

**AGREEMENT TO DESIGN, BUILD, FINANCE,
OPERATE AND MAINTAIN**

**REGINA WASTEWATER
TREATMENT PLANT UPGRADE PROJECT**

THE CITY OF REGINA

and

EPCOR WATER PRAIRIES INC.

July 3, 2014

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions.....	1
1.2	Section References.....	18
1.3	Schedules	18
1.4	Order of Precedence.....	19
1.5	Entire Agreement	19
1.6	Currency.....	19
1.7	No Agency, Joint Venture, Partnership, Lease or Loan	19
1.8	Project Co's Knowledge	19
1.9	Other Rules of Interpretation	20
2.	DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN	22
2.1	Project Financing	22
2.2	Design and Build of Infrastructure and Existing Facilities O&M	22
2.3	Operation and Maintenance	22
2.4	Handback	22
2.5	Assumption of Risk.....	22
3.	BUSINESS OPPORTUNITIES.....	23
3.1	Business Opportunities	23
4.	FINANCING.....	23
4.1	Project Financing	23
4.2	<i>[intentionally deleted]</i>	23
4.3	Condition Precedent.....	23
4.4	Financing and Initial Performance Letter of Credit.....	24
4.5	Release and Surrender of Financing and Initial Performance Letter of Credit.....	24
4.6	Presentation of Financing and Initial Performance Letter of Credit.....	24
4.7	Repayment of Proceeds.....	25
5.	THE LANDS	25
5.1	Access and Use	25
5.2	Non-Exclusive License	25
5.3	City Access to the Lands, Existing Facilities and Infrastructure	26
5.4	Status of Lands.....	26
5.5	Acceptance of Lands	26
5.6	Commencement and Duration	27
5.7	No Access Fee.....	27
5.8	Damage Outside of the Lands.....	27
5.9	Utility and Railway Agreements.....	27
5.10	Condition of the Lands and Existing Facilities.....	28
5.11	Existing Biosolids and Sludge	29
5.12	Permitted Use.....	29
5.13	No Encumbrances On Lands	29
5.14	Liens.....	30

5.15	Ownership of Improvements.....	30
5.16	Uninterrupted Access and Use.....	30
5.17	Payment of Taxes on Lands.....	31
5.18	Access and Use Rights to Cease.....	31
5.19	Permits and Approvals.....	31
5.20	Latent Defects.....	32
6.	DESIGN AND BUILD.....	33
6.1	Project Co's Obligations.....	33
6.2	Works Requirements.....	33
6.3	Project Co's Responsibility to Carry Out Works Requirements.....	33
6.4	Request for Clarification.....	34
6.5	Project Co's Designs, Plans and Schedule.....	34
6.6	Project Co Solely Responsible for Works and Existing Facilities O&M.....	34
6.7	Project Co Solely Responsible for Works and Existing Facilities O&M Costs.....	35
6.8	Title.....	35
6.9	Construction Within the Lands.....	35
6.10	Detailed Designs.....	36
6.11	Stop Work Order or Opening Up.....	36
6.12	Construction Delays.....	36
6.13	Independent Certifier.....	37
6.14	Anticipated Substantial Completion.....	37
6.15	Certification of Substantial Completion.....	37
6.16	30-Day Performance Test Holdback.....	38
6.17	Substitution of Letter of Credit.....	38
6.18	Anticipated Final Completion.....	39
6.19	Certification of Final Completion.....	39
6.20	Final Completion Holdback.....	40
7.	OPERATE AND MAINTAIN.....	41
7.1	Commencement of O&M.....	41
7.2	O&M Requirements.....	41
7.3	Project Co Solely Responsible for O&M.....	41
7.4	Project Co Solely Responsible for O&M Costs.....	41
8.	HUMAN RESOURCES.....	42
8.1	Project Co Covenants - Affected Employees.....	42
8.2	Project Co Covenants - Terms and Conditions of Employment.....	42
8.3	Transfer of Employees.....	43
8.4	Pension Plan Deficit.....	43
8.5	Labour Adjustment.....	44
9.	MODIFICATIONS AND CHANGE ORDERS.....	45
9.1	Modification of Works Requirements.....	45
9.2	Modification of O&M Requirements.....	46
9.3	Modifications to Infrastructure.....	46
9.4	Determination of Costs.....	47

9.5	Other Work by City	47
10.	HANDBACK UPON EXPIRY.....	47
10.1	Handback Requirements	47
10.2	Independent Inspector	47
10.3	Consultation re Handback Inspections.....	48
10.4	Handback Inspections	48
10.5	Procedure Following Inspections.....	49
10.6	Handback Requirements Holdback.....	49
10.7	Substitution of Letter of Credit	50
11.	PAYMENT	51
11.1	Milestone Payment.....	51
11.2	Substantial Completion Payment.....	51
11.3	Existing Facilities O&M Payment	51
11.4	Monthly Payment Mechanism	51
11.5	Payment Procedure	52
11.6	Adjustment of the Payment Schedule	52
11.7	Early Completion.....	53
11.8	Late Completion.....	53
11.9	Set-off	54
11.10	Interest on Overdue Payments	54
11.11	Taxes	54
11.12	Changes in Recoverability of Tax Credits	55
11.13	Information and Assistance Provided by Project Co	56
11.14	Withholding Taxes.....	56
12.	INDEXING AND PAYMENT ADJUSTMENTS.....	56
12.1	Indexing of Existing Facilities O&M and Infrastructure O&M Payments.....	56
12.2	Payment Adjustments	56
12.3	Notification of Payment Adjustments.....	57
13.	INSURANCE, DAMAGE AND DESTRUCTION.....	57
13.1	Insurance Requirements.....	57
13.2	Evidence of Insurance.....	57
13.3	City May Insure	58
13.4	Repair of Damage - Construction Period.....	58
13.5	Milestone Payment Delayed	58
13.6	Substantial Completion Delayed.....	59
13.7	Repair of Damage - Operating Period	60
13.8	Damage Event.....	60
13.9	Review and Benchmarking of Insurance	61
13.10	Definition Uninsurability	61
13.11	Consequences of Uninsurability	62
14.	FORCE MAJEURE	63
14.1	Force Majeure During Construction Period.....	63

14.2	Force Majeure During Operating Period	64
14.3	Procedure on Force Majeure Event.....	64
15.	RELIEF EVENT	65
15.1	Relief Event Defined.....	65
15.2	Relief Event During Construction Period	67
15.3	Relief Event During Operating Period.....	70
15.4	Procedure on Relief Event	70
16.	PROJECT CO'S REPRESENTATIONS AND OBLIGATIONS	71
16.1	Project Co's Representations	71
16.2	Reporting Requirements	72
16.3	Records	73
16.4	Information and General Audit Rights	74
16.5	Safety	75
16.6	Project Co's Other Obligations.....	75
16.7	No Other Business	76
17.	CITY'S REPRESENTATIONS AND OBLIGATIONS	76
17.1	City's Representations	76
17.2	City's General Obligation	76
17.3	Project Co's Reliance on Information.....	76
17.4	Assistance with Permits and Approvals and Utility Agreements	77
18.	INDEMNITIES.....	77
18.1	Project Co Indemnities - General.....	77
18.2	Project Co Indemnities - Taxes.....	78
18.3	City Indemnities.....	79
18.4	Calculation of and Limitation on Claims.....	79
18.5	Exclusivity of Specified Remedies	80
18.6	Conduct of Indemnity Claims.....	81
18.7	Progress of Indemnity Claims.....	81
18.8	Settlement of Indemnity Claims	82
19.	DEFAULTS, REMEDIES AND TERMINATION EVENTS	82
19.1	Exclusivity of Termination Provisions	82
19.2	City's Step-in Rights.....	82
19.3	Termination Events.....	83
20.	TERMINATION.....	86
20.1	Termination by City.....	86
20.2	Termination by Project Co.....	87
20.3	Termination Upon Force Majeure	87
20.4	Consequences of Termination.....	87
20.5	Effect of Notice of Termination.....	88
20.6	Transitional Arrangements.....	89
20.7	Survival of Obligations	90

21.	TERMINATION PAYMENTS	91
21.1	Construction Period Termination.....	91
21.2	Termination While City Holds Financing and Initial Performance Letter of Credit.....	91
21.3	Operating Period Termination	91
21.4	Payment Based on Sale of Contractual Rights	92
21.5	Payment of Fair Market Value.....	93
21.6	Force Majeure Termination - Construction Period.....	94
21.7	Force Majeure Termination - Operating Period.....	94
21.8	Termination for Convenience or Termination by Project Co	95
21.9	Set-off Against Termination Payments.....	95
21.10	Negative Amounts	95
21.11	Delivery of Information	95
22.	COMMUNICATIONS	96
22.1	Notices	96
22.2	Authority to Give Notices.....	97
22.3	Public Announcements	97
22.4	Confidential Information	97
22.5	Disclosure of Confidential Information	98
22.6	Public Disclosure of Agreement	98
22.7	Collection, Use and Disclosure of Personal Information.....	98
22.8	Naming Rights	99
23.	CONTRACT ADMINISTRATION	99
23.1	Contract Administration Representatives	99
23.2	Mutual Cooperation	99
24.	DISPUTE RESOLUTION	99
24.1	Dispute Resolution Procedure.....	99
24.2	Exception	100
24.3	Termination and Dispute Resolution Procedure.....	100
24.4	No Court Proceedings	100
24.5	Payments Where Amount in Dispute.....	100
25.	ASSIGNMENT, SUBCONTRACTING AND CHANGE IN OWNERSHIP	100
25.1	Assignment by Project Co	100
25.2	Subcontracting by Project Co	101
25.3	Change in Ownership.....	101
25.4	Assignment by the City.....	101
25.5	Enurement	102
26.	INTELLECTUAL PROPERTY	102
26.1	Assigned Intellectual Property.....	102
26.2	Licensed Intellectual Property	102
27.	GENERAL PROVISIONS	103
27.1	Applicable Law and Jurisdiction	103

27.2	Amendment and Waiver	103
27.3	Severability	103
27.4	Cumulative Remedies	103
27.5	Costs.....	103
27.6	Additional Assurances	103
27.7	Counterparts	104
27.8	Joint and Several	104

SCHEDULES

Schedule 1	-	Change Orders
Schedule 2	-	Project Co's Construction 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	-	Existing Facilities
Schedule 8	-	Substantial Completion Criteria
Schedule 9	-	Employee Transition
Schedule 10	-	Index Factor
Schedule 11	-	Insurance Requirements
Schedule 12	-	Lands
Schedule 13	-	Milestone Payment
Schedule 14	-	Payment Schedule
Schedule 15	-	Payment Adjustments Summary
Schedule 16	-	Safety Requirements
Schedule 17	-	<i>[intentionally deleted]</i>
Schedule 18	-	Technical Requirements
Schedule 19	-	Independent Certifier Agreement

AGREEMENT TO DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN

REGINA WASTEWATER TREATMENT PLANT UPGRADE PROJECT

THIS AGREEMENT is made this 3rd day of July, 2014.

BETWEEN:

THE CITY OF REGINA
(the “City”)

AND:

EPCOR WATER PRAIRIES INC.
(“Project Co”)

PREAMBLE:

Pursuant to a competitive procurement process, the City has selected Project Co to design, build, finance, operate and maintain a wastewater treatment plant upgrade 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):

“**30-Day Performance Test**” has the meaning indicated in Schedule 18 (Technical Requirements);

“**30-Day Performance Test Holdback**” has the meaning indicated in Section 6.16;

“**30-Day Performance Test Letter of Credit**” has the meaning indicated in Section 6.17;

“**Actual Annual Commodity Consumption**” has the meaning indicated in Schedule 14 (Payment Schedule);

“**Additional Items Notice**” has the meaning indicated in Section 6.18;

“**Affected Employees**” means those 24 full-time unionized employees (including both staffed and vacant positions) of the Existing Facilities as at the Existing Facilities O&M Effective Date;

“Agreement” means this agreement, including Schedules 1 to 19 and any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time;

“Annual Influent Flow” has the meaning indicated in Schedule 14 (Payment Schedule);

“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;

“As-Built Drawings” has the meaning indicated in Schedule 18 (Technical Requirements);

“Assigned Intellectual Property” has the meaning indicated in Section 26.1;

“Associated Liabilities” has the meaning indicated in Section 18.2(b);

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

“Biosolids” has the meaning indicated in Schedule 18 (Technical Requirements);

“Benchmark Insurance Premium” has the meaning indicated in Section 13.9;

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

“Business Opportunities” has the meaning indicated in Section 3.1;

“Capital Amount” means the parties’ mutually agreed calculation of the net present value, as of:

- (a) for purposes of Section 21.1 and Section 21.6, the effective date of the Construction Period Termination or the Force Majeure Termination, as the case may be; and
- (b) for purposes of Section 21.7, the earlier of the Substantial Completion Target Date and the Substantial Completion Date,

of the aggregate Capital Payments (calculated using a discount rate of [REDACTED] for the Project Financing, but not in any event exceeding the amount of Project Financing contemplated as at the Submission Date, plus the amount of the City Funding;

“Capital Payment” means the component of the Monthly Payment to be made by the City to Project Co under Section 11.4(a) that is described as the Capital Payment in Schedule 14 (Payment Schedule);

“Certificate of Final Completion” has the meaning indicated in Section 6.19;

“Certificate of Substantial Completion” has the meaning indicated in Section 6.15;

“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 Funding” means the Milestone Payment and the Substantial Completion Payment;

“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 any other person authorized by the City to access the Lands, including, for greater certainty, Western Potash Corp. and Spectra Energy Empress Management Inc., and its or their directors, officers and employees;
- (b) those for whom the City is legally responsible, including, for greater certainty, the Affected Employees during the period prior to the Transfer Date; or
- (c) any person exercising rights under an Identified Encumbrance, a grant contemplated by the third paragraph of Section 5.1 or a consent contemplated by the last sentence of Section 5.16,

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 Road Allowances” has the meaning indicated in Schedule 12 (Lands);

“City’s Average Annual Cost for City Water” has the meaning indicated in Schedule 14 (Payment Schedule);

“City’s Average Annual Cost for Electricity” has the meaning indicated in Schedule 14 (Payment Schedule);

“City’s Average Annual Cost for Natural Gas” has the meaning indicated in Schedule 14 (Payment Schedule);

“Claim Notice” has the meaning indicated in Section 18.6;

“Collective Agreement” means, for the Affected Employees, the collective agreement (as defined in *The Trade Union Act* (Saskatchewan)) in effect on the date immediately preceding the Transfer Date;

“Collective Agreement Expiry Date” has the meaning indicated in Section 8.4(a);

“Commodities” has the meaning indicated in Schedule 14 (Payment Schedule);

“Commodity Consumption Rates” has the meaning indicated in Schedule 14 (Payment Schedule);

“Compliance Undertaking” has the meaning indicated in Schedule 16 (Safety Requirements);

“Condie Road Valve Chamber” has the meaning indicated in Schedule 18 (Technical Requirements);

“Confidential Information” has the meaning indicated in Section 22.4;

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

“Construction Period” means the period from the date hereof to the Substantial Completion Date (but excluding the Substantial Completion Date);

“Construction Period Payment Calculation” has the meaning indicated in Schedule 14 (Payment Schedule);

“Construction Period Termination” means termination of this Agreement by the City under Section 20.1(a) prior to Substantial Completion;

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

“COR” has the meaning indicated in Schedule 16 (Safety Requirements);

“Damage Event” has the meaning indicated in Section 13.8;

“Dangerous Occurrence” has the meaning indicated in Schedule 16 (Safety Requirements);

“DBFOM Agreement Action” has the meaning indicated in Schedule 6 (Dispute Resolution Procedure);

“Default” means any breach by Project Co of any provision of this Agreement, including the material inaccuracy, when made, of any representation given by Project Co in Section 16.1;

“Deficiency List” has the meaning indicated in Section 6.18;

“Design and Construction Subcontractor” means Graham-Lockerbie Stanley JV, an unincorporated joint venture consisting of Graham Infrastructure LP, by its general partner Graham Infrastructure Ltd., and Lockerbie Stanley 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 wastewater facilities construction, operation or maintenance industries in Saskatchewan or Canada, including, without limitation, a change in Applicable Law related to the management and disposal of Biosolids, Digested Sludge, Inorganic Sludge or directed specifically at Project Co, any Project Co Party, the Project, the Existing Facilities, the Infrastructure or public-private arrangements of the nature of this Agreement, provided that such change was not reasonably foreseeable as of the Submission Date 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;
- (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 Existing Facilities or the Infrastructure which Project Co would not otherwise be required to perform in order to comply with its obligations under this Agreement, provided that such change was not reasonably foreseeable as of the Submission Date 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; or
- (c) a change in the Effluent Standards from the Effluent Standards as of the Submission Date;

“Detailed Designs” has the meaning indicated in Section 6.10;

“Digested Sludge” has the meaning indicated in Schedule 18 (Technical Requirements);

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

“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);

“Effluent Standards” means:

- (a) prior to the Substantial Completion Target Date, the effluent standards set out in Appendix B to Part B of the Permit to Operate a Sewage Works, Permit #00050853-04-00, effective as of May 31, 2014, as amended from time to time; or
- (b) following the Substantial Completion Target Date, the effluent standards set out in Appendix C to Part B of the Permit to Operate a Sewage Works, Permit #00050853-04-00, effective as of May 31, 2014, as amended from time to time;

