation of Project Co);
- (d) the City is the owner of an estate in fee simple of all of the Lands;
- (e) the City has not granted any leases that are outstanding in respect of the Lands, except for the leases forming part of the Identified Encumbrances and the leases described in Appendix B of Schedule 9 (Lands); and
- (f) the City has the legal authority to use the Lands for the Project.

**15.2 City's General Obligation**

The City covenants to do all things specified in this Agreement to be done by the City, in such manner and at such times as specified in this Agreement.

**15.3 Environmental Reports**

The City agrees that, if at the date of this Agreement, except as disclosed in any background information or as otherwise disclosed by the City or any City Party or known by Project Co or any Project Co Party, any of the information in the Environmental Reports is, to the actual knowledge of the City, incorrect or there is relevant information in the possession or control of the City that would make any of the information in the Environmental Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Works or materially adversely affects Project Co's cost of performing the Works, such incorrect information shall, subject to and in accordance with Schedule 1 (Change Orders), result in a Change Order.

**15.4 Assistance with Permits and Utility Agreements**

Project Co shall provide the City with prompt notice of each application that Project Co makes to a regulator for a permit or approval in respect of the Project.

Without derogating from Project Co's responsibilities under Section 5.6 to obtain all permits and approvals required for the Project to make all required arrangements relating to utilities, the City shall, in response to any reasonable request by Project Co in relation to such permits and approvals and required arrangements, provide Project Co with such reasonable assistance as the City is able to offer or arrange without unduly fettering its executive discretion or pursuing amendment of any legislation or subordinate legislation, but otherwise including taking any action required to obtain a permit or approval which only the City can take and which cannot be taken by Project Co on the City's behalf, and in any case where the City concludes that a third party is acting unreasonably in relation to the negotiation or issuance of such permits, approvals or required arrangements, the exercise by the City of all legal rights and remedies available to it in relation to such third party, to the extent it is reasonable in the circumstances for the City to exercise such legal rights and remedies.

Project Co shall provide notice to the City of unreasonable delay experienced by Project Co in obtaining permits and approvals required for the Project as soon as practicable after becoming aware of the delay, including details of the cause or perceived cause of the delay and the efforts to date and anticipated further efforts of Project Co to prevent or minimize the duration of the delay.

**15.5 Assistance with OH&S Orders**

Project Co shall provide the City with prompt notice of any OH&S Order that Project Co receives in respect of the Project.

The City shall, in response to any reasonable request by Project Co in relation to any OH&S Order, provide Project Co with such reasonable assistance as the City is able to offer or arrange, including taking any action required to resolve any OH&S Order which only the City can take and which cannot be taken by Project Co on the City's behalf and, where the City concludes that a third party is acting unreasonably in relation to any OH&S Order, the exercise by the City of all legal rights and remedies available to it in relation to such third party, to the extent it is reasonable in the circumstances for the City to exercise such legal rights and remedies.

Project Co shall provide notice to the City of unreasonable delay experienced by Project Co in resolving any OH&S Order as soon as practicable after becoming aware of the delay, including details of the cause or perceived cause of the delay and the efforts to date and anticipated further efforts of Project Co to prevent or minimize the duration of the delay.

**15.6 Retention and Release of Statutory Holdbacks**

The City shall be required to satisfy the statutory holdback requirements under the BLA in respect of all Payments to Project Co for completion of the Works. The City shall release to Project Co any BLA holdbacks in accordance with the requirements of the BLA.

**16. INDEMNITIES AND LIQUIDATED DAMAGES****16.1 Project Co's Indemnities**

Subject to Section 16.4, Project Co shall indemnify and hold harmless the City and any City Party from and against any and all damages, losses and costs, including third party claims, liquidated damages under Section 19.2(b)(iii) and Delay Liquidated Damages, arising from:

- (a) a breach by Project Co of its obligations under this Agreement;
- (b) the negligence or other tortious conduct of Project Co or any Project Co Party;
- (c) an infringement or alleged infringement by Project Co or any Project Co Party of the intellectual property rights of a third party;
- (d) the City owning, using or benefiting from the use of the Assigned Intellectual Property contained in the license set out in Section 24.1;
- (e) a failure by Project Co to perform any obligations of the City under the Permits and Approvals, the Utility Agreements or applicable mechanical, health and safety laws to the extent Project Co is required to perform such obligations under this Agreement where such failure results in a fine or other financial penalty imposed by any Governmental Authority;
- (f) the access or use of the Lands by Project Co or any Project Co Party after the termination of this Agreement as contemplated in Section 4.16;
- (g) subject to the last sentence of Section 5.2, the exceptions set out in Section 4.11(f) and in the last paragraph of Section 4.11, any and all third party claims for which Project Co is legally responsible and arising in relation to the Lands, including:
  - (i) any claims for occupier's liability in respect of the Lands, including any claims for which the City has liability solely as a result of being the registered owner of the Lands, except to the extent that such liability was caused or contributed to by the City or a City Party;
  - (ii) any claims arising out of negligence or willful acts by Project Co or any Project Co Party;
  - (iii) any claims arising under or in relation to any Environmental Damage or Degradation (except for claims arising in relation to the Environmental Damage or Degradation for which the City is responsible as set out in Section 4.6); and
  - (iv) any claims for nuisance; or
- (h) a failure by Project Co to comply with the Technical Requirements;

- (i) any and all damages, losses, claims and liabilities suffered by the City or any City Party occurring or arising as a result of or in connection with Project Co or any Project Co Party's entry onto the Lands; or
- (j) any Remedial Action to the extent that the need for the Remedial Action arises as a result of any breach by Project Co of its obligations under this Agreement,

except to the extent such damages, losses and costs were caused by the City or any City Party.