“Employer” has the meaning indicated in Schedule 16 (Safety Requirements);

“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;

“Equity” means that part of the Project Financing other than the Senior Debt Financing;

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

“Estimate Dispute” has the meaning indicated in Section 3.3(f) of Schedule 1 (Change Orders);

“Excluded Latent Defect” means, in respect of any of the Process Tanks, any hairline cracks, concrete scaling, concrete spalling, exposed reinforcing, failure of sealant or caulking in joints, de-bonding of concrete floor topping, blistering and failure of gas proof coating, leaking waterproof membranes on roofs and any other defect or deficiency in the mechanical or electrical systems, piping or other mechanisms related to the Process Tanks;

“Existing Facilities” means the infrastructure described in Schedule 7 (Existing Facilities);

“Existing Facilities O&M” means the operation and maintenance of the Existing Facilities during the Construction Period;

“Existing Facilities O&M Effective Date” means August 1, 2014;

“Existing Facilities O&M Index” has the meaning indicated in Schedule 10 (Index Factor);

“Existing Facilities O&M Index Factor” has the meaning indicated in Schedule 10 (Index Factor);

“Existing Facilities O&M Payment” has the meaning indicated in Section 11.3;

“Existing Lagoons” has the meaning indicated in Schedule 18 (Technical Requirements);

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

“Final Completion” means full completion of all aspects of the Works in accordance with the Works Requirements, including, for greater certainty, all demolition and decommissioning, as evidenced by a certificate issued by the City or the Independent Certifier, as applicable, under Section 6.18;

“Final Completion Holdback” has the meaning indicated in Section 6.20;

“Final Completion Items Notice” has the meaning indicated in Section 6.18;

“Financing and Initial Performance Letter of Credit” has the meaning indicated in Section 4.3;

“Force Majeure Capital Amount” means the Capital Amount, exclusive of the amount of the City Funding;

“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 20.3 on account of a Force Majeure Event;

“GAAP” means generally accepted accounting principles in Canada, as defined in the Canadian Institute of Chartered Accountants Handbook, including the International Financial Reporting Standards;

“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 Infrastructure, in each case, to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction and, for greater certainty, does not include any aboriginal bands, councils or self-governing entities;

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

“GTH” has the meaning indicated in Schedule 18 (Technical Requirements);

“GTH Valve Chamber” has the meaning indicated in Schedule 18 (Technical Requirements);

“Handback Letter of Credit” has the meaning indicated in Section 10.7;

“Handback Requirements” means Project Co’s obligations to hand back the Infrastructure at the end of the Term in the condition required by Schedule 18 (Technical Requirements);

“Handback Requirements Holdback” has the meaning indicated in Section 10.6;

“Hauled Waste” has the meaning indicated in Schedule 18 (Technical Requirements);

“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 regulated by or under any Applicable Law or that is classified as hazardous or toxic by or under any Applicable Law;

“Heritage Find” means property of archaeological, palaeontological or heritage significance or historical resources located in, under or on the Lands;

“Hydrovac Waste” has the meaning indicated in Schedule 18 (Technical Requirements);

“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;

“Identified Encumbrances” means:

- (a) all encumbrances and interests that, as of the Submission Date, are registered against any of the titles listed in Schedule 12 (Lands); and
- (b) all unregistered utility rights of way, easements, leases and other similar interests that are specifically identified in Schedule 12 (Lands);

“Indemnifiable Taxes” has the meaning indicated in Section 18.2(b);

“Indemnified Party” has the meaning indicated in Section 18.6;

“Indemnifying Party” has the meaning indicated in Section 18.6;

“Indemnity Claim” has the meaning indicated in Section 18.6;

“Independent Certifier” has the meaning indicated in Section 6.13;

“Independent Certifier Agreement” means the agreement to be entered into between the City, Project Co and the Independent Certifier substantially in the form of Schedule 19 (Independent Certifier Agreement);

“Independent Inspector” has the meaning indicated in Section 10.2;

“Independent Inspector’s Report” has the meaning indicated in Section 10.4;

“Independent Reviewer” has the meaning indicated in Schedule 18 (Technical Requirements);

“Index” has the meaning indicated in Schedule 10 (Index Factor);

“Index Factor” has the meaning indicated in Schedule 10 (Index Factor);

“Index Linked” means adjusted for inflation using the Infrastructure O&M Index Factor in the manner and at the times set out in Schedule 10 (Index Factor);

“Index Year” has the meaning indicated in Schedule 10 (Index Factor);

“Infrastructure” means the wastewater treatment plant and all site services, utilities, roadways, supporting systems, buildings and improvements ancillary thereto designed and/or constructed by Project Co in accordance with this Agreement and as contemplated in Project Co’s Designs, including new construction and/or renovation, alteration, improvement, expansion or use of any Existing Facilities;

“Infrastructure Diversion Chamber” has the meaning indicated in Schedule 18 (Technical Requirements);

“Infrastructure O&M Index” has the meaning indicated in Schedule 10 (Index Factor);

“Infrastructure O&M Index Factor” has the meaning indicated in Schedule 10 (Index Factor);

“Infrastructure O&M Payment” means the component of the Monthly Payment that is other than the Capital Payment;

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

“Inorganic Sludge” has the meaning indicated in Schedule 18 (Technical Requirements);

“Irrecoverable Tax” has the meaning indicated in Section 11.12(b);

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

“Lands” means the lands described in Schedule 12 (Lands);

“Latent Defect” means any structural defect or deficiency in any of the Process Tanks, other than a defect or deficiency that:

- (a) was described in, or was properly inferable, readily apparent or readily discoverable from, any drawings, reports, studies, data, documents or other information made available to Project Co or any Project Co Party by the City or any City Party prior to the Submission Date;
- (b) was ascertainable through reasonable and normal course due diligence, without intrusive testing, undertaken prior to the Submission Date;
- (c) is caused by Project Co or any Project Co Party; or
- (d) is an Excluded Latent Defect;

“Licensed Intellectual Property” has the meaning indicated in Section 26.2;

“Liquid Stream Treatment Performance Test” has the meaning indicated in Schedule 18 (Technical Requirements);

“Longstop Date” has the meaning indicated in Section 19.3(g);

“LTD Plan” means *The Regina Civic Employees’ Long Term Disability Plan, 1992 Bylaw*, Bylaw No. 9566;

“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 Payment” means \$30,000,000;

“Milestone Payment Target Date” means January 4, 2016;

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

“Monthly Payment” means the total monthly payment to be paid by the City to Project Co under Section 11.4;

“Monthly Previously Paid GST Amount” means a monthly GST amount to be:

- (a) the amount of the Section 11.11(b) payment amortized on a straight line basis over the Monthly Payments due over the remainder of the Operating Period following the payment of the Section 11.11(b) payment, subject to an alternative basis on which to amortize the remaining unapplied Section 11.11(b) payment as provided for by Applicable Law, in which case the City shall determine the Monthly Previously Paid GST Amount in accordance with such Applicable Law, provided that the City may, at any time, proceed to obtain an advance ruling under the *Excise Tax Act* (Canada) (or rely upon an existing advance ruling under the *Excise Tax Act* (Canada) based on an analogous fact pattern) in respect of some other basis for amortizing the remaining unapplied Section 11.11(b) payment over the Monthly Payments due over the remainder of the Operating Period and, in such event, the remaining unapplied Section 11.11(b) payment may be amortized over the Monthly Payments in a manner provided for in the advance ruling;
- (b) communicated by the City to Project Co in writing at the same time that the City pays Project Co the Section 11.11(b) payment; and
- (c) credited to the City in each invoice for a Monthly Payment sent by Project Co to the City following the payment of the Section 11.11(b) payment,

and, for greater certainty, the aggregate of all Monthly Previously Paid GST Amounts shall be the Section 11.11(b) payment;

“New Plan” has the meaning indicated in Section 8.4(c)(i);

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

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

“Notice of Failure to Achieve Final Completion” has the meaning indicated in Section 6.19;

“Notice of Failure to Achieve Substantial Completion Criteria” has the meaning indicated in Section 6.15;

“O&M” means the operation, maintenance and renewal of the Infrastructure in accordance with the O&M Requirements, including the actions required in order for Project Co to fulfill the Handback Requirements;

“O&M Requirements” means the City’s requirements and technical specifications for:

- (a) all aspects of the operation and maintenance of the Infrastructure; and
- (b) renewal of the Infrastructure,

all as set out in Schedule 18 (Technical Requirements);

“OH&S” has the meaning indicated in Schedule 16 (Safety Requirements);

“OH&S Conviction” has the meaning indicated in Section 19.3(q);

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

“Operating Period” means the period from and including the Substantial Completion Date until the end of the Term, as such period may be amended in accordance with this Agreement;

“Operating Period Payment Calculation” has the meaning indicated in Schedule 14 (Payment Schedule);

“Operating Period Termination” means termination of this Agreement by the City under Section 20.1(a) on or after Substantial Completion;

“Original Spread” means the spread between the yield to maturity of the relevant bonds and the interpolated yield to maturity of a Government of Canada bond with a maturity equal to the average remaining life of such bonds on the date of pricing.

“Other Employer” has the meaning indicated in Schedule 16 (Safety Requirements);

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

“Own Forces Work” has the meaning indicated in Section 4.4(a) of Schedule 1 (Change Orders);

“Owner” has the meaning indicated in Schedule 16 (Safety Requirements);

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

“Payment Adjustment” means an adjustment to the Monthly Payment or the Existing Facilities O&M Payment authorized under Section 12.2 and Schedule 18 (Technical Requirements) and summarized in Schedule 15 (Payment Adjustments Summary);

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

“PCS” has the meaning indicated in Schedule 18 (Technical Requirements);

“Pension Plan” means *A Bylaw of the City of Regina Concerning a Superannuation and Benefit Plan*, Bylaw No. 3125;

“Permits and Approvals” means all permissions, consents, approvals, certificates, permits, registrations, licences, agreements and authorizations required to perform the Project in accordance with this Agreement and Applicable Law, including the permit to operate and any other existing permissions, consents, approvals, certificates, permits, registrations, licences, agreements and authorizations governing the current use of the Existing Facilities and/or the future use of the Infrastructure held in the City’s name;

“PPE” has the meaning indicated in Schedule 16 (Safety Requirements);

“Pre-Transfer Date Deficit Payment” has the meaning indicated in Section 8.4(a)(i);

“Primary Exclusions” has the meaning indicated in Section 4.4 of Schedule 11 (Insurance Requirements);

“Prime” means the rate of interest from time to time declared by Canadian Imperial Bank of Commerce (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 16 (Safety Requirements);

“Process Tanks” means the grit tanks, primary sedimentation tanks, tertiary clarifiers and digesters forming part of the Existing Facilities;

“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, inducement or reward of any kind 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 or to its knowledge, to the

City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, other than in the ordinary course;

- (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;
- (d) defrauding or attempting to defraud or conspiring to defraud the City; or
- (e) defrauding or attempting to defraud or conspiring to defraud any public body in a manner that may compromise the reputation or integrity of the City or any City Party or otherwise negatively affect public perception of the City, any City Party or the Project;

“Project” means the Existing Facilities O&M, the O&M and the Works;

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

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

“Project Co” means EPCOR Water Prairies Inc., a corporation incorporated under the laws of the Province of Saskatchewan;

“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) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors; and
- (e) those for whom Project Co is legally responsible,

and, for greater certainty, does not include the Project Adjudicator, the Independent Certifier, the Independent Inspector or the Affected Employees during the period prior to the Transfer Date, 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 Resubmission” has the meaning indicated in Schedule 5 (Design and Plan Certification Process and Review Procedure);

“Project Co’s Construction Schedule” means Project Co’s schedule for construction of the Works, set out in Schedule 2 (Project Co’s Construction Schedule), including any amendments made from time to time in accordance with Section 6.5;

“Project Co’s Designs” means Project Co’s design drawings and design reports for the Infrastructure, set out in Schedule 3 (Project Co’s Designs), including any amendments made from time to time in accordance with Section 6.5;

“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 6.5;

“Project Financing” means financing (of whatever nature, and inclusive of the Senior Debt Financing and the Equity) arranged by or on behalf of Project Co sufficient, together with the City Funding, to carry out and complete the Works, provided that the amount of such financing shall not exceed the amount of Project Financing contemplated as at the Submission Date (as such amount may be adjusted in accordance with the definition of Senior Debt Financing);

“Proposed Latent Defect Work” has the meaning indicated in Section 5.20(a)(i);

“PST” means the sales tax imposed pursuant to *The Provincial Sales Tax Act* (Saskatchewan);

“Recoverable Tax” has the meaning indicated in Section 11.12(c);

“Redemption Payment” means the lesser of:

- (a) the amount actually required to redeem the Senior Debt Financing (inclusive of hedging transactions, if applicable) in accordance with its terms; and
- (b) the amount that would be required to redeem the Senior Debt Financing if it were arranged with only such prepayment penalties as are commercially reasonable in the circumstances of the financing;

“Relief Event” has the meaning indicated in Section 15.1;

“Remedial Action” has the meaning indicated in Section 19.2;

“Renewal Index” has the meaning indicated in Schedule 10 (Index Factor);

“Renewal Index Factor” has the meaning indicated in Schedule 10 (Index Factor);

“Renewal Payment” means the component of the Infrastructure O&M Payment that is designated in Schedule 14 (Payment Schedule) as payment for the periodic planned

rehabilitation, replacement or renovation of the Infrastructure, excluding any routine maintenance, necessary to meet the Technical Requirements, including the Handback Requirements;

“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);

“Schedule” means a schedule to this Agreement;

“Senior Debt Financing” means any part of the Project Financing that is debt financing, provided that the amount of such financing shall not exceed the amount of Senior Debt Financing contemplated as at the Submission Date;

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

“Subcontractor Work” has the meaning indicated in Section 4.4(b) of Schedule 1 (Change Orders);

“Submission Date” means May 22, 2014;

“Substantial Completion” means the Infrastructure 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 8 (Substantial Completion Criteria);

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

“Substantial Completion Items Notice” has the meaning indicated in Section 6.14;

“Substantial Completion Payment” means \$49,738,746.45;

“Substantial Completion Target Date” means December 31, 2016;

“Suitable Bidder” means a person that has the relevant experience, appropriate qualifications, technical competence and resources, including financial resources, available to it to perform all of Project Co’s obligations under this Agreement;

“Technical Requirements” means all requirements set out in Schedule 18 (Technical Requirements), including, but not limited to, the Works Requirements, the O&M Requirements and the Handback Requirements;

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

“Term” means the period from the date hereof to the date that is the 30th anniversary of the date hereof, as such period may be amended in accordance with this Agreement;

“Termination by Project Co” means termination of this Agreement by Project Co under Section 20.2;

“Termination Event” has the meaning indicated in Section 19.3;

“Termination for Convenience” means termination of this Agreement by the City under Section 20.1(b);

“Termination Payment” means the applicable payment specified in Section 21 required to be made by the City to Project Co upon termination of this Agreement;

“Termination Shortfall Amount” has the meaning indicated in Section 21.6;

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

“Third Party Input” has the meaning indicated in Section 3.2 of Schedule 1 (Change Orders);

“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);

“Transfer Date” means January 1, 2015;

“Transferred Employees” means all Affected Employees who are transferred to Project Co or the relevant Project Co Party pursuant to Section 8 of this Agreement and do not transfer back to the City in accordance with Section 8.3;

“Treated Wastewater” has the meaning indicated in Schedule 18 (Technical Requirements);

“Utility Agreements” has the meaning indicated in Section 5.9;

“Weighting Alteration” has the meaning indicated in Schedule 10 (Index Factor);

“Works” means the design and build of the Infrastructure in accordance with the Works Requirements; and

“Works Requirements” means the City’s requirements and technical specifications for the Works and the Existing Facilities O&M, all as set out in Schedule 18 (Technical Requirements).

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	-	Project Co's Construction 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	-	Existing Facilities
Schedule 8	-	Substantial Completion Criteria
Schedule 9	-	Employee Transition
Schedule 10	-	Index Factor
Schedule 11	-	Insurance Requirements
Schedule 12	-	Lands
Schedule 13	-	Milestone Payment
Schedule 14	-	Payment Schedule
Schedule 15	-	Payment Adjustments Summary
Schedule 16	-	Safety Requirements
Schedule 17	-	<i>[intentionally deleted]</i>
Schedule 18	-	Technical Requirements
Schedule 19	-	Independent Certifier Agreement

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 to the extent of such 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 request for qualifications and the request for proposals issued by the City in respect of the Project and Project Co's submissions in response thereto. 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 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.

1.8 Project Co's Knowledge

Where any provision of this Agreement refers to the knowledge of or matters known to Project Co:

- (a) during the Construction Period, knowledge on the part of the directors, officers and senior management of Project Co and any Project Co Party, provided such directors, officers and senior management are directly involved in the design or construction of the Works or in the Existing Facilities O&M, shall be deemed to be knowledge of Project Co; and

- (b) during the Operating Period, knowledge on the part of the directors, officers and senior management of Project Co and any Project Co Party, provided such directors, officers and senior management are directly involved in the O&M, shall be deemed to be knowledge of Project Co.