## **16.2 Project Co Indemnity - Taxes**

- (a) If (i) Project Co becomes a non-resident (as defined in the *Income Tax Act (Canada)*), or (ii) the City is or becomes required by Applicable Law to deduct and withhold any amount in respect of taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City under this Agreement or under any of the Project Documents, then the City shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non Resident and at all times while it remains a Non Resident; or (B) the City is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non Resident or otherwise as required by Applicable Law; and all amounts paid or credited by the City under this Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.
- (b) If (i) Project Co becomes a non-resident (as defined in the *Income Tax Act (Canada)*), or (ii) the City is or becomes required by Applicable Law to deduct and withhold any amount in respect of taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City under the Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless the City for (A) the full amount of all taxes ("**Indemnifiable Taxes**") that arise, are imposed on or are required to be paid by the City in respect of any amounts paid or credited by the City to Project Co or any Project Co Party under this Agreement or under any other ancillary document as a result of either of the foregoing items less any amount withheld or deducted by the City in respect of such taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted ("**Associated Liabilities**"). Payment under this indemnification shall be made within thirty (30) days from the date the City makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by the City shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the City. The City shall be entitled to exercise its rights of set off under Section 10.4 against any amounts owing under this indemnification.

**16.3 City's Indemnities**

Subject to Section 16.4, the City shall indemnify and hold harmless Project Co and any Project Co Party from and against any and all damages, losses and costs, including third party claims, arising from:

- (a) a breach by the City of its obligations under this Agreement;
- (b) the negligence or other tortious conduct of the City or any City Party;
- (c) any Environmental Damage and Degradation for which the City is responsible for as set out in Section 4.6; or
- (d) any failure of the Technical Requirements to be adequate and suitable.

**16.4 Calculation of and Limitation on Claims**

Where any provision of this Agreement entitles Project Co to recover damages or losses from the City upon the occurrence of a specified event, then except as otherwise expressly indicated, the intent is to afford Project Co the equivalent of the ordinary contractual measure of direct damages, that is, that such recovery will place Project Co in the same position it would have been in but for the occurrence of the specified event, having regard to the following circumstances and limitations but otherwise without limiting the generality of the foregoing:

- (a) Project Co's obligations to its subcontractors, provided that break fees payable to Project Co's subcontractors and others contracting with Project Co must be commercially reasonable, having regard to customarily negotiated break fees between parties at arm's-length from one another, and subject in every case to a duty on the part of the subcontractor or other contracting party to mitigate its damages;
- (b) participation by Project Co directly, or indirectly by arrangement with the holders of the Project Financing (if under such arrangement the risks and benefits of the hedging flow through to Project Co), in hedging arrangements specifically in relation to changes in Canadian dollar interest rates (and specifically excluding any foreign exchange transactions), provided:
  - (i) the hedging arrangements are entered into on an arm's-length basis or are on commercial terms equivalent to those that would have been available on an arm's-length basis;
  - (ii) particulars of the hedging arrangements are communicated to the City within five (5) Business Days after the hedging arrangements are entered into; and
  - (iii) the hedging arrangements are not entered into in anticipation of an imminent termination of this Agreement; and
- (c) Project Co's duty in every instance to take all commercially reasonable measures to mitigate its damages or losses.

- (d) Subject to the foregoing, no claim by either party arising from any breach of this Agreement or under any indemnity given by this Agreement shall include any claim by such party against the other for punitive or exemplary damages, indirect or consequential damages, or any claim for pure economic loss, whether or not the other party has been advised of the possibility of pure economic loss, and regardless of whether the action is framed in contract or in negligence, except, provided that nothing in this paragraph shall preclude Project Co from claiming for lost profits under this Agreement as part of a recovery of damages that Project Co is entitled to under any provision of this Agreement, including without limitation a claim by Project Co for damages under Section 19, as applicable.
- (e) The City and Project Co acknowledge that Project Co will not be precluded from advancing any claim or seeking any relief under this Agreement solely by the reason that Project Co is not liable to the Design and Construction Subcontractor under the applicable agreement between Project Co and the Design and Construction Subcontractor until such claim or relief is granted by the City to Project Co under this Agreement. Nothing in this paragraph creates any contract or obligation directly between the City, Project Co and the Design and Construction Subcontractor.

### **16.5 Exclusivity of Specified Remedies**

Project Co shall not be entitled to claim damages or indemnification in respect of any breach by the City under this Agreement that would duplicate compensation to Project Co under Section 13 arising from a Relief Event.

### **16.6 Conduct of Indemnity Claims**

Where either party to this Agreement is entitled to indemnification under this Agreement (“**Indemnified Party**”) and determines that an event has occurred giving rise or that may give rise to a right of indemnification in favor of the Indemnified Party (an “**Indemnity Claim**”), the Indemnified Party shall promptly notify the party obligated to provide indemnification (the “**Indemnifying Party**”) of such Indemnity Claim (a “**Claim Notice**”) describing in reasonable detail the facts giving rise to the claim for indemnification, and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such Indemnity Claim; provided that the failure of an Indemnified Party to give timely notice thereof shall not affect any of its rights to indemnification nor relieve the Indemnifying Party from any of its indemnification obligations except to the extent the Indemnifying Party is materially prejudiced by such failure.

Any obligation to provide indemnification under this Agreement shall be subject to the following terms and conditions:

- (a) upon receipt of a Claim Notice, the Indemnifying Party shall, at its cost and expense and upon notice to the Indemnified Party within thirty (30) days of its receipt of such Claim Notice (or such shorter time period as the circumstances warrant), assume and control the defence, investigation, compromise and settlement of such Indemnity Claim, including the management of any proceeding relating thereto, and shall employ and engage legal counsel reasonably acceptable to the Indemnified Party, provided that, if there exists a material conflict of interest (other than one of a monetary nature) or if the Indemnified Party has

been advised by counsel that there may be one or more legal or equitable defences available to it that are different from or additional to those available to the Indemnifying Party that, in either case, would make it inappropriate for the same counsel to represent both the Indemnifying Party and the Indemnified Party, then the Indemnified Party shall be entitled to retain its own counsel at the cost and expense of the Indemnifying Party (except that the Indemnifying Party shall not be obligated to pay the fees and expenses of more than one separate counsel, other than local counsel, for all Indemnified Parties, taken together); and

- (b) the Indemnified Party may, at its own cost and expense, participate in the defence of the Indemnity Claim, and shall cooperate with the Indemnifying Party in such efforts and make available to the Indemnifying Party all witnesses, records, materials and information in the Indemnified Party's possession, under its control or to which it may have access as may be reasonably required by the Indemnifying Party.

### **16.7 Progress of Indemnity Claims**

The Indemnifying Party will keep the Indemnified Party reasonably informed of the progress of the defence of the Indemnity Claim. If the Indemnifying Party, contrary to Section 16.6(a), fails to assume the defence and investigation of the Indemnity Claim, then:

- (a) the Indemnified Party shall have the right to undertake the defence, investigation, compromise and settlement of the Indemnity Claim on behalf of, and at the cost and expense of and for the account and risk of the Indemnifying Party;
- (b) the Indemnifying Party shall cooperate with the Indemnified Party in such efforts; and
- (c) the Indemnified Party will keep the Indemnifying Party reasonably informed of the progress of the defence of the Indemnity Claim.

### **16.8 Settlement of Indemnity Claims**

The Indemnifying Party shall not, without the prior written consent of the Indemnified Party:

- (a) settle or compromise any Indemnity Claim or consent to any final judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release or releases from all liability in respect of such Indemnity Claim of all Indemnified Parties affected by such Indemnity Claim; or
- (b) settle or compromise any Indemnity Claim if the settlement imposes equitable remedies or material obligations on the Indemnified Party other than financial obligations for which such Indemnified Party will be indemnified hereunder.

No Indemnity Claim that is being defended in good faith by the Indemnifying Party shall be settled or compromised by the Indemnified Party without the prior written consent of the Indemnifying Party.

**16.9 Delay Liquidated Damages**

- (a) Project Co acknowledges and agrees that:
  - (i) Project Co will pay the City damages in an amount equal to twenty thousand (\$20,000) Dollars per day (“**Delay Liquidated Damages**”) for the period from the Substantial Completion Target Date to the earlier of the Substantial Completion Date and the Longstop Date, as a genuine and reasonable pre-estimate of the damages suffered by the City as a result of a delay in Project Co achieving Substantial Completion by the Substantial Completion Target Date to the extent that such delay resulted from any breach or failure by Project Co or a Project Co Party to perform its obligations under this Agreement (provided, for greater certainty, that no claim in respect of any unpaid Delay Liquidated Damages outstanding as at the time of termination of this Agreement or achievement of Substantial Completion shall be extinguished as at such relevant time). The Parties agree that such liquidated damages shall be payable whether or not the City incurs or mitigates its damages, and that the City shall have no obligation to mitigate such damages.
  - (ii) On the first (1st) Business Day of each calendar month, Project Co shall pay the City Delay Liquidated Damages which have accrued in the immediately preceding calendar month.
  - (iii) Notwithstanding anything to the contrary set forth in the Agreement, the maximum aggregate liability set forth in Section 16.10(a) in respect of claims under Section 16 of this Agreement do not apply to Delay Liquidated Damages.
- (b) If Project Co fails to pay Delay Liquidated Damages under this Agreement to the City when due, the City shall be entitled to set off such Delay Liquidated Damages against any payments due to Project Co under the Agreement.
- (c) The Delay Liquidated Damages described in this Section 16.9 are the only damages payable by Project Co for a delay in Project Co achieving Substantial Completion by the Substantial Completion Target Date.
- (d) If there is a delay in Substantial Completion beyond the Substantial Completion Target Date as a result of a Relief Event, a Force Majeure Event, or a damage event described in Section 11.6, the City shall not be entitled to Delay Liquidated Damages resulting solely from such Relief Event, damage event or Force Majeure Event, as applicable.