1.9 Other Rules of Interpretation

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

- (a) the tables 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 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;
- (s) unless otherwise indicated, time periods will be strictly construed; and
- (t) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

2. DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN

2.1 Project Financing

Project Co undertakes to arrange the Project Financing, as more particularly contemplated in Section 4.

2.2 Design and Build of Infrastructure and Existing Facilities O&M

Project Co undertakes to design and build the Infrastructure in accordance with the Works Requirements and as more particularly set out in Section 6. Project Co undertakes to operate and maintain the Existing Facilities from and after the Existing Facilities O&M Effective Date until the Substantial Completion Date in accordance with the Works Requirements set out in Section 4 of Schedule 18 (Technical Requirements) and as more particularly set out in Section 6.

2.3 Operation and Maintenance

Project Co agrees to operate and maintain the Infrastructure from and after the Substantial Completion Date until the expiry of the Term in accordance with the O&M Requirements and as more particularly set out in Section 7.

2.4 Handback

Project Co undertakes that, upon expiry of the Term, the Infrastructure shall be in accordance with the Handback Requirements and as more particularly set out in Section 10.

2.5 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, as between the City and Project Co, are the exclusive responsibility of Project Co.

3. BUSINESS OPPORTUNITIES

3.1 Business Opportunities

Project Co acknowledges that the City reserves the right to all commercial and other opportunities related to the Existing Facilities, the Infrastructure or the Lands (“**Business Opportunities**”). The City may, as set out in this Agreement, grant rights in the Business Opportunities to Project Co. For greater certainty, Business Opportunities include any commercial benefit derived from the sale of greenhouse gas credits, wastewater, effluent, biogas, electricity, laboratory services, equipment maintenance services, remote monitoring services, wastewater treatment services, services related to receiving truck haul waste, struvite, Biosolids, Digested Sludge, Inorganic Sludge or other similar products and services or the use of the Existing Facilities, the Infrastructure or the Lands for administrative functions unrelated to the Project, but exclude the sale by Project Co of any decommissioned components of the Existing Facilities and the use by Project Co of biogas for heating and on-site electricity generation.

To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for the City’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both parties. The City may accept any such proposal in its sole discretion and subject to such terms and conditions as the City may require.

Notwithstanding that Project Co has proposed a Business Opportunity to the City for its consideration, Project Co acknowledges that the City reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity.

4. FINANCING

4.1 Project Financing

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

4.2 *[intentionally deleted]*

4.3 Condition Precedent

Project Co shall, as a condition precedent to this Agreement, deliver or cause to be delivered to the City, on or prior to the date hereof, one or more irrevocable, unconditional, on sight letters of credit (collectively, the “**Financing and Initial Performance Letter of Credit**”) in the aggregate amount of \$10 million, presentable for payment at a bank in Canada and issued by a bank authorized under the *Bank Act* (Canada) to do business in Canada (or issued by such other financial institution approved in advance for the purposes of this Section 4.3 by the City, who may grant or decline such approval in its absolute discretion), and 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, Fitch Ratings or Moody’s Investors Service (or any other major credit rating

agency approved for the purposes of this Section 4.3 by the City, who may grant or decline such approval in its absolute discretion).

4.4 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 design and build the Works.

4.5 Release and Surrender of Financing and Initial Performance Letter of Credit

The Financing and Initial Performance Letter of Credit must be maintained in effect until Project Co has satisfied the City, acting reasonably, that Project Co has incurred direct out-of-pocket expenditures of not less than \$10 million in furtherance of the Works, exclusive of:

- (a) the cost of legal and financial advisors;
- (b) costs incurred in connection with preparation of Project Co's proposal in response to either the request for qualifications or the request for proposals issued by the City in respect of the Project;
- (c) design costs;
- (d) financing costs;
- (e) mobilization costs;
- (f) prepaid management or service fees;
- (g) costs incurred in connection with the Existing Facilities O&M; and
- (h) the cost of any materials that have not yet been incorporated into the Works,

and, upon such event, the City shall immediately release and surrender the Financing and Initial Performance Letter of Credit to Project Co. The City will, as soon as reasonably practicable, also release and surrender to Project Co the Financing and Initial Performance Letter of Credit if this Agreement is terminated other than under Section 20.1(a).

4.6 Presentation of Financing and Initial Performance Letter of Credit

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

- (a) this Agreement is terminated by the City under Section 20.1(a);
- (b) Project Co fails to deliver or cause to be delivered to the City a renewal of the Financing and Initial Performance Letter of Credit at least 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 or cause to be delivered to the City a replacement of the Financing and Initial Performance Letter of Credit no later than 21 days after being so requested by the City,

and only if the condition in Section 4.5 for release and surrender of the Financing and Initial Performance Letter of Credit has not been achieved prior to the occurrence of the event described in Section 4.6(a), (b) or (c), as the case may be.

4.7 Repayment of Proceeds

If the City presents the Financing and Initial Performance Letter of Credit under Section 4.6(b) or (c), and if thereafter, but prior to termination of this Agreement, Project Co meets the conditions in Section 4.5 for release and surrender of the Financing and Initial Performance Letter of Credit by the City, then the City shall, within five Business Days, repay to or to the order of Project Co, without interest (excepting only interest accruing pursuant to Section 11.10 after such repayment becomes due), the proceeds from presenting the Financing and Initial Performance Letter of Credit.

5. THE LANDS

5.1 Access and Use

Subject to the provisions of this Section 5.1, 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 Infrastructure and the Existing Facilities.

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, the Existing Facilities and the Infrastructure, 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, subject to Section 5.16, but otherwise without compensation to Project Co, grant utility rights of way, easements, leases or similar interests in land over the Lands.

5.2 Non-Exclusive License

Project Co acknowledges and agrees that the City remains the owner of the Lands, the Existing Facilities and the Infrastructure, that the rights granted to Project Co and the Project Co Parties in Section 5.1 shall be non-exclusive and, subject to Section 5.16, that the City and any person authorized by the City, including, without limitation, Western Potash Corp. and Spectra Energy Empress Management Inc., may occupy and possess the Lands or a portion or portions thereof.

5.3 City Access to the Lands, Existing Facilities and Infrastructure

Project Co acknowledges and agrees that, at all times until the end of the Term, the City shall have full and free access to:

- (a) the Lands;
- (b) the Existing Facilities;
- (c) the Infrastructure; and
- (d) 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, the Existing Facilities, the Infrastructure 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. Such access shall not, in and of itself, be construed as constituting disturbance or interference with Project Co's uninterrupted access to the Lands, the Existing Facilities or the Infrastructure, provided that Project Co may exercise reasonable control over such access for reasons of safety and operational efficiency. In exercising any right of access under this Section 5.3, the City shall comply with Project Co's reasonable safety requirements. For the purpose of any 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 material expense) to facilitate any such measurements, tests, 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 the Project.

5.4 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.

5.5 Acceptance of Lands

Subject to Sections 14 and 15, Project Co acknowledges and agrees that it has, in accordance with Good Industry Practice:

- (a) 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, taking into account all matters relating to the Lands, existing on the date hereof;
- (b) taken into account all matters relating to the Lands, including the buildings, structures and works, on, over and under the Lands existing on the date hereof, 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;

- (c) 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;
- (d) 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
- (e) 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.

5.6 Commencement and Duration

Subject to Section 5.18, Project Co's right to non-exclusive access to and use of the Lands, the Existing Facilities and the Infrastructure comes into effect upon the date hereof and, unless otherwise provided in Schedule 18 (Technical Requirements), continues until the expiry of the Term or earlier termination of this Agreement. Such right to non-exclusive access and use automatically terminates upon any termination of this Agreement.

5.7 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.

5.8 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.

5.9 Utility and Railway Agreements

Subject only to the City's obligations to provide the Commodities and to provide assistance to Project Co in accordance with Section 17.4, Project Co 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 5.9(b)(ii)) upon expiry of the Term 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 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 5.9(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 end of the Term 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 payments required by the Utility Agreements.

Project Co shall also negotiate and arrange all agreements required with any railway company in order to carry out the Project.

5.10 Condition of the Lands and Existing Facilities

Subject to Sections 13.4, 13.7 and 15.1(d), and subject to Project Co's obligations under this Agreement to carry out the Works, Project Co shall maintain the Lands and the Existing Facilities in good and proper order and repair throughout the duration of this Agreement, and shall:

- (a) subject to Section 5.10(e) below, 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 and the Existing Facilities, in accordance with the requirements more particularly set out in the Technical Requirements and Applicable Law;
- (c) not stockpile any material on the Lands or at the Existing Facilities, except:
 - (i) during the Construction Period;
 - (ii) during and for the purpose of doing renewal or otherwise carrying out construction, maintenance or repair activities under this Agreement; or
 - (iii) soil excavated from the Lands and retained for use in construction, maintenance, operation or repair activities under this Agreement;
- (d) not commit, or permit any Project Co Party to commit, any waste or nuisance on the Lands or at the Existing Facilities; and

- (e) promptly deal with any Environmental Damage or Degradation to the Lands or the Existing Facilities as required by Applicable Law, with the exception only of:
 - (i) Environmental Damage or Degradation pre-existing as of the date hereof, provided that, if such pre-existing Environmental Damage or Degradation is required to be dealt with in order to carry out the Project, Project Co shall do so and claim relief arising in connection therewith under Section 15.1(d); and
 - (ii) Environmental Damage or Degradation caused after the date hereof by the City or a City Party,

which Environmental Damage or Degradation shall be remediated by the City in such manner and upon such timetable as the City may determine, provided that the City shall ensure that neither the remediation nor any failure or delay by the City to carry out the remediation interferes with or disrupts or delays the carrying out by Project Co of the Project.

The City acknowledges and agrees that neither the Works, nor the observing and carrying out of the Technical Requirements by Project Co, shall, in and of itself, constitute a breach by Project Co of its obligations under this Section 5.10.

5.11 Existing Biosolids and Sludge

Project Co shall manage all Biosolids, Digested Sludge or Inorganic Sludge pre-existing on the Lands as of the date hereof in accordance with Applicable Law and Schedule 18 (Technical Requirements).

5.12 Permitted Use

Project Co covenants that it and any Project Co Party:

- (a) will use the Lands and the Infrastructure to be constructed thereon and the Existing Facilities only for the purposes of the Project, and, from and after Substantial Completion, only as a wastewater treatment facility and not for any commercial purposes other than the Project, unless expressly permitted by the City; and
- (b) will not, from and after Substantial Completion, interfere with the Infrastructure being continuously in operation, excepting such closures or partial closures as are expressly contemplated and authorized by or in accordance with the Technical Requirements.

5.13 No Encumbrances On Lands

The City covenants that it will not grant or permit to be granted any mortgage or other security interest in the Lands. The City covenants that it will not grant or permit to be granted any encumbrance that can be registered against title to the Lands that results in the City being in breach of its obligations set out in Section 5.16.

5.14 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 Applicable Law, and shall not, by any act or omission, cause, encourage, suffer or allow any lien or claim of lien under Applicable Law or in equity to be made against the City or filed or registered against the Lands, the Existing Facilities or the Infrastructure 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 of lien is caused by the City withholding any amount payable under this Agreement, other than where the withholding of an amount payable is disputed by the City in good faith. As soon as reasonably practicable following receipt thereof, the City shall advise Project Co if it has received notice of any lien or claim of lien under Applicable Law or in equity made against the City or filed or registered against the Lands, the Existing Facilities or the Infrastructure 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. Project Co shall, at its own expense, promptly, and, in any event, within 10 Business Days of becoming aware of any lien or claim of lien under Applicable Law or in equity made against the City or filed or registered against the Lands, the Existing Facilities or the Infrastructure 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, take all steps required to effect a removal, vacation or discharge of any such lien or otherwise deal with any such claim of lien. If any such lien or claim of lien is not removed, vacated, discharged or otherwise dealt with within 10 Business Days of Project Co becoming aware of such lien or claim of lien then, without prejudice to any other rights or remedies it may have, the City, upon 5 Business Days' notice to Project Co, will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate, discharge or otherwise deal with the lien or claim of lien, 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, all of which shall be payable on demand, provided that the City shall not interfere with Project Co's right to dispute the legitimacy of the lien or claim of lien with the filer.

5.15 Ownership of Improvements

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

5.16 Uninterrupted Access and Use

The City covenants that Project Co's access to and use of the Lands, the Existing Facilities and the Infrastructure pursuant to Section 5.1 shall be uninterrupted during the duration of this Agreement, shall be without any disturbance or interference from the City or any person claiming a right of access to or use of the Lands, the Existing Facilities and the Infrastructure from or under the City and shall be adequate to enable Project Co to carry out the Works and the Existing Facilities O&M throughout the Construction Period and to carry out the O&M throughout the Operating Period, in each case subject to the following:

- (a) the Identified Encumbrances (but subject to the obligations of the City under Section 17.4);
- (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 5.3 to access to and use of the Lands, the Existing Facilities and the Infrastructure for inspection purposes, the City's right under Section 6.11 to direct Project Co to cease construction, the City's rights under Section 9.5 to undertake additional improvements or to accommodate additional utilities and the City's step-in rights under Section 19.2; and
- (c) any interference, including, without limitation, an injunction issued by a court of competent jurisdiction or action by protesters, to the extent attributable to a negligent or wrongful act or omission by Project Co or any Project Co Party.

The City shall defend its title to the Lands against any person claiming any interest adverse to the City in the Lands, including any aboriginal title or treaty rights, 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, the Existing Facilities or the Infrastructure 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.

5.17 Payment of Taxes on Lands

The City will directly pay all applicable property taxes, special taxes and local improvement taxes that may be imposed on the Lands by a municipality in accordance with Applicable Law.

5.18 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. 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, as soon as reasonably practical and in any event no later than one month following termination of this Agreement, to demobilize and remove any of Project Co's equipment and materials from the Lands.

5.19 Permits and Approvals

Subject only to the City's obligations under Section 17.4 and as otherwise set out in this Section 5.19, Project Co shall at its own cost and risk:

- (a) obtain, maintain and, as applicable, renew all Permits and Approvals which may be required for the performance of the Project;
- (b) comply with all Permits and Approvals in accordance with their terms; and

- (c) duly perform and carry out all obligations under the Permits and Approvals, including preparing all applications, plans and supporting information, paying any fees and conducting any studies, investigations and consultations necessary to obtain, maintain, renew or comply with such Permits and Approvals.

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 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 above.

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. Regardless of whether the City is the applicant for the Permits and Approvals, Project Co shall promptly forward to the City any communication it sends to or receives from any regulator or other Governmental Authority with respect to the Permits and Approvals and a copy of any Permits and Approvals once obtained.

Project Co shall notify the City in a timely manner regarding upcoming meetings related to Permits and Approvals that the City may wish to attend. In addition, the City may, in its sole discretion, attend any hearings and pre-application meetings related to any Permits and Approvals.

5.20 Latent Defects

- (a) If, during the Construction Period, Project Co identifies a Latent Defect which, individually or when aggregated with other Latent Defects, would cost greater than \$500,000 to repair, Project Co shall give notice to the City of the need for a Change Order as a result of such Latent Defect, including:
 - (i) a description of the work required to repair such Latent Defect (the “**Proposed Latent Defect Work**”); and
 - (ii) an estimate of the cost of completing the Proposed Latent Defect Work, prepared in accordance with and meeting the requirements of Section 3.4 of Schedule 1 (Change Orders).
- (b) As soon as practicable and, in any event, within 10 Business Days following receipt by the City of the notice described in Section 5.20(a), the parties shall meet to seek to agree on whether a Change Order is required as a result of the Latent Defect. If the parties

have not, within 10 Business Days of this meeting, reached an agreement, either party may refer the dispute to the Dispute Resolution Procedure.

- (c) The City shall, within 10 Business Days of an agreement or determination that a Change Order is required, issue a Change Order Enquiry in respect of the Proposed Latent Defect Work and the relevant provisions of Schedule 1 (Change Orders) shall apply, except that:
 - (i) the City shall not be entitled to withdraw such Change Order Enquiry unless Project Co agrees; and
 - (ii) Project Co shall not be entitled to any payment or compensation from the City in respect of the first \$500,000 in costs incurred by Project Co in the repair of Latent Defects.

6. DESIGN AND BUILD

6.1 Project Co's Obligations

Project Co agrees to design and build the Infrastructure and to perform the Existing Facilities O&M in accordance with the Works Requirements, Project Co's Designs and Project Co's Management Systems and Plans. In the event of any inconsistency among the Works Requirements, Project Co's Designs and Project Co's Management Systems and Plans, the higher standard or specification shall apply, provided that nothing 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 Infrastructure and to operate and maintain the Existing Facilities in accordance with the Works Requirements.

6.2 Works Requirements

Subject to Section 6.4 and notwithstanding any other provision of this Agreement, Project Co's obligation to design and build the Infrastructure and to operate and maintain the Existing Facilities in accordance with the Works Requirements is absolute and cannot be modified or waived except by amendment of the Works Requirements made in accordance with Section 9.1. If Project Co asserts that any aspect of the Works Requirements is uncertain or ambiguous, either party may require that the interpretation of that aspect of the Works Requirements be determined by the Project Adjudicator. The City acknowledges that it is responsible for the adequacy and suitability of the Works Requirements.