**16.10 Maximum Liability**

- (a) Subject to Section 16.10(b), and except for amounts payable under Section 16.9, the maximum aggregate liability of each Party in respect of all claims under this Section 16 shall not exceed fifty million (\$50,000,000) Dollars. This limit shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 8 (Insurance). This limit shall not apply in cases of willful misconduct or deliberate acts of wrongdoing.

- (b) Project Co's maximum aggregate liability in respect of all claims under Section 16.9 shall not exceed seven million three hundred thousand (\$7,300,000) Dollars. This limit shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 8 (Insurance). This limit shall not apply in cases of willful misconduct or deliberate acts of wrongdoing.
- (c) Subject to the limitations of liability set out in Sections 16.10(a) or 16.10(b), nothing in this Section 16.10 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Agreement.

## **17. DEFAULTS, REMEDIES AND TERMINATION EVENTS**

### **17.1 Exclusivity of Termination Provisions**

Neither party shall have any right to terminate this Agreement except as expressly set out in Sections 18.1, 18.2 or 18.3. Without limiting the generality of the foregoing neither party shall in any event be entitled to terminate this Agreement on the basis of fundamental breach.

### **17.2 City's Step-in Rights**

If at any time during the Construction Period the City reasonably believes that it needs to take action in relation to the Project:

- (a) because a serious risk exists to public safety or to the environment;
- (b) in order to discharge a statutory duty or enable performance by any other person of a statutory duty; or
- (c) because a Default has occurred of which Project Co is aware and the City has given Project Co notice that, in the City's opinion, acting reasonably, Project Co is not diligently pursuing a cure of the Default, or because an Incurable Default has occurred of which Project Co is aware and the City has given Project Co notice that in the City's opinion, acting reasonably, Project Co is not diligently pursuing a course of action designed to mitigate the consequences of the Incurable Default,

then the City may, upon notice to Project Co (which notice shall specify all pertinent details of the intended action) take such action (the "**Remedial Action**") in relation to the Project or the Facility as the City reasonably considers necessary to mitigate the risk or discharge the statutory duty or address the Default or the Incurable Default, and in that event:

- (d) the City shall carry out the Remedial Action as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Agreement; and
- (e) if the need for the Remedial Action does not arise as a result of any breach by Project Co of its obligations under this Agreement, then the Remedial Action shall, subject to Section 13.1, constitute a Relief Event under Section 13.1(i).

### 17.3 Termination Events

For the purposes of this Agreement, “**Termination Event**” means any one or more of the following events or circumstances:

- (a) if Project Co is declared or adjudged a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any legislation in force for protection against creditors, orderly payment of debts, winding up or liquidation;
- (b) if a receiver or receiver-manager is appointed for the business of Project Co, unless the appointment is canceled within twenty (20) Business Days;
- (c) if any material part of the property of Project Co is seized or attached and such seizure or attachment is not successfully contested by Project Co within twenty (20) Business Days;
- (d) if Project Co ceases active business operations;
- (e) if, during the Construction Period, Project Co abandons the Project;
- (f) if Project Co fails to achieve Substantial Completion on the date that is twelve (12) months after the Substantial Completion Target Date (the “**Longstop Date**”);
- (g) if, at any time after the date that is twelve (12) months before the Substantial Completion Target Date, it is determined pursuant to the Dispute Resolution Procedure that there is no reasonable possibility of Project Co achieving Substantial Completion by the Long Stop Date;
- (h) if, after Substantial Completion, Project Co, other than:
  - (i) for purposes expressly contemplated by Schedule 15 (Technical Requirements);
  - (ii) for reasons of public safety, exercised on a temporary basis; or
  - (iii) for purposes of performing Warranty Work;takes any steps to prevent or reduce operation of the Facility or to prevent the performance by the City of any statutory duty; or
- (i) if Project Co, upon receiving a Notice of Default from the City where the specified Default has a Material Adverse Effect (regardless of whether the Notice of Default so indicates), fails to:
  - (i) cure the Default within twenty (20) Business Days; or
  - (ii) where the Default cannot by reasonable commercial efforts be cured within twenty (20) Business Days, communicate to the City and initiate within that twenty (20) Business Days a commercially reasonable course of action designed to cure the Default, and thereafter diligently pursue that course of action until the Default is cured; or