6.3 Project Co's Responsibility to Carry Out Works Requirements

Subject to Section 6.4 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 6.10 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 Works and the Existing Facilities O&M comply with the Works Requirements or shall estop the City from asserting any non-compliance with the Works Requirements. In the event of any failure by Project Co to comply with the Works

Requirements, Project Co shall not assert any duty of care or contributory negligence on the part of the City in relation to such failure.

6.4 Request for Clarification

Project Co may request that the City agree that a particular design element or construction specification complies with the Works Requirements, which request the City shall endeavor to respond to within 10 Business Days. If the City so agrees in writing, then such design element or construction specification shall be deemed to comply with the Works Requirements, provided that the City must consider such a request only where:

- (a) the request is in relation to a specific design element or construction specification;
- (b) the pertinent Works 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 Works Requirements ultimately proved to be incorrect; and
- (d) Project Co has not made multiple or generalized requests under this Section 6.4 such that, in the reasonable opinion of the City, Project Co is attempting to use this Section 6.4 to transfer to the City all or partial responsibility for ensuring that the Works meet the Works Requirements.

6.5 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 Project Co's Construction Schedule. Notwithstanding the foregoing, Project Co may make amendments to non-critical path items in Project Co's Construction Schedule with advance written notice to the City of each such amendment.

6.6 Project Co Solely Responsible for Works and Existing Facilities O&M

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 Works and to carry out the Existing Facilities O&M, including:

- (a) subject to the obligations of the City set out in Section 17.4:
 - (i) the obtaining of all Permits and Approvals, including building and development permits; and
 - (ii) all required arrangements, as more particularly contemplated by Section 5.9, relating to utilities; and
- (b) complying with Applicable Law.

6.7 Project Co Solely Responsible for Works and Existing Facilities O&M 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 Works and perform the Existing Facilities O&M, including, for greater certainty, the costs, fees, charges or payments for submetered amounts of electricity, natural gas and water used for purposes of the Works, 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, arbitration or litigation pursuant to the Dispute Resolution Procedure, which are specifically provided for in Schedule 6 (Dispute Resolution Procedure);
- (c) the costs, fees, charges or payments for electricity, natural gas and water used for purposes of the Existing Facilities O&M; and
- (d) any other 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 Works or the Existing Facilities O&M except as expressly set out in this Agreement.

6.8 Title

Title to each item and part of the Infrastructure, including any materials, supplies, equipment, facilities, spare parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to the City (or as the City may direct) upon the receipt of such item on the Lands, provided that title to items of tangible personal property that comprise the Infrastructure or are to be affixed or attached to the Infrastructure prior to Substantial Completion shall pass to the City (or as the City may direct) at the time that such items are included in the Infrastructure or affixed or attached to the Infrastructure, as the case may be.

6.9 Construction Within the Lands

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

- (a) any existing, renewed or replaced pipelines that are within the Condie Road right-of-way, provided that they form part of Project Co's Designs and the Detailed Designs;
- (b) any existing, renewed, replaced or new pipelines crossing the CNR rail line, provided that they form part of Project Co's Designs and the Detailed Designs;

- (c) any portion of the Infrastructure Diversion Chamber that is within the Condie Road right-of-way, provided that it is part of an upgrade of the existing Condie Road Valve Chamber and not new construction; and
- (d) the effluent outfalls.

6.10 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, construction specifications, as-built drawings and any modifications to any detailed designs previously provided to the City) for the Works 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, without the prior written consent of the City, in its sole discretion, commence or permit the commencement of construction of any component of the Works if such component of the Works has not been addressed in Detailed Designs provided to the City in accordance with this Section 6.10. Subject to Section 6.4, 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 6.3 to carry out the Works in accordance with the Technical Requirements.

6.11 Stop Work Order or Opening Up

The City may at any time direct Project Co to cease any construction or open up any component of the Works already constructed that it considers to be not in accordance with the Works Requirements or if the City is of the opinion that Project Co has not complied with any other obligations of this Agreement, including, for greater certainty, the obligations in Schedule 16 (Safety Requirements). If it is subsequently determined that the relevant component of the Works was in accordance with the Works Requirements or that Project Co did comply with the other obligations of this Agreement, as applicable, then such direction shall, subject to Section 15.1, constitute a Relief Event under Section 15.1(b).

6.12 Construction Delays

If the progress of the Works falls materially behind Project Co’s Construction 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 Works back on schedule. If Project Co fails to achieve Substantial Completion by the Substantial Completion Target Date, Project Co shall, within 30 days of the Substantial Completion Target Date, provide the City with Project Co’s plan for achieving Substantial Completion as soon as possible and, in any event, no later than the Longstop Date and, from and after the Substantial Completion Target Date, 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.

6.13 Independent Certifier

At least 100 days prior to the date Project Co anticipates that the Milestone Payment will be made, Project Co and the City shall jointly retain, in accordance with the City's procurement policies, an engineering consultant having strong expertise in wastewater projects and cost estimation and acceptable to both parties, acting reasonably, to act as independent certifier (the **"Independent Certifier"**). The parties will enter into the Independent Certifier Agreement with the Independent Certifier.

6.14 Anticipated Substantial Completion

No later than 100 days prior to the date Project Co anticipates the Works 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 Works 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. The City may, within 10 Business Days after receiving the results of the Independent Certifier's inspection, (i) perform its own inspection, and (ii) provide a notice (the **"Substantial Completion Items Notice"**) to Project Co and the Independent Certifier of any items that, in the opinion of the City, prevent the Works from satisfying the Substantial Completion Criteria. Project Co may, within 5 Business Days of receipt of the Substantial Completion Items Notice, communicate to the City and the Independent Certifier its opinion on the items that prevent the Works from satisfying the Substantial Completion Criteria.

6.15 Certification of Substantial Completion

If the Independent Certifier, having completed the inspection referred to in Section 6.14 and having considered the Substantial Completion Items Notice, Project Co's response to the Substantial Completion Items Notice and all remedial action, if any, taken by Project Co in response to the inspection contemplated in Section 6.14, is satisfied that the Works 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"**).

If the Independent Certifier, having completed the inspection referred to in Section 6.14 and having considered the Substantial Completion Items Notice, Project Co's response to the Substantial Completion Items Notice and all remedial action, if any, taken by Project Co in response to the inspection contemplated in Section 6.14, determines that the Works has not satisfied the Substantial Completion Criteria, the Independent Certifier shall issue to Project Co and 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 Works will satisfy the Substantial Completion Criteria, Project Co shall again

engage the process set out in Sections 6.14 and 6.15, with the exception that the time periods contemplated in Section 6.14 shall in each case be reduced to 3 Business Days.

For greater certainty, the Independent Certifier's decision to issue or not issue the Certificate of Substantial Completion shall be final and binding on the parties solely in respect of determining the date for making the Substantial Completion Payment and commencing the Monthly Payments and a dispute in relation to any such date shall not be subject to the Dispute Resolution Procedure, provided that any other dispute in relation to the Independent Certifier's decision to issue or not issue the Certificate of Substantial Completion may be referred for resolution in accordance with the Dispute Resolution Procedure.

6.16 30-Day Performance Test Holdback

If Project Co has not successfully completed the 30-Day Performance Test upon Substantial Completion, the City shall hold back \$25,000,000 from the Substantial Completion Payment (the **"30-Day Performance Test Holdback"**). The 30-Day Performance Test Holdback shall be released to Project Co, without interest, when the 30-Day Performance Test is successfully completed, as determined by the Independent Certifier. If the 30-Day Performance Test is not successfully completed within 270 days after Substantial Completion (or such longer period as may be agreed by the City, acting reasonably, but in any event not exceeding 12 months after Substantial Completion), the City may release Project Co from its obligation to complete the 30-Day Performance Test (but not, for greater certainty, any of its other obligations under this Agreement) and may retain the 30-Day Performance Test Holdback as the City's sole and exclusive remedy in respect of Project Co's failure to successfully complete the 30-Day Performance Test.

6.17 Substitution of Letter of Credit

In lieu of the City withholding or continuing to withhold the 30-Day Performance Test Holdback, Project Co may deliver or cause to be delivered to the City an irrevocable, unconditional, on sight letter of credit in the amount of the 30-Day Performance Test Holdback (the **"30-Day Performance Test Letter of Credit"**), presentable for payment at a bank in Canada and issued by a bank authorized under the *Bank Act* (Canada) to do business in Canada (or issued by such other financial institution approved in advance for the purposes of this Section 6.17 by the City, who may grant or decline such approval in its absolute discretion), and having a senior, unsecured long-term issuer 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, Fitch Ratings or Moody's Investors Service (or any other major credit rating agency approved for the purposes of this Section 6.17 by the City, who may grant or decline such approval in its absolute discretion).

The City may present the 30-Day Performance Test Letter of Credit for payment and retain the proceeds therefrom:

- (a) in the same circumstances in which it could retain the 30-Day Performance Test Holdback pursuant to Section 6.16;

- (b) if Project Co fails to deliver or cause to be delivered to the City a renewal of the 30-Day Performance Test Letter of Credit at least 30 days before the expiry date specified in the 30-Day Performance Test Letter of Credit; or
- (c) if any of the senior, unsecured long-term credit ratings of the issuer of the 30-Day Performance Test Letter of Credit becomes less than A+ (with a stable outlook) or equivalent and Project Co fails to deliver or cause to be delivered to the City a replacement of the 30-Day Performance Test Letter of Credit no later than 21 days after being so requested by the City,

and, in any case, the amount received by the City upon presentation of the 30-Day Performance Test Letter of Credit shall be dealt with by the City in the same manner as the 30-Day Performance Test Holdback under Section 6.16.

6.18 Anticipated 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 in the Works (the “**Deficiency List**”) required to be completed or rectified for Final Completion and the Independent Certifier’s estimate of the cost to achieve Final Completion. The City may, within 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 in respect of the Works that, in the opinion of the City, are required to be completed or rectified for Final Completion. Project Co may, within 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 completed or 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 estimate of the cost to achieve Final Completion accordingly.

Following achievement of Substantial Completion, Project Co shall diligently proceed to Final Completion. No later than 30 days prior to the date Project Co anticipates that it will achieve Final Completion, Project Co shall notify the City, including an indication of any items on the Deficiency List still intended to be completed or rectified by Project Co for the Works to achieve Final Completion.

Project Co shall request an inspection by the Independent Certifier and shall provide the City with the results of that inspection. The City may, within 10 Business Days after receiving the results of the Independent Certifier’s inspection, (i) perform its own inspection, and (ii) provide a notice (the “**Final Completion Items Notice**”) to Project Co and the Independent Certifier of any items on the Deficiency List that, in the opinion of the City, have not been completed or rectified. Project Co may, within 5 Business Days of receipt of the Final Completion Items Notice, communicate to the City and the Independent Certifier its opinion on the items on the Deficiency List that have not been completed or rectified.

6.19 Certification of Final Completion

If the Independent Certifier, having completed the inspection referred to in Section 6.18 and having considered the Final Completion Items Notice, Project Co’s response to the Final

Completion Items Notice and all remedial action, if any, taken by Project Co in response to the inspection contemplated in Section 6.18, is satisfied that all of the items on the Deficiency List have been completed or rectified, the Independent Certifier shall promptly issue to Project Co and the City a certificate certifying that Final Completion has been achieved (the “**Certificate of Final Completion**”).

If the Independent Certifier, having completed the inspection referred to in Section 6.18 and having considered the Final Completion Items Notice, Project Co’s response to the Final Completion Items Notice and all remedial action, if any, taken by Project Co in response to the inspection contemplated in Section 6.18, determines that any of the items on the Deficiency List have not been completed or rectified, the Independent Certifier shall issue to Project Co and the City a notice stating that the Certificate of Final Completion has not been issued and specifying any items on the Deficiency List that must be completed or rectified before the Certificate of Final Completion can be issued (the “**Notice of Failure to Achieve Final Completion**”).

After receiving a Notice of Failure to Achieve Final Completion, when Project Co anticipates that all of the items on the Deficiency List have been completed or rectified, Project Co shall again engage the process set out in Sections 6.16 and 6.19, with the exception that the time periods contemplated in Section 6.18 shall in each case be reduced to 3 Business Days.

6.20 Final Completion Holdback

If Project Co has not achieved Final Completion upon Substantial Completion and the Independent Certifier has issued a Deficiency List, Project Co shall, within 30 days thereafter, prepare and deliver to the City a comprehensive workplan and schedule acceptable to the City, acting reasonably, designed to complete or rectify the items on the Deficiency List 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. If Project Co fails to deliver an acceptable workplan and schedule within such 30 day period or, having delivered it, fails in any material respect to diligently carry out the workplan in accordance with the schedule, the City may hold back from any Monthly Payment an amount of up to twice the amount of the Independent Certifier’s estimate provided (and, if applicable, adjusted) in accordance with Section 6.18 of the cost of achieving Final Completion (the “**Final Completion Holdback**”). The Final Completion Holdback shall be released to Project Co, without interest, when Final Completion is achieved. If Final Completion is not achieved within 270 days after Substantial Completion (or such longer period as may be agreed by the City, acting reasonably, but in any event not exceeding 12 months after Substantial Completion), the City may, by notice to Project Co, elect to do the remaining work required to achieve Final Completion and, in that event, may deduct the cost of performing such remaining work from the Final Completion Holdback. Following completion of any such remaining work, the balance, if any, of the Final Completion Holdback shall be released to Project Co without interest.

7. OPERATE AND MAINTAIN**7.1 Commencement of O&M**

Project Co shall perform and carry out the O&M in accordance with the O&M Requirements and Project Co's Management Systems and Plans for the Infrastructure from Substantial Completion until the end of the Term or the earlier termination of this Agreement in accordance with its provisions. In the event of any inconsistency among the O&M Requirements, Project Co's Designs and Project Co's Management Systems and Plans, the higher standard or specification shall apply, provided that nothing in Project Co's Designs or Project Co's Management Systems and Plans detract from Project Co's absolute obligation to perform and carry out the O&M in accordance with the O&M Requirements.

7.2 O&M Requirements

The O&M Requirements may be modified only by amendment of the O&M Requirements made in accordance with Section 9.2. If Project Co asserts that any aspect of the O&M Requirements is uncertain or ambiguous, either party may require that the interpretation of that aspect of the O&M Requirements be determined by the Dispute Resolution Procedure. The City acknowledges that it is responsible for the adequacy and suitability of the O&M Requirements.

7.3 Project Co Solely Responsible for O&M

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 carry out the O&M, including complying with the Permits and Approvals and Applicable Law.

7.4 Project Co Solely Responsible for O&M 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 perform the O&M, 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, arbitration or litigation pursuant to the Dispute Resolution Procedure, which are specifically provided for in Schedule 6 (Dispute Resolution Procedure);
- (c) subject to the Actual Annual Commodity Consumption adjustment procedure set out in Schedule 14 (Payment Schedule), the costs, fees, charges or payments in respect of the Commodities; and
- (d) any other costs, fees, charges or payments the responsibility for which has been expressly allocated to the City under this Agreement.

8. HUMAN RESOURCES**8.1 Project Co Covenants - Affected Employees**

- (a) From the Existing Facilities O&M Effective Date to the Transfer Date, Project Co shall manage, supervise and direct the Affected Employees in the performance of the Existing Facilities O&M. The Affected Employees shall remain employees of the City and the City shall remain responsible for paying all salaries, wages, benefits and other entitlements to, and making all necessary contributions, deductions and withholdings for, each of the Affected Employees, provided that Project Co uses commercially reasonable efforts to mitigate and minimize overtime and other variable labour expenses to the extent practicable.
- (b) From and after the Transfer Date, Project Co shall employ, or cause a Project Co Party to employ, the Affected Employees and, in doing so, stand, or cause the relevant Project Co Party to stand, with respect to work usually performed by the Affected Employees, in the place of the employer for the purposes of the Collective Agreement. For greater certainty, from and after the Transfer Date, Project Co, or the relevant Project Co Party, shall be responsible for paying all salaries, wages, benefits and other entitlements to, and making all necessary contributions, deductions and withholdings for, each of the Transferred Employees.
- (c) From and after the Transfer Date, Project Co shall use commercially reasonable efforts to fill any existing positions that were vacant on the Transfer Date or became vacant after the Transfer Date, all in accordance with the terms of the Collective Agreement and Applicable Law.

8.2 Project Co Covenants - Terms and Conditions of Employment

- (a) Prior to the Transfer Date, Project Co shall manage, supervise and direct the Affected Employees in the performance of the Existing Facilities O&M having regard to the terms of the Collective Agreement.
- (b) From and after the Transfer Date, Project Co shall comply with the terms of the Collective Agreement.
- (c) Project Co shall recognize, or shall ensure that the relevant Project Co Party recognizes, the service that all Transferred Employees have accrued on or before the Transfer Date for the purposes of determining, with respect to the Transferred Employees, seniority and all other entitlements under the terms of the Collective Agreement and any other statutory entitlements.
- (d) Subject to Section 15.1(x), Project Co shall seek and diligently pursue, or cause the relevant Project Co Party to seek and diligently pursue, the consent of the Civic Pension and Benefits Committee (as described in the Pension Plan) to become a participating employer under the Pension Plan and the LTD Plan on or before the Transfer Date. The City shall provide Project Co with such information and assistance as Project Co may reasonably require in order to comply with its obligations under this Section 8.2(d).