- (iii) where the Default is an Incurable Default, within twenty (20) Business Days communicate to the City and initiate a commercially reasonable course of action designed to mitigate the consequences of the Incurable Default to the maximum extent practicable, and thereafter diligently pursue that course of action until the consequences of the Incurable Default have been so mitigated;
- (j) if Project Co breaches the provisions of Sections 23.1, 23.2 or 23.3;
- (k) if Project Co or any Project Co Party commits a Prohibited Act; and
- (l) if Project Co commits a breach of its obligations under this Agreement which results in a criminal conviction or a conviction for an offence which causes or is likely to cause serious injury or death to a worker under *The Occupational Health and Safety Act* (Saskatchewan) against Project Co, any Project Co Party or the City (an “**OH&S Conviction**”), provided that:
  - (i) an OH&S Conviction against Project Co, a Project Co Party or the City shall not constitute a Termination Event if, within ninety (90) days from the date of the OH&S Conviction (whether or not the OH&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Project Co Party (which, in the case of an individual director, officer or employee, shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to the City, in its sole discretion; and
  - (ii) in determining whether to exercise any right of termination for a Termination Event pursuant to this Section 17.3(l)(ii), the City shall:
    - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the OH&S Conviction; and
    - (B) give all due consideration, where appropriate, to action other than termination of this Agreement.

## **18. TERMINATION**

### **18.1 Termination by City**

Subject to the Direct Lender Agreement, the City may terminate this Agreement by notice to Project Co:

- (a) upon or within a reasonable time after the City becoming aware of the occurrence of a Termination Event; or
- (b) at any time, in the absolute and unfettered discretion of the City and for any reason whatsoever or for no reason at all, and at the convenience of the City.

No notice of termination under this Section 18.1 shall be effective unless, in the case of a notice under Section 18.1(a), it specifies the Termination Event relied on, or in the case of a notice under Section 18.1(b), it states that the termination is for convenience.

**18.2 Termination by Project Co**

Subject to Section 18.3, Project Co may terminate this Agreement by notice to the City only if:

- (a) the City has failed to pay any amount due to Project Co under this Agreement (except to the extent that such amount is disputed in good faith through the Dispute Resolution Procedure) and does not remedy such failure within twenty one (21) days of Project Co providing the City with notice to do so;
- (b) during the Construction Period: (i) a Relief Event has occurred and continued for a period in excess of one hundred twenty (120) days; (ii) following such period, Project Co must have recertified to the City the continuation of such Relief Event; (iii) if recertified by Project Co, such Relief Event must have continued to occur for a further ninety (90) days; and (iv) if, at the end of such time period, the Relief Event wholly or substantially prevented Project Co from proceeding with the Project; or
- (c) the City is in breach of Section 23.4.

**18.3 Termination Upon Force Majeure**

Either party may by notice to the other terminate this Agreement if during the Construction Period, as a result of a Force Majeure Event, it has become impossible or impractical for Project Co to proceed with the Project, and such status persists or is highly likely to persist for at least in aggregate one hundred twenty (120) days.

**18.4 Consequences of Termination**

Upon any termination of this Agreement under Sections 18.1, 18.2 or 18.3:

- (a) if a Termination Payment is payable by the City in accordance with Section 19, then the City shall pay to Project Co the amount of the Termination Payment, together with interest thereon in accordance with Section 10.5 thirty (30) days after termination of this Agreement; and
- (b) Project Co shall, upon request by the City and at no cost to the City, hand over to the City copies of all records of any kind whatsoever that pertain to Project Co's performance of, or may otherwise facilitate the City or its contractors assuming responsibility for the Project; provided that the City shall, to the extent possible using commercially reasonable efforts, protect records that constitute proprietary information in the nature of trade secrets under LAFOIP.

## 18.5 Survival of Obligations

All obligations under this Agreement that necessarily extend beyond termination of this Agreement in order to fully achieve their intended purpose shall survive termination of this Agreement, including without limiting the generality of the foregoing:

- (a) all indemnification and hold harmless obligations, insofar as they apply to events that occurred prior to termination of this Agreement;
- (b) the obligations of Project Co under Section 18.4(b);
- (c) the obligation of the City to make the Termination Payment specified in Section 19;
- (d) the obligations in relation to Confidential Information set out in Sections 20.4, 20.5, 20.6 and 20.7; and
- (e) the obligations in relation to the Dispute Resolution Procedure set out in Section 22.

## 19. TERMINATION PAYMENTS

### 19.1 Compensation on Termination For City Default or Convenience

- (a) If Project Co terminates this Agreement pursuant to Section 18.2 or the City terminates this Agreement pursuant to Section 18.1(b), the City shall pay to Project Co the City Default Termination Sum.
- (b) The “**City Default Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) the Project Finance Amount; plus
  - (ii) the Project Financing Makewhole; plus
  - (iii) Project Co’s reasonable damages calculated having regard to the principles set out in Section 16.4;
  - (iv) any reasonable costs properly incurred by Project Co to wind up its operations;
  - (v) all insurance proceeds, if any, claimable by Project Co as a result of events occurring prior to the termination. and

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co or any Project Co Party on the termination date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim,

demand, proceeding or liability or where the City is required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the performance of the Project and this Agreement (but only when received from third parties) but excluding any claims under any subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the performance of the Project and this Agreement) to the City and, at no additional cost to Project Co, give the City reasonable assistance in prosecuting such claims; and

- (vii) to the extent realized before the Substantial Completion Date, the market value of any other assets and rights of Project Co (other than those transferred to the City pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the termination date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the performance of the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (viii) amounts which the City is entitled to set off pursuant to Section 10.4 of this Agreement,

provided that the City Default Termination Sum shall never be less than the aggregate of the Project Finance Amount and the Project Financing Makewhole.

- (c) To the extent that such assets and rights referred to in Section 19.1(b)(vii) are not realized and applied pursuant thereto, Project Co shall, on payment of the City Default Termination Sum, assign such assets and rights to the City.

## **19.2 Compensation for Project Co Default**

- (a) If the City terminates this Agreement pursuant to Section 18.1(a), the City shall pay to Project Co the Project Co Default Termination Sum.
- (b) The "**Project Co Default Termination Sum**" shall, in the case of termination prior to Substantial Completion, be an amount equal to:
  - (i) the value of any Payment(s) not yet paid; less

- (ii) the reasonable cost to the City, established by a competitive bidding process (and including out-of-pocket costs incurred by the City in relation to that process), of completing the Works; less
- (iii) liquidated damages of ten million (\$10,000,000) Dollars, less the amount of Delay Liquidated Damages, if any, previously paid by Project Co to the City, to compensate the City.

**19.3 Termination for Force Majeure**

- (a) If either Party terminates this Agreement pursuant to Section 18.3, the City shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) the Project Financing Amount; plus
  - (ii) the Project Financing Makewhole;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iii) all credit balances on any bank accounts held by or on behalf of Project Co or any Project Co Party on the termination date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where the City is required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the performance of the Project and this Agreement (but only when received from third parties) but excluding any claims under any subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the performance of the Project and this Agreement) to the City and, at no additional cost to Project Co, give the City reasonable assistance in prosecuting such claims; and
- (iv) to the extent realized before the Substantial Completion Date, the market value of any other assets and rights of Project Co (other than those transferred to the City pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the termination date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the performance of the Project; or
- (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (v) amounts which the City is entitled to set off pursuant to Section 10.4 of this Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Project Finance Amount.

- (c) To the extent that such assets and rights referred to in Section 19.3(b)(iv) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to the City.

**19.4 Termination While the City Holds Financing and Initial Performance Letter of Credit**

Notwithstanding this Section 19, if Construction Period Termination occurs pursuant to Section 18.1(a) while the City continues to hold the Financing and Initial Performance Letter of Credit and the condition for release set out in Section 3.5 has not occurred, then the City shall not make a Termination Payment to Project Co.

**19.5 Negative Amounts**

If the amount of the Termination Payment calculated under Section 19 is a negative number, the City shall be entitled to claim that amount (stated as a positive number) from Project Co.

**20. COMMUNICATIONS**

**20.1 Notices**

Any notice, consent, approval or other communication under any provision of this Agreement must be in writing to be effective, and is effective when delivered by any means, including fax transmission, to the following respective addresses:

- (a) if to the City:

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

Attention: [REDACTED]  
Fax: [REDACTED]

(b) if to Project Co:

PCL Regina Stadium 2014 Ltd.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Attention: [REDACTED]  
Fax: [REDACTED]

Either party may change its address information by giving notice to the other in the above manner.

**20.2 Authority to Give Notices**

The parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this Agreement:

(a) in the case of the City:

[REDACTED]  
Telephone: [REDACTED]  
Fax: [REDACTED]  
Email: [REDACTED]

(b) in the case of Project Co:

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

In the absence of any further designation or limitation communicated with reference to this Section 20.2, each party may assume that any notice, approval, consent, waiver or other communication under this Agreement given by the above individual has been duly authorized and is binding upon the other party.

**20.3 Public Announcements**

Project Co shall not make, and shall not cause or permit, any entity not at arms-length with Project Co to make any public announcement relating to this Agreement except as approved in advance by the City, acting reasonably.

**20.4 Confidential Information**

Each party shall, upon delivering any information to the other that includes information delivered in confidence, identify the information delivered in confidence (the “**Confidential Information**”). The receiving party shall maintain (and shall ensure that its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information, with the exception of information that:

- (a) at the time of the disclosure to the receiving party, was in the public domain;
- (b) after disclosure to the receiving party became part of the public domain through no fault of the receiving party or those for whom it is responsible at law;
- (c) was in the possession of the receiving party at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the receiving party from a third party who had a lawful right to disclose the information.

**20.5 Disclosure of Confidential Information**

Neither party shall disclose Confidential Information delivered by the other except:

- (a) to such of its affiliates, officers, employees, consultants, advisors and contractors (including, in the case of Project Co, its lenders and potential lenders, investors and potential investors, and rating agencies, surety companies and prospective guarantors) who reasonably require access to the Confidential Information for the due performance of this Agreement or to further the purposes of this Agreement;
- (b) as required by LAFOIP, *The Cities Act* (Saskatchewan), or any other Applicable Law; or
- (c) where the disclosure is consented to by the other.

**20.6 Public Disclosure of Agreement**

Notwithstanding the above Sections 20.4 and 20.5, Project Co agrees that the City will be at liberty to disclose all information contained in this Agreement, excepting only any information that may be exempt from disclosure pursuant to Applicable Law. In the event of a request under LAFOIP for access to any information contained in this Agreement, Project Co will be given notice of the request pursuant to LAFOIP and will be given an opportunity to make representations as to why the information should not be disclosed.