- (e) Project Co agrees that, effective as of the Transfer Date, it shall establish, or cause the relevant Project Co Party to establish, new benefit plans (including short-term disability, life insurance, accidental death and dismemberment and healthcare) or shall designate, or cause the relevant Project Co Party to designate, any existing benefit plans to provide benefits to the Transferred Employees in compliance with the Collective Agreement in effect as of the Transfer Date. Where service is a relevant criterion, Project Co agrees to recognize, or to cause the relevant Project Co Party to recognize, the service of each Transferred Employee that was accrued to the Transfer Date for the purpose of determining eligibility for membership in and entitlement to benefits under Project Co's or such Project Co Party's benefit plans. For purposes of this Section 8.2(e), any reference to a Transferred Employee shall include such Transferred Employee and his or her dependents under the relevant benefit plans.
- (f) Subject to Schedule 9 (Employee Transition), each Transferred Employee shall cease to participate in and accrue benefits under the City's benefit plans (other than the Pension Plan and the LTD Plan) and shall commence participation in the benefit plans of Project Co or the relevant Project Co Party on the Transfer Date.

8.3 Transfer of Employees

- (a) The mechanics of the transfer of the Affected Employees shall be governed by Schedule 9 (Employee Transition).
- (b) The City shall provide Project Co with such reasonable assistance as the City is able to offer or arrange in connection with the transfer of the Affected Employees.
- (c) Subject to the terms of the Collective Agreement, the Transferred Employees shall:
 - (i) maintain their seniority and service with the City; and
 - (ii) have the right to post for any vacancy at the City, whether such vacancy occurred before or after the Transfer Date.
- (d) Project Co shall be solely responsible for recruiting replacement personnel required in respect of any vacancy that occurs as a result of a Transferred Employee transferring back to the City in accordance with this Section 8.3.

8.4 Pension Plan Deficit

- (a) In the event the Pension Plan is in a deficit position as of the Transfer Date and there is an obligation under the terms of the Pension Plan or Applicable Law for an employer to make an additional contribution to amortize such deficit, Project Co or the relevant Project Co Party shall, until December 31, 2015 (the "**Collective Agreement Expiry Date**"):
 - (i) pay the employer's portion of the additional contribution to the Pension Plan relating to the deficit for the Transferred Employees in respect of service on or before the Transfer Date, as such amount may be adjusted from time to time

(either before or after the Transfer Date) in accordance with the terms of the Pension Plan and the most recently filed actuarial valuation report (the “**Pre-Transfer Date Deficit Payment**”);

- (ii) pay the employer’s portion of the additional contribution to the Pension Plan relating to the deficit for the Transferred Employees in respect of service after the Transfer Date, as such amount may be adjusted from time to time in accordance with the terms of the Pension Plan and the most recently filed actuarial valuation report; and
 - (iii) remit all employee remittances for the Transferred Employees in relation to the Pension Plan, including the employee’s portion of the Pension Plan contribution relating to the deficit.
- (b) Beginning in the month following the month in which the Transfer Date occurs, the City shall make monthly payments to Project Co or the relevant Project Co Party in an amount equal to the Pre-Transfer Date Deficit Payment. The City will remit the Pre-Transfer Date Deficit Payment to Project Co or the relevant Project Co Party at least 5 Business Days prior to the date on which Project Co or the relevant Project Co Party is required to make a corresponding contribution to the Pension Plan.
- (c) From and after the Collective Agreement Expiry Date:
- (i) if Project Co or the relevant Project Co Party is entitled, in accordance with Applicable Law and any new collective agreement, to establish a new pension plan (the “**New Plan**”) and the Transferred Employees cease participating in the Pension Plan and commence participation in the New Plan, then the City shall be responsible for the cost of funding any payment required to be made to the Pension Plan relating to the deficit for the Transferred Employees in respect of service on or before the Transfer Date, as such liability is determined by the Pension Plan, and Project Co shall be responsible for all other costs of withdrawing from the Pension Plan; or
 - (ii) if Project Co or the relevant Project Co Party chooses or is required, in accordance with Applicable Law or any new collective agreement, to remain a participating employer in the Pension Plan, then Project Co or the relevant Project Co Party shall continue to pay the employer’s portion of the current service cost as well as the employer’s portion of the additional contribution to the Pension Plan relating to the deficit for the Transferred Employees and the City shall continue to make monthly payments to Project Co or the relevant Project Co Party in an amount equal to the Pre-Transfer Date Deficit Payment.

8.5 Labour Adjustment

- (a) No later than 60 days following the Collective Agreement Expiry Date, the parties, both acting reasonably, will agree on the cost impact to Project Co of any changes in the salary, wage, benefits (including sick bank, vacation accruals and overtime accruals) and other entitlements of each Affected Employee under the Collective Agreement for the

period from April 4, 2014 to the Transfer Date and the period from the Transfer Date to the Collective Agreement Expiry Date. Either party shall be entitled to seek compensation for any increase or decrease (as the case may be) in such costs so as to put such party in the position it would have been in had such changes not occurred.

- (b) If the City is required to compensate Project Co pursuant to this Section 8.5, then the City may pay such compensation either as a lump sum or, if agreed by Project Co, by way of an increase in the Infrastructure O&M Payments.
- (c) If Project Co is required to compensate the City pursuant to this Section 8.5, then Project Co shall pay such compensation by way of a decrease in the Infrastructure O&M Payments.
- (d) Each party agrees to provide the other party with such information and documentation as the other party may reasonably require to assess the cost impact to Project Co of any changes in the salary, wage, benefits (including sick bank, vacation accruals and overtime accruals) and other entitlements of each Affected Employee under the Collective Agreement.

9. MODIFICATIONS AND CHANGE ORDERS

9.1 Modification of Works Requirements

If, during the Construction Period, the City wishes to modify the Works, the Existing Facilities O&M or the Works Requirements, it shall proceed in accordance with Schedule 1 (Change Orders). If Project Co wishes to recommend modification of the Works, the Existing Facilities O&M or the Works Requirements, it may invite the City to 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 Existing Facilities O&M or the Works Requirements:

- (a) Schedule 18 (Technical Requirements) or any other affected Schedule (other than Schedule 14 (Payment Schedule), which is addressed in Section 9.1(d) below) shall be amended accordingly;
- (b) except as otherwise agreed between the City and Project Co, 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 Existing Facilities O&M or the Works Requirements, including any costs to Project Co occasioned by a delay in payment of the Milestone Payment or Substantial Completion, which costs shall be paid by the City following the Milestone Payment Target Date or the Substantial Completion Target Date, as applicable;
- (c) if Project Co anticipates that the Change Order will delay payment of the Milestone Payment or 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; and

- (d) except as otherwise agreed between the City and Project Co, if the Change Order will increase or decrease the cost to Project Co of carrying out the Existing Facilities O&M or the O&M, then the Existing Facilities O&M Payments or the Infrastructure O&M Payments, as appropriate, shall thereafter be adjusted in accordance with Schedule 1 (Change Orders).

9.2 Modification of O&M Requirements

If the City wishes to modify the O&M or the O&M Requirements, it shall proceed in accordance with Schedule 1 (Change Orders). If Project Co wishes to recommend modification of the O&M or the O&M Requirements, it may invite the City to 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 O&M or the O&M Requirements:

- (a) Schedule 18 (Technical Requirements) or any other affected Schedule (other than Schedule 14 (Payment Schedule) which is addressed in Section 9.2(b) below) shall be amended accordingly; and
- (b) except as otherwise agreed between the City and Project Co, if the Change Order will increase or decrease the cost to Project Co of carrying out the O&M, then the Infrastructure O&M Payments shall thereafter be adjusted in accordance with Schedule 1 (Change Orders).

9.3 Modifications to Infrastructure

The City shall be entitled, during the Operating Period, to undertake Modifications to the Infrastructure. The City shall direct Project Co to carry out any such Modification pursuant to 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 a Modification:

- (a) Schedule 18 (Technical Requirements) or any other affected Schedule (other than Schedule 14 (Payment Schedule) which is addressed in Section 9.3(c) below) shall be amended accordingly;
- (b) except as otherwise agreed between the City and Project Co, Project Co shall be entitled to payment from the City on a progress basis, invoiced and paid on a monthly basis, of the reasonable costs, calculated in accordance with Schedule 1 (Change Orders), of carrying out the Modification; and
- (c) except as otherwise agreed between the City and Project Co, if a Modification will increase or decrease the cost to Project Co of carrying out the O&M, then the Infrastructure O&M Payments shall thereafter be adjusted in accordance with Schedule 1 (Change Orders).

9.4 Determination of Costs

All payments on account of Change Orders under Sections 9.1, 9.2 or 9.3 and adjustments of Schedule 14 (Payment Schedule) shall be calculated in accordance with the provisions of Schedule 1 (Change Orders).

9.5 Other Work by City

The City shall be entitled, both during the Construction Period and the Operating Period, to undertake the subject matter of any proposed Change Order or any additional improvements within the Lands and within lands adjacent to the Lands, provided that:

- (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
- (b) if the activities of the City or any City Party do interfere with or disrupt Project Co's carrying out of the Project, such interference or disruption shall, subject to Section 15.1, constitute a Relief Event under Section 15.1(h).

Project Co shall provide all reasonable cooperation to facilitate the City or any City Party, including, without limitation, Western Potash Corp. and Spectra Energy Empress Management Inc., carrying out the subject matter of any proposed Change Order or any additional improvements within the Lands and within lands adjacent to the Lands.

10. HANDBACK UPON EXPIRY**10.1 Handback Requirements**

Upon expiry of the Term, Project Co shall leave the Infrastructure in the condition required by the Handback Requirements.

10.2 Independent Inspector

- (a) Not less than 66 months prior to the expiry of the Term, Project Co and the City shall jointly retain, in accordance with the City's procurement policies, an independent inspector acceptable to both parties, acting reasonably, to carry out inspections of the Infrastructure pursuant to this Section 10.2 (the "**Independent Inspector**"). The Independent Inspector shall be retained in accordance with the following:
 - (i) the Independent Inspector must be an engineering consultant having strong expertise in wastewater projects and cost estimation;
 - (ii) the Independent Inspector must agree to carry out and discharge the responsibilities contemplated by this Section 10.2 and Section 10.4 and be available to carry out and discharge such responsibilities promptly and within the timelines contemplated in this Agreement;

- (iii) the Independent Inspector must carry professional liability insurance with errors and omissions coverage of not less than \$1,000,000 (Index Linked) per claim;
 - (iv) all fees and expenses of the Independent Inspector are to be shared equally by Project Co and the City;
 - (v) the Independent Inspector shall be impartial to the City and Project Co when required to make any recommendation, determination or assessment; and
 - (vi) the agreement between the Independent Inspector, the City and Project Co shall, in addition to complying with the requirements of this Section 10.2, be in form and substance satisfactory to the City and Project Co, each acting reasonably.
- (b) In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector's engagement.
- (c) In the event the parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 10.2(a) or Section 10.2(b) by the specified deadline, each party shall, within 10 Business Days, select three independent and suitably qualified and experienced persons that would be acceptable to that party as the Independent Inspector, and:
- (i) if the parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (ii) if the parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 6 (Dispute Resolution Procedure).

10.3 Consultation re Handback Inspections

Not less than 7 years prior to the expiry of the Term, Project Co and the City will meet to discuss the schedule of handback inspections contemplated in Section 10.4 and Project Co's Management Systems and Plans having regard to the ongoing operation, maintenance and renewal of the Infrastructure by Project Co.

10.4 Handback Inspections

Project Co and the City shall cause the Independent Inspector to perform the following handback inspections (consisting of all appropriate examinations and tests) in order to assess what work (including renewal work) is likely to be required in order to achieve the Handback Requirements:

- (a) the first handback inspection shall be completed at a time, specified by the City following consultation with Project Co, that is at least 5 years prior to expiry of the Term;
- (b) the second handback inspection shall be completed at a time, specified by the City following consultation with Project Co, that is at least 3 years prior to expiry of the Term;

- (c) the third handback inspection shall be completed at a time, specified by the City following consultation with Project Co, that is at least 1 year prior to expiry of the Term; and
- (d) the fourth handback inspection shall be completed at a time, specified by the City following consultation with Project Co, that is not more than 1 month prior to the expiry of the Term.

The agreement between the Independent Inspector, the City and Project Co will require the Independent Inspector to provide a written report (the “**Independent Inspector’s Report**”) to Project Co and the City as soon as reasonably practicable and, in any event, within 30 days following the completion of each of the handback inspections referred to in this Section 10.4. The Independent Inspector’s Report shall include details of the examinations and tests performed by the Independent Inspector and the Independent Inspector’s assessment of the work that will be required to achieve the Handback Requirements and the cost of performing such work.

10.5 Procedure Following Inspections

Following each handback inspection under Section 10.3, Project Co shall within:

- (a) 90 days of receipt of the Independent Inspector’s Report following the first handback inspection;
- (b) 60 days of receipt of the Independent Inspector’s Report following the second handback inspection;
- (c) 15 days receipt of the Independent Inspector’s Report following of the third handback inspection; and
- (d) 7 days receipt of the Independent Inspector’s Report following of the fourth handback inspection,

prepare and deliver to the City a comprehensive workplan and schedule acceptable to the City, acting reasonably, designed to ensure that the Infrastructure will meet the Handback Requirements upon expiry of the Term, including a valuation of the existing spares inventory and a plan for remedying any shortages. 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.

10.6 Handback Requirements Holdback

If Project Co fails to deliver a workplan and schedule in accordance with Section 10.5 or, having delivered it, fails in any material respect to diligently carry out the workplan in accordance with the schedule, then the City may hold back from any amounts thereafter becoming payable to Project Co under this Agreement an aggregate amount (the “**Handback Requirements Holdback**”) that the Independent Inspector considers sufficient to achieve the Handback Requirements at the end of the Term, including with respect to the spares inventory, in the event that Project Co were to fail to do so.

The Handback Requirements Holdback shall be released to Project Co, without interest, as the work to achieve the Handback Requirements, as certified by the Independent Inspector, is done by Project Co (but not more frequently than monthly). If the Handback Requirements are not achieved by the expiry of the Term, the City may release Project Co from its obligation to achieve the Handback Requirements and may retain the remaining balance of the Handback Requirements Holdback as the City's sole and exclusive remedy in respect of Project Co's failure to achieve the Handback Requirements.

10.7 Substitution of Letter of Credit

In lieu of the City withholding or continuing to withhold the Handback Requirements Holdback, Project Co may deliver or cause to be delivered to the City an irrevocable, unconditional, on sight letter of credit in the amount of the Handback Requirements Holdback or the remaining balance of the Handback Requirements Holdback, as applicable (the "**Handback Letter of Credit**"), presentable for payment at a bank in Canada and issued by a bank authorized under the *Bank Act* (Canada) to do business in Canada (or issued by such other financial institution approved in advance for the purposes of this Section 10.7 by the City, who may grant or decline such approval in its absolute discretion), and having a senior, unsecured long-term issuer 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, Fitch Ratings or Moody's Investors Service (or any other major credit rating agency approved for the purposes of this Section 10.7 by the City, who may grant or decline such approval in its absolute discretion).

The City may present the Handback Letter of Credit for payment and retain the proceeds therefrom:

- (a) in the same circumstances in which it could retain the Handback Requirements Holdback pursuant to Section 10.6;
- (b) if Project Co fails to deliver or cause to be delivered to the City a renewal of the Handback Letter of Credit at least 30 days before the expiry date specified in the Handback Letter of Credit; or
- (c) if any of the senior, unsecured long-term credit ratings of the issuer of the Handback Letter of Credit becomes less than A+ (with a stable outlook) or equivalent and Project Co fails to deliver or cause to be delivered to the City a replacement of the Handback Letter of Credit no later than 21 days after being so requested by the City,

and, in any case, the amount received by the City upon presentation of the Handback Letter of Credit shall be dealt with by the City in the same manner as the Handback Requirements Holdback under Section 10.6.

Subject to Section 10.6, as the work to achieve the Handback Requirements is done by Project Co (but not more frequently than monthly), the City shall permit, on written application by Project Co, a corresponding reduction in the amount of the Handback Letter of Credit.

11. PAYMENT

11.1 Milestone Payment

The City shall pay to Project Co the Milestone Payment at the time and subject to the conditions specified in Schedule 13 (Milestone Payment), plus applicable GST and PST.

11.2 Substantial Completion Payment

On the date that is 5 Business Days following the Substantial Completion Date, the City shall pay to Project Co the Substantial Completion Payment, less the amount of the 30-Day Performance Test Holdback, if applicable, plus applicable GST and PST.

11.3 Existing Facilities O&M Payment

From and after the Existing Facilities O&M Effective Date to and excluding the Substantial Completion Date, the City shall pay to Project Co a monthly payment (each, an “**Existing Facilities O&M Payment**”) in respect of the Existing Facilities O&M calculated in accordance with Schedule 14 (Payment Schedule), as amended and adjusted under Sections 11.6 through 11.8, as applicable, and from time to time in accordance with the Existing Facilities O&M Index Factor, plus applicable GST and PST.

11.4 Monthly Payment Mechanism

From and after the Substantial Completion Date, the City shall pay to Project Co all-inclusive monthly payments (each, a “**Monthly Payment**”) calculated as follows:

- (a) the amount of the Capital Payment as set out in Schedule 14 (Payment Schedule), as amended and adjusted under Sections 11.6 through 11.8, as applicable; plus
- (b) the amount of the Infrastructure O&M Payment as set out in Schedule 14 (Payment Schedule), as amended and adjusted:
 - (i) under Sections 11.6 through 11.8, as applicable; and
 - (ii) from time to time in accordance with the Infrastructure O&M Index Factor; plus
- (c) the amount of the Renewal Payment as set out in Schedule 14 (Payment Schedule), as amended and adjusted:
 - (i) under Sections 11.6 through 11.8, as applicable; and
 - (ii) from time to time in accordance with the Renewal Index Factor; plus
- (d) applicable GST and PST;

less:

- (e) the amount of any Final Completion Holdback, which may subsequently be released to Project Co in accordance with Section 6.20;
- (f) the amount of any Handback Requirements Holdback, which may subsequently be released to Project Co in accordance with Section 10.6;
- (g) the amount of any Payment Adjustments made by the City in accordance with Section 12.2; and
- (h) any amount set off by the City in accordance with Section 11.9.

In the event that the above calculation produces a negative amount for any month, such amount may be set off by the City against the Monthly Payment for the next following month (or, if necessary, months).

The City's obligation to make the Monthly Payment each month until expiry of the Term (or earlier termination of this Agreement in accordance with its provisions) shall not be interrupted, abated or adjusted except as expressly set out in this Agreement.

11.5 Payment Procedure

Each Existing Facilities O&M Payment shall be paid on the 5th Business Day following receipt by the City of a Construction Period Payment Calculation submitted in accordance with Schedule 14 (Payment Schedule). In the event that Project Co disputes the amount of any Existing Facilities O&M Payment made by the City, Project Co shall bring such dispute to the attention of the City within 90 days after the date the Existing Facilities O&M Payment is received.

Each Monthly Payment shall be paid on the 5th Business Day following receipt by the City of an Operating Period Payment Calculation submitted in accordance with Schedule 14 (Payment Schedule). In the event that Project Co disputes the amount of any Monthly Payment made by the City, Project Co shall bring such dispute to the attention of the City within 90 days after the date the Monthly Payment is received.

Unless specific timeframes are stipulated for payment of any other amounts payable by one party to the other party under this Agreement, such amounts shall be due within 30 days of receipt of an invoice therefor.

11.6 Adjustment of the Payment Schedule

The Payment Schedule is premised upon Substantial Completion being achieved on the Substantial Completion Target Date. Upon Substantial Completion, the Payment Schedule shall be proportionately adjusted and amended so that:

- (a) the first Monthly Payment shall be calculated based on the number of days from and including the Substantial Completion Date to and including the last day of the month in which Substantial Completion is achieved;

- (b) the final Monthly Payment shall be calculated based on the number of days from and including the first day of the month in which the Term expires to and including the last day of the Term; and
- (c) the timing of all other Monthly Payments are adjusted accordingly.

11.7 Early Completion

In the event that Substantial Completion is achieved prior to the Substantial Completion Target Date, Schedule 14 (Payment Schedule) shall be adjusted and amended to reflect that:

- (a) the Operating Period shall expire 330 months from the Substantial Completion Date;
- (b) the final Existing Facilities O&M Payment shall be calculated based on the number of days from and including the first day of the month in which Substantial Completion is achieved to and excluding the Substantial Completion Date;
- (c) the first Monthly Payment shall be calculated based on the number of days from and including the Substantial Completion Date to and including the last day of the month in which Substantial Completion is achieved; and
- (d) the final Monthly Payment shall be calculated based on the number of days from and including the first day of the month in which the Term expires to and including the last day of the Term,

it being the mutual intent of the parties that, in such event, both the Term and the aggregate amount of Existing Facilities O&M Payments payable to Project Co shall be reduced in accordance with the foregoing.

11.8 Late Completion

In the event that Substantial Completion is not achieved until after the Substantial Completion Target Date:

- (a) Project Co shall continue to receive the Existing Facilities O&M Payments, which shall be calculated as the average of all Existing Facilities O&M Payments (prior to the application of any Payment Adjustments or other deductions or set-offs) that would have been payable prior to the Substantial Completion Target Date; and
- (b) Schedule 14 (Payment Schedule) shall not be adjusted or amended, except that:
 - (i) Project Co is not entitled to any payment for any month prior to the month in which Substantial Completion is achieved but subject to the provisions of Sections 9.1(b), 11.8(a), 13.5, 14.1(e), 14.1(f), 15.2(e) and 15.2(f);
 - (ii) Project Co is entitled to payment of the Existing Facilities O&M Payment for the month in which Substantial Completion is achieved calculated based on the

number of days from and including the first day of the month in which Substantial Completion is achieved to and excluding the Substantial Completion Date; and

- (iii) Project Co is entitled to payment of the Monthly Payment for the month in which Substantial Completion is achieved calculated based on the number of days from and including the Substantial Completion Date to and including the last day of the month in which Substantial Completion is achieved,

it being the mutual intent of the parties that, in such event, both the Operating Period and the aggregate amounts of Capital Payments and Infrastructure O&M Payments payable to Project Co shall be reduced in accordance with the foregoing.

11.9 Set-off

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

- (a) finally determined to be payable by Project Co to the City under this Agreement or in connection with any Permits and Approvals; 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 an amount contemplated by Section 11.9(b), shall give Project Co such advance notice as may be practicable in the circumstances, with a view to affording Project Co an opportunity to dispute, or make arrangements to remove or eliminate, the lien or claim.

11.10 Interest on Overdue Payments

Any amount payable under this Agreement and not paid when it becomes due shall bear interest at Prime plus 2%, 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 2%, without compounding, shall be payable from the date when such amount ought to have been paid until the date (or dates) of payment.

11.11 Taxes

- (a) All amounts specified in this Agreement are expressed exclusive of applicable GST and PST but inclusive of all other taxes. Except as specified in Section 11.11(b), applicable GST and PST shall be paid simultaneously with any amount due hereunder, including, for greater certainty, any compensation on termination and holdbacks.
- (b) Within three weeks 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, less any GST payable on the 30-Day Performance Test Holdback, if applicable, in accordance with paragraph 168(7) of the *Excise Tax Act* (Canada), which amount, if any, shall be set out in an invoice issued by Project Co to the City upon the occurrence of Substantial Completion and shall reflect the capital cost of construction of the Works. For greater certainty, 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 the Milestone Payment and the Substantial Completion Payment.

- (c) In each Operating Period Payment Calculation, Project Co shall show on a distinct line of the invoice the Monthly Previously Paid GST Amount used to determine the amount of unpaid GST payable by the City on such Monthly Payment. For greater certainty, a Monthly Previously Paid GST Amount must be credited to the City on each invoice for a Monthly Payment.

11.12 Changes in Recoverability of Tax Credits

- (a) The City will, within 30 days following receipt by the City of an invoice from Project Co in respect of such amounts, 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 the Project 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 the Project Agreement.
- (b) For the purposes of this Section 11.12, the term “**Irrecoverable Tax**” means GST, 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 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 or otherwise performing the Existing Facilities O&M or the O&M to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST, or after obtaining an input tax credit, refund, rebate or exemption, is required to pay any amounts to the Canada Revenue Agency or any other Governmental Authority in respect of all or any part of the input tax credit, refund, rebate or exemption claimed.
- (c) For the purposes of this Section 11.12, the term “**Recoverable Tax**” means GST or PST incurred by Project Co 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 or otherwise performing the Existing

Facilities O&M or the O&M to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST, minus any amounts that Project Co is required to pay to the Canada Revenue Agency or any other Governmental Authority in respect of all or any part of the input tax credit, refund, rebate or exemption claimed.

11.13 Information and Assistance Provided by Project Co

- (a) 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, outside of the City's routine GST and PST filings, to which the City is entitled.
- (b) 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.
- (c) 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.

11.14 Withholding Taxes

Project Co shall not 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 under this Agreement.

12. INDEXING AND PAYMENT ADJUSTMENTS

12.1 Indexing of Existing Facilities O&M and Infrastructure O&M Payments

The Existing Facilities O&M Payment and the Infrastructure O&M Payment are subject to annual indexing for inflation in the manner and at the times set out in Schedule 10 (Index Factor) and Schedule 14 (Payment Schedule).

12.2 Payment Adjustments

The Existing Facilities O&M Payment and the Monthly Payment are subject to Payment Adjustments on the basis set out in Schedule 18 (Technical Requirements) and as summarized in Schedule 15 (Payment Adjustments Summary), applied at the times and in the manner set out in Schedule 18 (Technical Requirements). In the event of any inconsistency between the criteria for and descriptions of the Payment Adjustments set out in Schedule 18 (Technical Requirements) and the summaries of such criteria and such descriptions included in Schedule 15

(Payment Adjustments Summary), the more detailed provisions of Schedule 18 (Technical Requirements) shall govern. All Payment Adjustments shall be subject to annual indexing for inflation in the manner and at the times set out in Schedule 10 (Index Factor) and Schedule 14 (Payment Schedule).

12.3 Notification of Payment Adjustments

Each of Project Co and the City shall notify the other in a timely manner upon becoming aware of circumstances that give rise to a Payment Adjustment. Failure by either party to give such notice in a timely manner shall not prevent the City from claiming the Payment Adjustment, but either party may assert against the other a claim for any damages resulting from the failure to give notice in a timely manner.

13. INSURANCE, DAMAGE AND DESTRUCTION

13.1 Insurance Requirements

Project Co shall maintain in place all of the insurance specified in Sections 3 and 4 of Schedule 11 (Insurance Requirements).

13.2 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 Agreement is in effect and complies with the insurance requirements in this Agreement, of all insurance policies required to be obtained and maintained by Project Co at least 5 days prior to Project Co making any entry upon the Lands for the purpose of commencing construction;
- (b) in relation to the project specific insurance required for the Construction Period, certified copies of all insurance policies evidencing the insurance required to be obtained and maintained by Project Co as soon as reasonably practicable and, in any event, within 30 days of the date hereof;
- (c) in relation to the insurance required for the Operating 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 Agreement is in effect and complies with the insurance requirements in this Agreement, of all insurance policies required to be obtained and maintained by Project Co prior to and as a precondition to Substantial Completion;
- (d) in relation to the project specific insurance required for the Operating Period, certified copies of all insurance policies evidencing the insurance required to be obtained and maintained by Project Co prior to and as a precondition to Substantial Completion; and

- (e) not less than 10 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 30 days after expiration of any then current policy, certified copies of policies or detailed certificates of insurance, as applicable, evidencing to the satisfaction of the City, acting reasonably, the renewal, extension or replacement of such insurance.

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 Agreement and shall not operate as a waiver by the City of any rights.

Project Co shall promptly notify the City if it receives notice or otherwise becomes aware that any of the insurance required under this Agreement will not be renewed or may be restricted by the insurer(s) on risk.

13.3 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 13.2 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 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.

13.4 Repair of Damage - Construction Period

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

- (a) damage caused by a Force Majeure Event (in which case Sections 14.1 and 14.3 apply);
- (b) Environmental Damage or Degradation described in Sections 5.10(e)(i) or 5.10(e)(ii) (in which case Section 5.10(e) applies);
- (c) damage to any of the Existing Lagoons, except to the extent caused by Project Co or any Project Co Party; and
- (d) damage caused by the City or any City Party.

13.5 Milestone Payment Delayed

If damage to the Existing Facilities or to the Infrastructure during the Construction Period causes payment of the Milestone Payment to be delayed beyond the Milestone Payment 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 mitigate the delay and, at the City's request and cost, repair the damage; and
- (c) Project Co maintained any insurance required by Section 13.1 that is relevant to the damage,

the City will, to the extent the damages occasioned to Project Co by the delay is not insured against, from and after the Milestone Payment Target Date, compensate Project Co in an amount equal to the interest payable on any outstanding debt financing during the period of the delay, subject to Project Co's obligation to take reasonable steps to mitigate the delay.

13.6 Substantial Completion Delayed

If damage to the Existing Facilities or to the Infrastructure 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 mitigate the delay and, at the City's request and cost, repair the damage; and
- (c) Project Co maintained any insurance required by Section 13.1 that is relevant to the damage,

Project Co's Construction Schedule and the dates in Sections 6.12, 19.3(g) and 19.3(h) shall be adjusted to take account of the period during which Project Co is taking all reasonable action to diligently mitigate the delay and, at the City's request and cost, repair the damage, 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 (and shall, from and after the Substantial Completion Target Date, make advance payment to Project Co on account of such damages, to the extent such damages can reasonably be determined prior to Substantial Completion, it being mutually anticipated by the parties that such damages and such advance payment will include at least an amount equal to each Capital Payment that would have been payable had Substantial Completion been achieved and each Existing Facilities O&M Payment otherwise due and payable in accordance with Section 11.3), subject to Project Co's obligation to take reasonable steps to mitigate the delay and to mitigate its damages.

Notwithstanding that advance payment to Project Co of such damages will not start until the Substantial Completion Target Date, if, prior to the Substantial Completion Target Date, Project Co incurs direct out-of-pocket expenditures as part of such damages and such out-of-pocket expenditures cannot reasonably be funded until the Substantial Completion Target Date by the Project Financing, then the City shall make advance payment to Project Co on account of such out-of-pocket expenditures within 10 Business Days following receipt by the City of an invoice from Project Co in respect of such out-of-pocket expenditures.

13.7 Repair of Damage - Operating Period

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

- (a) damage caused by risks that are Primary Exclusions;
- (b) damage caused by Force Majeure Events (in which case Sections 14.2 and 14.3 apply);
- (c) damage to any of the Existing Lagoons, except to the extent caused by Project Co or any Project Co Party; and
- (d) damage which is expressly, specifically and in accordance with Section 4.4 of Schedule 11 (Insurance Requirements), excluded from coverage in the property insurance policy Project Co is required to maintain pursuant to Section 4.4 of Schedule 11 (Insurance Requirements) and which is caused by the City or a City Party.

In the case of insured damage caused by the City or a City Party, the City will, provided that Project Co has made a claim under Project Co's insurance required under Schedule 11 (Insurance Requirements) and the amount of the damage claim accepted by the insurer exceeds \$25,000 (Index Linked), pay Project Co the lesser of \$25,000 (Index Linked) and the actual deductible applicable to the claim pursuant to Project Co's insurance within 30 days following receipt by the City of an invoice from Project Co in respect of such amount.

All proceeds from Project Co's insurance required under Schedule 11 (Insurance Requirements), except for the proceeds of any business interruption insurance or similar insurance protecting against lost revenues that Project Co may choose to carry and that may be associated with Project Co's insurance required under Schedule 11 (Insurance Requirements), in respect of any damage to the Infrastructure must be applied by Project Co to repair, reinstate and replace each part or parts of the Infrastructure in respect of which the proceeds are payable.

13.8 Damage Event

Upon the occurrence of damage contemplated under Section 13.7(a) to 13.7(d) (each, a "**Damage Event**"), the City is obligated to repair the damage and, to that end, the City shall direct Project Co to repair the damage, and Project Co shall repair the damage and invoice the City the amount to which Project Co would be entitled if the work were a Change Order Directive governed by Schedule 1 (Change Orders), provided that, if the City anticipates that the cost of repairs necessitated by a particular Damage Event will exceed \$25,000 (Index Linked), the City may instead tender the repair work, in which case:

- (a) the City shall ensure that the person contracted to repair the damage takes all commercially reasonable measures to minimize interference with or disruption to Project Co's carrying out of the O&M and, if the repair work causes damage to the Lands or any other part of the Infrastructure or if the repair work interferes with or disrupts Project Co's carrying out of the O&M, such interference or disruption shall, subject to Section 15.1, constitute a Relief Event under Section 15.1(i);

- (b) for all purposes related to the Handback Requirements, Project Co shall not be obligated to make good any deficiency or defect in the repair work; and
- (c) if the repair work materially and adversely alters the risk profile of the O&M or materially and adversely alters the risk profile of the Handback Requirements as applied to the repair work, Project Co is entitled to reasonable compensation therefor from the City.

For greater clarity, if the repair work by others results in changes to the O&M, then Section 9.2 shall apply.

13.9 Review and Benchmarking of Insurance

At any time during the Operating Period but not more frequently than annually, at the request of either Project Co or the City, Project Co and the City shall jointly review Schedule 11 (Insurance Requirements) and:

- (a) amend Schedule 11 (Insurance Requirements) as necessary to maintain appropriate coverage in light of any changes in applicable industry standards and coverage requirements since the date hereof or the date of the last review, as the case may be; and
- (b) adjust, upwards or downwards, the Infrastructure O&M Payments coming due from and after the first anniversary of the date hereof to follow the review so as to reflect generally applicable changes to insurance premiums payable by wastewater treatment facility operators in Canada (having regard to any changes in coverage arising under Section 13.9(a) and otherwise having regard only to the insurance required by Section 4 of Schedule 11 (Insurance Requirements) and not to any other insurance required by Schedule 11 (Insurance Requirements) or any additional insurance Project Co chooses to carry), determined as of such anniversary on the basis of industry standard insurance premiums for services in Canada approximating the O&M Requirements (the “**Benchmark Insurance Premium**”), which adjustment shall be calculated in accordance with cost increases indicated by the Benchmark Insurance Premium but subject to the following:
 - (i) the calculation shall take into account the application of the indexing factor in Section 12.1, so as to avoid double-counting; and
 - (ii) no upwards adjustment shall exceed the increase in Project Co’s actual cost of the insurance required by Section 4 of Schedule 11 (Insurance Requirements).