## **20.7 Collection, Use and Disclosure of Personal Information**

For the purposes of this Section, “**personal information**” has the meaning given in LAFOIP.

Project Co acknowledges that LAFOIP applies to information obtained, related, generated, collected or provided for the City under this Agreement and agrees to adhere to LAFOIP and *The Cities Act* (Saskatchewan).

Project Co shall not collect, use or disclose any personal information under this Agreement except that which is reasonably required to fulfil its obligations under this Agreement, or as otherwise authorized by the City.

Project Co shall protect the personal information it collects under this Agreement and shall make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

Upon request, Project Co shall provide to the City, within seven days, any records that are requested under the access provisions of LAFOIP and *The Cities Act* (Saskatchewan) that are in the custody or under the control of Project Co. Should Project Co receive an access request under LAFOIP and *The Cities Act* (Saskatchewan), Project Co shall not respond to it, but shall immediately forward the access request to the City for further handling.

Project Co shall ensure that all Project Co Parties comply with this Section 20.7.

## **20.8 Facility Sponsorship and Naming Rights**

Project Co acknowledges that the City, as owner of the Lands and the Facility, has the exclusive right to evaluate and determine all sponsorship opportunities involving the Facility in any manner. Project Co agrees that it shall present to the City all sponsorship opportunities (and similar such arrangements) for the City to evaluate and decide on such opportunity, in its sole discretion. The City shall also have the sole and exclusive right the right to determine the name and to re-name (subject to Section 6.1) the Facility and all related improvements. Project Co shall not accept or undertake any sponsorship arrangements involving the Facility nor shall it name nor purport to name the Project or the Facility, or any portions thereof, except in accordance with this Section 20.8. Where the City has named the Facility, Project Co shall not publicly refer to the Facility except as so named by the City.

## **21. CONTRACT ADMINISTRATION**

### **21.1 Contract Administration Representatives**

Upon execution of this Agreement, the City and Project Co will each designate a representative or representatives to establish protocols and procedures, including but not limited to lines of communication additional to those expressly contemplated by this Agreement, designed to facilitate the effective, efficient and cooperative administration of this Agreement and avoidance of disputes.

## **21.2 Mutual Cooperation**

In administering, interpreting and carrying out their respective obligations under this Agreement, the parties mutually undertake to deal fairly and in good faith, and to act at all times in a spirit of mutual cooperation.

## **22. DISPUTE RESOLUTION**

### **22.1 Dispute Resolution Procedure**

Unless otherwise agreed to in writing between the City and Project Co, all disputes in respect of the application or interpretation of any provision of this Agreement shall be determined in accordance with the Dispute Resolution Procedure. Either party may at any time by notice to the other refer any question in respect of the application or interpretation of any provision of this Agreement to the Dispute Resolution Procedure. The right to refer disagreements to the Dispute Resolution Procedure shall not be limited to provisions of this Agreement that expressly refer to the Dispute Resolution Procedure, and all such express provisions shall be construed as having been included only for greater certainty.

### **22.2 Exception**

Where under the provisions of this Agreement a party has an unfettered discretion to exercise a right or take an action under any provision of this Agreement, the decision of that party to exercise the right or take the action is not subject to review under the Dispute Resolution Procedure, provided that where any decision or discretion is expressly required to be made or exercised reasonably (or is otherwise qualified), then the reasonableness (or other qualification) of the decision made or the discretion exercised may be referred to the Dispute Resolution Procedure for determination.

### **22.3 Termination and Dispute Resolution Procedure**

A party may refer to the Dispute Resolution Procedure for advance determination the question of whether it has grounds for terminating this Agreement, provided that the submission of that question to the Dispute Resolution Procedure shall not prevent either party from terminating this Agreement in accordance with its provisions prior to determination of that question by the Dispute Resolution Procedure. If either party has purported to terminate this Agreement in accordance with its provisions, the other party may submit to the Dispute Resolution Procedure the question of whether such termination was made in accordance with this Agreement, and request either a ruling that this Agreement has not been terminated or an award of damages for wrongful repudiation of this Agreement.

**22.4 No Court Proceedings**

Neither party shall, except as may be otherwise expressly permitted by this Agreement or *The Arbitration Act*, 1992 (Saskatchewan) or with the prior written consent of the other party, initiate any proceedings against the other party in respect of the application or interpretation of any provision of this Agreement.

**22.5 Payments Where Amount in Dispute**

Where the amount of any payment required to be made under this Agreement (including, without limiting the generality of the foregoing, the amount of any Termination Payment) is in dispute, the party required to make the payment shall pay such portion of the payment as it does not dispute in good faith.