13.10 Definition Uninsurability

Notwithstanding Section 13.1, Project Co shall not be obligated during the Operating Period to maintain insurance against a risk that has become uninsurable. A risk shall be considered to have become uninsurable only if:

- (a) insurance against that risk is generally not available to Canadian wastewater treatment facility operators with reputable insurers in good standing; or

- (b) the terms and conditions generally required by insurers for insuring such risk are such that the risk is generally not being insured against by Canadian wastewater treatment facility operators,

and shall only be considered an uninsurable risk during such period when Project Co has not obtained insurance against the risk. Upon Project Co becoming aware of an uninsurable risk, Project Co shall, in a timely manner, give the City notice of the uninsurable risk, including any details as may be reasonably requested by the City.

13.11 Consequences of Uninsurability

For so long as a risk is uninsurable, the Infrastructure O&M Payment shall abate by the amount of any reduction in the insurance premiums paid by Project Co (or that would have been paid by Project Co had Project Co obtained insurance in accordance with Schedule 11 (Insurance Requirements)) as a result of no longer being required to insure against such risk.

In the event that, subsequent to the Submission Date, a risk that Project Co would have been required to insure against in accordance with this Agreement becomes an uninsurable risk and a loss occurs in respect of that risk, then the City shall, at its option and upon notice to Project Co, either:

- (a) assume responsibility for the loss, to the extent of the insurance proceeds that would have been payable if the insurance specified in Section 4 of Schedule 11 (Insurance Requirements) had been available to and was obtained by Project Co (having regard to the coverage limits specified in Section 4 of Schedule 11 (Insurance Requirements) and any applicable deductibles) and, in the event that the loss includes damage to the Infrastructure, then Project Co shall proceed as if the repairs necessitated by the loss were requested by the City pursuant to a Change Order Directive under Schedule 1 (Change Orders); or
- (b) declare a Force Majeure Termination, pay the Termination Payment required by Section 21.7 and, if applicable, assume responsibility for the loss, to the extent of the insurance proceeds that would have been payable if the insurance specified in Section 4 of Schedule 11 (Insurance Requirements) had been available to and was obtained by Project Co (having regard to the coverage limits specified in Section 4 of Schedule 11 (Insurance Requirements) and any applicable deductibles),

provided that the City shall not declare a Force Majeure Termination under Section 13.11(b) unless:

- (c) the City has incurred a liability under this Section 13.10 of at least \$5,000,000 (Index Linked) in any calendar year or at least \$10,000,000 (Index Linked) in aggregate at any time during the Operating Period; and
- (d) the City has first afforded Project Co a reasonable opportunity to meet with the City to discuss alternative ways to address risks that have become uninsurable.

14. FORCE MAJEURE**14.1 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) no Payment Adjustment shall be applicable, to the extent that and for so long as performance is prevented by the Force Majeure Event;
- (c) if the Force Majeure Event wholly or substantially prevents Project Co from proceeding with the Works for a period of at least 5 days, then Project Co's Construction Schedule and the dates in Sections 6.12, 19.3(g) and 19.3(h) shall be adjusted to take account of the period during which Project Co is prevented by the Force Majeure Event from proceeding with the Works;
- (d) 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;
- (e) if by reason of the Force Majeure Event, payment of the Milestone Payment is delayed until beyond the Milestone Payment Target Date, then the City shall, from and after the Milestone Payment Target Date, pay to Project Co an amount equal to the interest payable on any outstanding debt financing during the period of the delay, subject to Project Co's obligation to take reasonable steps to mitigate the delay;
- (f) 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 (and shall, from and after the Substantial Completion Target Date, make advance payment to Project Co on account of such damages, to the extent such damages can reasonably be determined prior to Substantial Completion, it being mutually anticipated by the parties that such damages and such advance payment will include at least an amount equal to each Capital Payment that would have been payable had Substantial Completion been achieved and each Existing Facilities O&M Payment otherwise due and payable in accordance with Section 11.3), 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. Notwithstanding that advance payment to Project Co of such damages will not start until the Substantial Completion Target Date, if, prior to the Substantial Completion Target Date, Project Co incurs direct out-of-pocket expenditures as part of such damages and such out-of-pocket expenditures cannot reasonably be funded until the Substantial Completion Target Date

by the Project Financing, then the City shall make advance payment to Project Co on account of such out-of-pocket expenditures within 10 Business Days following receipt by the City of an invoice from Project Co in respect of such out-of-pocket expenditures;

- (g) no damages are payable under Section 14.1(e) or 14.1(f) to the extent that the damages are covered (or would have been covered but for Project Co's failure to comply with Section 13) by insurance maintained by or for the benefit of Project Co;
- (h) if one or more Force Majeure Events results in Project Co being wholly or substantially prevented from proceeding with the Works for an aggregate period of at least 120 days, then the Payment Schedule shall be adjusted and amended by postponing all Renewal Payments for the duration of the period (rounded to the nearest month) during which Project Co is prevented from proceeding with the Works, provided that, in no event, shall Renewal Payments be postponed beyond the end of the Term; and
- (i) 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.

14.2 Force Majeure During Operating Period

If a Force Majeure Event occurs during the Operating 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) no Payment Adjustment shall be applicable, to the extent that and for so long as performance is prevented by the Force Majeure Event;
- (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; and
- (d) if and for so long as all or any portion of the Infrastructure is inoperable as a result of the Force Majeure Event, then the Infrastructure O&M Payment, exclusive of the Renewal Payment, shall abate to reflect the actual cost to Project Co of performing the O&M for that portion of the Infrastructure that remains operable.

14.3 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 Infrastructure or otherwise addressing the consequences of the Force Majeure Event.

Except to the extent that damage caused to the Infrastructure 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 14.3(a), declines to repair the damage, that shall, subject to Section 15.1, constitute a Relief Event under Section 15.1(n) (but without prejudice to any termination right arising under Section 20.3).

15. RELIEF EVENT

15.1 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 6.11, a stop work order issued or opening up requested by the City if it is subsequently determined that the relevant component of the Works was in accordance with the Works Requirements or that Project Co did comply with the other obligations of this Agreement, as applicable;
- (c) a Designated Change in Law coming into effect after the Submission Date;
- (d) any Environmental Damage or Degradation in, on, under or around the Lands or the Existing Facilities that was unknown to Project Co at the Submission Date or was subsequently caused by parties other than Project Co or any Project Co Party;
- (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 of competent jurisdiction directly resulting from:
 - (i) a challenge to the selection process under which Project Co was awarded the right to enter into this Agreement;
 - (ii) a third party claim of an interest in the Lands or a portion thereof; or

- (iii) 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 construction, maintenance or operation industries in Saskatchewan or is directed at the City, other than a general strike or other labour disruption initiated by Project Co or any Project Co Party or a strike involving only employees of Project Co or any Project Co Party;
- (h) in the circumstances specified in Section 9.5(b), any interference with or disruption of Project Co's carrying out of the Project;
- (i) in the circumstances specified in Sections 13.4 and 13.8(a), any interference with or disruption of Project Co's carrying out of the Existing Facilities O&M or the O&M, as applicable;
- (j) in the circumstances specified in Section 19.2(f), any Remedial Action taken by the City;
- (k) if, despite Project Co using commercially reasonable efforts 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, unregistered utility rights of way, easements, leases or other similar interests, other than Identified Encumbrances, that pertain to the Lands;
- (l) protest actions by persons protesting the construction of the Works or any other protest action on the Lands, provided that Project Co uses commercially reasonable efforts to mitigate the effect of such protest actions;
- (m) the presence on or around the Lands of animal or plant species protected by any Applicable Law, which presence was unknown to Project Co at the Submission Date;
- (n) in the circumstances specified in Section 14.3, 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;
- (o) the willful or accidental addition of contaminants to the influent wastewater by any person (other than Project Co or any Project Co Party) such that the condition of the influent wastewater creates a serious and imminent threat of damage to the Infrastructure or would render the continued discharge of Treated Wastewater a violation of the Effluent Standards;
- (p) any failure of the Raw Wastewater to be within the parameters set out in Tables 3.4.2A, 3.4.2B, 4.5A and 4.5B of Schedule 18 (Technical Requirements);
- (q) the breach by the City of its obligations under a Utility Agreement;
- (r) any failure of any of the Existing Lagoons;

- (s) during the Construction Period, any failure of any component of the Existing Facilities that will not form part of the Infrastructure in accordance with Project Co's Designs;
- (t) any interference with the Project by persons claiming aboriginal title or treaty rights in respect of all or any part of the Lands;
- (u) any revocation of the determination made by the Saskatchewan Ministry of the Environment that the Project is not required to undergo an environmental impact assessment pursuant to *The Environmental Assessment Act* (Saskatchewan), other than a revocation arising as a result of Project Co's Designs, Project Co's Management Systems and Plans or the Detailed Designs;
- (v) during the Construction Period, the willful or accidental discharge of contaminants to the Existing Facilities from Hauled Waste or Hydrovac Waste by any person (other than Project Co or any Project Co Party) which creates a serious and imminent threat of damage to the Existing Facilities or would render the continued discharge of Treated Wastewater a violation of the Effluent Standards;
- (w) any defect or deficiency in the Project arising from or directly related to:
 - (i) any work undertaken by the City in accordance with Section 9.5; or
 - (ii) any repair work undertaken by the City in accordance with Section 13.8,provided that, within 90 days of the completion of such work, Project Co provides written notice to the City of the occurrence of such defect or deficiency; and
- (x) any extraordinary steps Project Co, or the relevant Project Co Party, is required to take to become or attempt to become a participating employer under the Pension Plan and the LTD Plan, including an application to the Saskatchewan Labour Relations Board,

but excluding, in any case, any event to the extent caused by the negligence 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.

15.2 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 inability to perform or delay in performing that obligation;
- (b) no Payment Adjustment shall be applicable, to the extent that and for so long as performance is prevented by the Relief Event;

- (c) if the Relief Event wholly or substantially prevents Project Co from proceeding with the Works for a period of at least 5 days, or if multiple Relief Events when taken together wholly or substantially prevent Project Co from proceeding with the Works for a period of at least 5 days and each such Relief Event wholly or substantially prevents Project Co from proceeding with the Works for a period of at least 2 days, then Project Co's Construction Schedule and the dates in Sections 6.12, 19.3(g) and 19.3(h) shall be adjusted to take account of the period during which Project Co is prevented by the Relief Event from proceeding with the Works;
- (d) 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;
- (e) if by reason of the Relief Event, payment of the Milestone Payment is delayed until beyond the Milestone Payment Target Date, then the City shall, from and after the Milestone Payment Target Date, pay to Project Co an amount equal to the interest payable on any outstanding debt financing during the period of the delay, subject to Project Co's obligation to take reasonable steps to mitigate the delay;
- (f) 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 (and shall, from and after the Substantial Completion Target Date, make advance payment to Project Co on account of such damages, to the extent such damages can reasonably be determined prior to Substantial Completion, it being mutually anticipated by the parties that such damages and such advance payment will include at least an amount equal to each Capital Payment that would have been payable had Substantial Completion been achieved and each Existing Facilities O&M Payment otherwise due and payable in accordance with Section 11.3), subject to Project Co's obligation to take reasonable steps to mitigate the delay and to mitigate its damages. Notwithstanding that advance payment to Project Co of such damages will not start until the Substantial Completion Target Date, if prior to the Substantial Completion Target Date Project Co incurs direct out-of-pocket expenditures as part of such damages and such out-of-pocket expenditures cannot reasonably be funded until the Substantial Completion Target Date by the Project Financing, then the City shall make advance payment to Project Co on account of such out-of-pocket expenditures within 10 Business Days following receipt by the City of an invoice from Project Co in respect of such out-of-pocket expenditures;
- (g) if the Relief Event, other than a Relief Event under Section 15.1(s), 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 Works or the Existing Facilities O&M, including any reasonable mitigation costs, by at least \$25,000, then subject to Section 15.4 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 15.2(e) or 15.2(f),

the City shall, within 10 Business Days following receipt from Project Co of appropriate documentation acceptable to the City, acting reasonably, 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 18.3;
 - (ii) if the effect of the Relief Event is tantamount to a change in the Works Requirements, the amount that would have been payable by the City if the change in the Works Requirements had been a Change Order governed by Section 9.1 and requested by the City pursuant to a Change Order Directive; and
 - (iii) in any other case, the amount by which Project Co's net costs of carrying out the Works or the Existing Facilities O&M have increased;
- (h) no damages are payable under Section 15.2 to the extent that the damages are covered (or would have been covered but for Project Co's failure to comply with Section 13) by insurance maintained by or for the benefit of Project Co;
- (i) if the Relief Event, in the case of a Relief Event under Section 15.1(s), will increase Project Co's net cost of carrying out the Works or the Existing Facilities O&M, including any reasonable mitigation costs, by at least \$10,000, then subject to Section 15.4 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 15.2(e) or 15.2(f), the City shall, within 10 Business Days following receipt from Project Co of appropriate documentation acceptable to the City, acting reasonably, 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 18.3;
 - (ii) if the effect of the Relief Event is tantamount to a change in the Works Requirements, the amount that would have been payable by the City if the change in the Works Requirements had been a Change Order governed by Section 9.1 and requested by the City pursuant to a Change Order Directive; and
 - (iii) in any other case, the amount by which Project Co's net costs of carrying out the Works or the Existing Facilities O&M have increased;
- (j) if one or more Relief Events results in Project Co being wholly or substantially prevented from proceeding with the Works for an aggregate period of at least 120 days, then the Payment Schedule shall be adjusted and amended by postponing all Renewal Payments for the duration of the period (rounded to the nearest month) during which Project Co is prevented from proceeding with the Works, provided that, in no event, shall Renewal Payments be postponed beyond the end of the Term; and
- (k) 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.

15.3 Relief Event During Operating Period

If a Relief Event occurs during the Operating 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 inability to perform or delay in performing that obligation;
- (b) no Payment Adjustment shall be applicable, to the extent that and for so long as performance is prevented by the Relief Event;
- (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; and
- (d) if the Relief Event, when aggregated with the effect of any other Relief Event or Relief Events occurring in the same rolling 12 month period and not previously claimed for by Project Co will increase Project Co's net cost of carrying out the O&M, including any reasonable mitigation costs, by at least \$10,000 (Index Linked) over the remainder of the Term, then subject to Section 15.4 and subject in every case to Project Co's obligation to take reasonable steps to mitigate the increase in its costs, the City shall, within 10 Business Days following receipt from Project Co of appropriate documentation acceptable to the City, acting reasonably, 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 18.3;
 - (ii) if the effect of the Relief Event is tantamount to a change in the O&M Requirements, the amount that would have been payable by the City if the change in the O&M Requirements had been a Change Order governed by Section 9.2 and requested by the City pursuant to a Change Order Directive; and
 - (iii) in any other case, the amount by which Project Co's net costs of carrying out the O&M have increased.

15.4 Procedure on Relief Event

Immediately 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 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.

16. PROJECT CO'S REPRESENTATIONS AND OBLIGATIONS

16.1 Project Co's Representations

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

- (a) Project Co is duly organized, validly existing and in good standing in Saskatchewan, is registered and otherwise lawfully authorized to do business under the laws of Saskatchewan and has the corporate 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 have been disclosed to the City;
- (d) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform its obligations under this Agreement;
- (e) 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 17.1;
- (f) 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;
- (g) Project Co is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada);
- (h) 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 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;

- (i) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its registration number is 804040939;
- (j) Project Co is registered under *The Provincial Sales Tax Act* (Saskatchewan) and its registration number is 5017660; and
- (k) Project Co or the applicable Project Co Party is registered with the Saskatchewan Workers' Compensation Board.

16.2 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:

- (a) during the Construction Period, a monthly report on the progress of the Works, including the percentage of the Works completed in such month and to date, the date Project Co expects to achieve the Effluent Standards applicable following the Substantial Completion Target Date, the date Project Co expects to be paid the Milestone Payment, the date Project Co expects to achieve Substantial Completion and any material events, developments or circumstances arising in relation to the Works since the last monthly report, all in a form and format prescribed or approved from time to time by the City, acting reasonably;
- (b) throughout both the Construction Period and the Operating Period, a monthly report noting all circumstances known to Project Co that trigger or, if they continue, will trigger a Payment Adjustment and any other events, developments or circumstances material to Project Co's performance of the Existing Facilities O&M and the O&M, all in a form and format prescribed or approved from time to time by the City, acting reasonably;
- (c) throughout both the Construction Period and the Operating Period, a monthly report including all information which must be provided to any Governmental Authority with respect to meeting the Effluent Standards, 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;
- (d) throughout both the Construction Period and the Operating Period, an annual report:
 - (i) summarizing any changes to the shareholdings in Project Co and in the ultimate parent corporation of Project Co; and
 - (ii) confirming:
 - (A) that no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform its obligations under this Agreement;

- (B) that Project Co is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and
 - (C) whether there are any 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 that have not been disclosed by Project Co to the City prior to the date of such annual report and 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 whether Project Co has any 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;
- (e) during the Operating Period, an annual report summarizing Project Co's expenditures on renewal of the Infrastructure, all in a form and format prescribed or approved from time to time by the City, acting reasonably;
 - (f) throughout both the Construction Period and the Operating Period, copies of Project Co's quarterly financial statements and annual financial statements (each of which may be delivered in confidence), in each case prepared in accordance with GAAP;
 - (g) copies of all other financial reporting provided from time to time to any lender providing all or any part of the Senior Debt Financing;
 - (h) such other periodic reports as the City may from time to time reasonably require; and
 - (i) throughout both the Construction Period and the Operating Period, a response delivered in a timely manner to any inquiry reasonably made by the City in relation to any aspect of the Project, this Agreement or the business of Project Co to the extent directly related to the Project 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 and the City will not disclose such reporting unless required by PPP Canada Ltd. or any Governmental Authority, in which case such disclosure shall be subject to Applicable Law.