**23. ASSIGNMENT, SUBCONTRACTING AND CHANGE IN OWNERSHIP**

**23.1 Assignment by Project Co**

- (a) Project Co may not, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, assign this Agreement or any right or benefit under this Agreement. Nothing in this Agreement restricts Project Co from granting security interests (including any security interest that is nominally structured as an “assignment” but is in essence a security agreement) in its assets as it sees fit. For greater certainty, the City shall not withhold or delay its consent where Project Co has satisfied the City, acting reasonably, that:
  - (i) the proposed transferee is of good reputation and has suitable technical, commercial and financial resources to undertake the Project; and
  - (ii) the proposed transferee is not involved in a business or activity incompatible with or inappropriate in relation to the Project or the business relationship between the City and Project Co.
- (b) Section 23.1(a) shall not apply to the grant of any security for any loan made to Project Co under any Project Financing; provided that any grantee of such security shall enter into the Direct Lenders Agreement in the form attached at Schedule 14 (Direct Lenders Agreement) in relation to the exercise of its rights, if the City so requires.

**23.2 Subcontracting by Project Co**

Project Co may subcontract its obligation to carry out the Project only to the Design and Construction Subcontractor.

Project Co may replace a subcontractor only with the prior written consent of the City, such consent not to be unreasonably withheld or delayed and having regard to the reputation of and the technical, commercial and financial resources available to the proposed subcontractor). For greater certainty, in this Section 23.2, a subcontractor means parties having a direct contractual relationship with Project Co, and excludes subcontractors of such parties.

**23.3 Change in Ownership**

- (a) Project Co shall not, prior to one (1) year after Substantial Completion, allow or suffer any material change in its ownership (direct or indirect) unless such change has been consented to in advance by the City, such consent not to be unreasonably withheld or delayed. For greater certainty, the City shall not withhold or delay its consent where Project Co has satisfied the City, acting reasonably, that:
- (i) the proposed owner is of good reputation and has suitable technical, commercial and financial resources to undertake the Project; and
  - (ii) the proposed owner is not involved in a business or activity incompatible with or inappropriate in relation to the Project or the business relationship between the City and Project Co.

For the purposes of this Section: (i) the issuance by Project Co of non-voting preferred shares or any similar transaction entered into for tax-planning purposes that does not involve voting shares in Project Co; (ii) internal reorganizations that do not have the effect of changing the ultimate ownership of Project Co, and (iii) the initial public offering or the trading of publicly traded securities of an entity that directly or indirectly holds an interest in Project Co, shall not be considered to be a material change in the ownership of Project Co.

**23.4 Assignment by the City**

The City may assign and transfer all of its rights and obligations under this Agreement only:

- (a) to a “controlled corporation” (as that term is defined in *The Cities Act* (Saskatchewan)) such that the City retains full legal responsibility for all obligations under this Agreement; or
- (b) with the prior written consent of Project Co, which consent shall not be unreasonably withheld or delayed.

The City shall not be released of any of its obligations under this Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Agreement in accordance with this Section 23.4. Nothing in this Agreement restricts the City from granting security interests (including any security interest that is nominally structured as an “assignment” but is in essence a security agreement) in its assets as it sees fit.

**23.5 Enurement**

This Agreement and any other agreement entered into in connection with this Agreement to which both the City and Project Co are parties shall enure to the benefit of, and be binding on, the City and Project Co and their respective successors and permitted transferees and assigns.

**24. INTELLECTUAL PROPERTY****24.1 Intellectual Property**

All intellectual property created by Project Co or any Project Co Party, including, but not limited to, copyright, patents and industrial designs, Project Co's Designs and all other plans, drawings and designs created by Project Co or any Project Co Party in relation to the Project or in the course of Project Co's carrying out of the Project (collectively, the "**Assigned Intellectual Property**"), shall be owned by Project Co, and Project Co hereby grants to the City a non-exclusive, irrevocable, perpetual, world wide, fully paid royalty-free license to use any of the Assigned Intellectual Property (including a right to grant sub-licenses or otherwise commercialize the Assigned Intellectual Property), provided that, the City shall as soon as reasonably practicable give Project Co notice of each time the City intends to grant sub-licenses or otherwise commercialize the Assigned Intellectual Property.

**25. GENERAL PROVISIONS****25.1 Applicable Law and Jurisdiction**

This Agreement shall be governed by the laws of the Province of Saskatchewan, including the federal laws of Canada applicable therein. Subject to Section 22.4, Saskatchewan courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each party accepts the jurisdiction of Saskatchewan courts.

**25.2 Amendment and Waiver**

No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each of the City and Project Co. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

**25.3 Severability**

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, 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 Agreement. If any such provision of this 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 Agreement as near as possible to its original intent and effect.

**25.4 Cumulative Remedies**

Except as otherwise set forth in this Agreement, the rights, powers and remedies of each party set forth in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Agreement.

**25.5 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement.

**25.6 Additional Assurances**

The City and Project Co each agree to do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this Agreement according to their spirit and intent, provided that this Section 25.3 shall not be construed as obligating the City to amend or enact any by-law or regulation.

**25.7 Counterparts**

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax or electronic transmission shall constitute good delivery.

**25.8 Joint and Several**

Where two or more persons execute this Agreement as Project Co, the liability under this Agreement of such persons executing this Agreement shall be joint and several.

**[SIGNATURE PAGE FOLLOWS]**

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

**CITY OF REGINA**

Per:

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

Title:

Per:

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

Title:

**PCL REGINA STADIUM 2014 LTD.**

Per:

---

Name: [REDACTED]  
Title: Authorized Signatory