16.3 Records

Project Co shall, following the date hereof and for a period of two years following expiry of the Term or earlier termination of this Agreement:

- (a) maintain, in an appropriate form, full accounting records and other operations, maintenance and renewal records in respect of the performance by Project Co of its obligations under this Agreement and the performance of the Infrastructure; 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.

Upon expiry of the Term, 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 any City Party assuming responsibility for performing the O&M.

16.4 Information and General Audit Rights

- (a) Project Co shall provide and shall cause each Project Co Party to provide to the City all information, reports, documents, records and the like with respect to the Project, in the possession of, or available to, Project Co as the City may reasonably require from time to time for any purpose in connection with this Agreement. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to any Project Co Party with respect to the Project, shall be available to Project Co and Project Co shall include relevant terms in all subcontracts to this effect.
- (b) Project Co shall also provide to the City, and shall require each Project Co Party to provide to the City (at the City's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 16.4(a) which subsequently come into the possession of, or become available to, Project Co or any Project Co Party, as the City may reasonably require from time to time to enable the City to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Existing Facilities or the Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters.
- (c) Project Co shall promptly after receipt provide the City with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Project Co Party from any Governmental Authority in relation to any of the Project, the Existing Facilities or the Infrastructure, and Project Co shall include relevant terms in all subcontracts to this effect.
- (d) Project Co shall promptly notify the City of 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, before any Governmental Authority or arbitral body 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.
- (e) Project Co shall promptly notify the City of any Environmental Damage or Degradation of which it becomes aware.

- (f) 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. Subject to compliance by the City with Project Co's reasonable safety requirements, the City shall also have the right to monitor and audit the performance of any and all the activities within the Project, wherever located, and Project Co shall cooperate with, and shall require each Project Co Party to cooperate with, and provide access to the representatives of the City monitoring and auditing the Project, including providing them with access and copies (at the City's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of the activities within the Project. Except as otherwise provided herein, all of the City's costs for the inspections, audits and monitoring shall be borne by the City.
- (g) In conducting an audit of Project Co under Section 16.4(f) or as otherwise provided under this Agreement, the City shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at the City's reasonable cost) of all books and records of Project Co required to be provided to or available to the City hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with the City and its auditors in the conduct of any audits, including by making available all such records and accounts in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with the City all matters arising from such audits, including the refunding of monies to the City where applicable. At the reasonable request of the City's auditors, Project Co shall provide such information, reports, documents and records as the City's auditors may reasonably require.
- (h) The City's rights pursuant to this Section 16.4 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Agreement.
- (i) The City's rights pursuant to this Section 16.4 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

16.5 Safety

Project Co shall observe all safety requirements specifically set out in Schedule 16 (Safety Requirements) or in the Technical Requirements and shall, in all respects and at all times, carry out the Works Requirements and the O&M Requirements with due regard for public safety.

16.6 Project Co's Other Obligations

Project Co covenants to do all things specified in this Agreement to be done by Project Co, in such manner and at such times as specified in this Agreement. 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 and emergency response services to carry out

their respective statutory duties in relation to the Infrastructure and the Existing Facilities, including, without limitation, meeting with the City, at any time and from time to time, at the City's request, acting reasonably.

16.7 No Other Business

Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project.

17. CITY'S REPRESENTATIONS AND OBLIGATIONS

17.1 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 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 has rights of use and access to the Lands sufficient to grant to Project Co the licence rights contemplated in Section 5.2; and
- (e) the City has not granted or permitted to be granted any mortgage or other security interest in the Lands.

17.2 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. Without limiting the generality of the foregoing, the City shall promptly after receipt provide Project Co with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any City Party from any Governmental Authority in relation to any of the Project, the Existing Facilities or the Infrastructure.

17.3 Project Co's Reliance on Information

The representation by the City in Section 17.1(c) shall not be construed as imparting any duty of care to Project Co on the part of the City in relation to the accuracy of such reports, studies or other information, it being mutually understood and agreed that Project Co will perform its own research, investigation and due diligence.

17.4 Assistance with Permits and Approvals and Utility Agreements

Project Co shall provide the City with prompt notice of each application that Project Co makes to a regulator for any Permits and Approvals in respect of the Project.

Without derogating from Project Co's responsibilities under Sections 6.6 and 7.3 to obtain all Permits and Approvals required for the Project and 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, 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, 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 or in making required arrangements with utilities 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.

18. INDEMNITIES**18.1 Project Co Indemnities - General**

Subject to Section 18.4, Project Co shall indemnify and hold harmless the City, the City Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all damages, losses and costs, including third party claims, to the extent arising from:

- (a) a breach by Project Co of its obligations under this Agreement;
- (b) a failure by Project Co to comply with Applicable Law;
- (c) the negligence or other tortious conduct of Project Co or any Project Co Party;
- (d) an infringement or alleged infringement by Project Co or any Project Co Party of the intellectual property rights of a third party;
- (e) any fine or other financial penalty imposed by any Governmental Authority due to a failure by Project Co to perform any obligations of the City under the Permits and Approvals, the Effluent Standards, the Utility Agreements or Applicable Law;
- (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 5.18;

- (g) subject to the last sentence of Sections 6.2 and 7.2, the exceptions set out in Section 5.10(e) and in the last paragraph of Section 5.10, 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 to the extent that such liability was caused or contributed to by Project Co or any Project Co Party;
 - (ii) any claims arising out of negligence or willful acts of Project Co or any Project Co Party; and
 - (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 set out in Section 5.10(e)(i) and 5.10(e)(ii));
- (h) a failure by Project Co to comply with the Technical Requirements; or
- (i) 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.

18.2 Project Co Indemnities - 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, 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 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 this Agreement, 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 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 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 11.9 against any amounts owing under this indemnification.

18.3 City Indemnities

Subject to Section 18.4, the City shall indemnify and hold harmless Project Co, the Project Co Parties and each of their respective directors, officers, employees, agents and representatives 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 or any representation given under this Agreement;
- (b) the negligence or other tortious conduct of the City or any City Party;
- (c) a failure of the Works Requirements or the O&M Requirements to be adequate and suitable;
- (d) a failure by the City to comply with Applicable Law; or
- (e) a bankruptcy or insolvency of any participating employer in the Pension Plan or the LTD Plan other than Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by the City any liability for the occurrence of risks against which Project Co is required to insure under this Agreement to the extent of insurance proceeds received or that should have been received but for a failure by Project Co to comply with its obligations to properly insure under this Agreement.

18.4 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 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, equity investors and other contracting parties, provided that break fees payable to Project Co’s subcontractors, equity investors 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, equity investor 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 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.

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, provided that nothing in this paragraph shall preclude Project Co from claiming for lost profits 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 Sections 21.6, 21.7 and 21.8.

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 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.

18.5 Exclusivity of Specified Remedies

Except to the extent of insurance proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to insure under this Agreement and without prejudice to the City's right to impose Payment Adjustments, neither party shall be entitled to recover compensation or make an indemnity claim under this Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred to the extent that such party has already been compensated in respect of such loss so that recovery is without duplication to any other amounts recoverable under this Agreement.

18.6 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 with respect to a third party claim 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 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.

18.7 Progress of Indemnity Claims

With respect to any Indemnity Claim the underlying subject matter of which is a third party claim, 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 18.6(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.

18.8 Settlement of Indemnity Claims

With respect to any Indemnity Claim the underlying subject matter of which is a third party claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party:

- (a) settle or compromise any such 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 such 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 such 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.

19. DEFAULTS, REMEDIES AND TERMINATION EVENTS

19.1 Exclusivity of Termination Provisions

Neither party shall have any right to terminate this Agreement except as expressly set out in Sections 20.1, 20.2 or 20.3. Without limiting the generality of the foregoing, neither party shall be entitled to terminate this Agreement on the basis of fundamental breach.

19.2 City's Step-in Rights

If, at any time during either the Construction Period or the Operating 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;

- (c) in order to prevent Project Co or any Project Co Party from limiting operation of the Existing Facilities or the Infrastructure (other than for purposes expressly contemplated by the Technical Requirements); or
- (d) 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 as the City reasonably considers necessary to mitigate the risk or discharge the statutory duty or keep the Existing Facilities or Infrastructure, as the case may be, in operation or address the Default or the Incurable Default, and in that event:

- (e) 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
- (f) 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 15.1, constitute a Relief Event under Section 15.1(j).

19.3 Termination Events

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

- (a) other than as a consequence of a breach by the City of its payment obligations hereunder, 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) other than as a consequence of a breach by the City of its payment obligations hereunder, if a receiver or receiver-manager is appointed for the business of Project Co, unless the appointment is canceled within 21 days;
- (c) other than as a consequence of a breach by the City of its payment obligations hereunder, 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 21 days;
- (d) other than as a consequence of a breach by the City of its payment obligations hereunder, if Project Co ceases active business operations;
- (e) if, during the Construction Period, Project Co abandons:

- (i) the Works; or
 - (ii) the business of carrying out the Existing Facilities O&M;
- (f) if, from and after the date that is 6 months following Substantial Completion, Project Co fails to meet one or more of the Effluent Standards at any time during a month for four consecutive months or 6 times in any rolling 12 month period;
- (g) if Project Co fails to achieve Substantial Completion by December 31, 2017 (the “**Longstop Date**”);
- (h) if, at any time after the date that is 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 Longstop Date;
- (i) if, during the Operating Period, Project Co abandons the business of carrying out the O&M;
- (j) if Project Co, having become subject to Payment Adjustments in any 12 month period that in aggregate exceed 50% of the aggregate Infrastructure O&M Payment (exclusive of any Renewal Payment, Payment Adjustments and other set offs) during that 12 month period, fails, within 10 days of receiving notification from the City to do so, to submit to the City a reasonable remedial plan for achieving future performance of the O&M or fails thereafter to diligently implement and carry out such remedial plan;
- (k) if, after Substantial Completion, Project Co, other than:
 - (i) for purposes expressly contemplated by Schedule 18 (Technical Requirements); or
 - (ii) for reasons of public safety, exercised on a temporary basis,takes any steps to prevent the performance by the City of any statutory duty and does not remedy such failure within 5 days of the City providing Project Co with notice to do so;
- (l) 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 21 days;
 - (ii) where the Default cannot by reasonable commercial efforts be cured within 21 days, communicate to the City and initiate within that 21 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 21 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;
- (m) if Project Co breaches the provisions of Sections 25.1, 25.2 or 25.3;
- (n) if Project Co or any Project Co Party commits a Prohibited Act, provided that such Prohibited Act shall not constitute a Termination Event if:
 - (i) the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co and, within 30 days of such Prohibited Act, Project Co terminates the employee's employment and ensures that the relevant part of the Project shall be performed by another person;
 - (ii) the Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party and, within 30 days of such Prohibited Act, Project Co terminates the relevant subcontract and ensures that the relevant part of the Project shall be performed by another person, where relevant, in accordance with Section 25.2;
 - (iii) the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party and, within 30 days of such Prohibited Act, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project shall be performed by another person; or
 - (iv) the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 19.3(n)(i) to 19.3(n)(iii) and, within 30 days of such Prohibited Act, Project Co causes the termination of such person's employment or the appointment of their employer and ensures that the relevant part of the Project shall be performed by another person;
- (o) if Project Co fails to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Agreement or any such bond, security or insurance is vitiated or otherwise ceases to be in full force and effect or in material compliance with the requirements set out in this Agreement, other than as a consequence of a breach by the City of its obligations under this Agreement or, in respect of insurance, other than as a consequence of a risk becoming uninsurable in accordance with Section 13.10, and:
 - (i) in respect of insurance, Project Co does not remedy such breach within 10 Business Days of the occurrence of the breach; and

- (ii) in respect of a bond or security, Project Co does not remedy such breach within 5 Business Days of Project Co becoming aware of such breach;
- (p) if Project Co fails to pay any amount or amounts due to the City under this Agreement, which amount or amounts, either singly or in the aggregate, exceed(s) \$50,000 (Index Linked) (except to the extent that such amount or amounts are disputed in good faith through the Dispute Resolution Procedure) and does not remedy such failure within 21 days of the City providing Project Co with notice to do so; or
- (q) 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 OH&S 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 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 19.3(q), 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.

20. TERMINATION

20.1 Termination by City

The City may terminate this Agreement:

- (a) by written notice to Project Co having immediate effect upon the City becoming aware of the occurrence of a Termination Event; or
- (b) at any time, on 90 days’ written notice to Project Co, 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 20.1 shall be effective unless, in the case of a notice under Section 20.1(a), it specifies the Termination Event relied on, or, in the case of a notice under Section 20.1(b), it states that the termination is for convenience.

Notwithstanding the foregoing, the City agrees not to exercise its right to terminate this Agreement upon the occurrence of the Termination Event set out in either Section 19.3(e)(ii) or Section 19.3(l) until the day following the payment of the Substantial Completion Payment in accordance with Section 11.2. For greater certainty, if the City is prevented from exercising its right to terminate this Agreement by the immediately preceding sentence, then, notwithstanding the passage of time or any intervening event, on and after the day following the payment of the Substantial Completion Payment in accordance with Section 11.2, the City may exercise such right to terminate.

20.2 Termination by Project Co

Subject to Section 20.3, Project Co may terminate this Agreement by notice to the City only if:

- (a) the City fails to pay any amount or amounts due to Project Co under this Agreement, which amount or amounts, either singly or in the aggregate, exceed(s) \$50,000 (Index Linked) (except to the extent that such amount or amounts are disputed in good faith through the Dispute Resolution Procedure) and does not remedy such failure within 21 days of Project Co providing the City with notice to do so;
- (b) during the Construction Period, a Relief Event has occurred and continues for a continuous period in excess of 365 days and has wholly or substantially prevented Project Co from proceeding with the Works during that period; or
- (c) the City is in breach of Section 25.4.

20.3 Termination Upon Force Majeure

Either party may by notice to the other terminate this Agreement if:

- (a) 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 Works, and such status persists or is highly likely to persist for at least in aggregate 120 days; or
- (b) during the Operating Period, as a result of a Force Majeure Event, performance of all or a substantial portion of the O&M by Project Co has become impossible or impractical, and such status persists or is highly likely to persist for at least 180 days.

20.4 Consequences of Termination

Upon any termination of this Agreement under Sections 20.1, 20.2 or 20.3:

- (a) the Monthly Payment for the month during which the termination occurs shall be pro-rated according to the number of days in that month up to and including the day when termination occurs;

- (b) if a Termination Payment is payable by the City in accordance with Section 21, then the City shall as soon as practicable and, in any event, not later than 60 days following determination of the amount of the Termination Payment, pay to Project Co the amount of the Termination Payment; and
- (c) 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 performing the Existing Facilities O&M and the Works Requirements (if the termination is prior to Substantial Completion) or the O&M and the O&M Requirements (if termination is after Substantial Completion).

20.5 Effect of Notice of Termination

On the service of a notice of termination or termination at the expiry of the Term:

- (a) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to the City, Project Co shall transfer to the City, free from all encumbrances, such part of the Works and the Infrastructure as shall have been constructed and such items of plant, equipment and materials as shall have been procured by Project Co, and, if the City so elects:
 - (i) all plant, equipment and materials (other than those referred to in Section 20.5(a)(ii) on or near to the Lands shall remain available to the City for the purposes of completing the Works); and
 - (ii) all construction plant and equipment shall remain available to the City for the purposes of completing the Works, subject to payment by the City of the Design and Construction Subcontractor's reasonable charges;
- (b) if termination is prior to the Substantial Completion Date, Project Co shall deliver to the City (to the extent such items have not already been delivered to the City) one set of all information and documentation relating to the design, construction and completion of the Works and the Infrastructure current to the date of termination;
- (c) in so far as title shall not have already passed to the City pursuant to Section 20.5(a)(i), Project Co shall hand over to the City, free from all encumbrances, the Works together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and all facilities, equipment and spare parts, and to the extent that any such assets or rights are not capable of being transferred by Project Co to the City, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by the City in order to enable it or any City Party, to continue to perform the activities which would have otherwise been performed by Project Co if this Agreement had not been terminated;
- (d) if the City so elects, Project Co shall ensure that any of the subcontracts between Project Co and each Project Co Party (including the Design and Construction Subcontractor) and any other instrument entered into between any such Project Co Party and Project Co for

securing the performance by such Project Co Party of its obligations in respect of the Project or to protect the interests of Project Co, shall be novated or assigned to the City or its nominee, provided that where termination occurs other than as a result of a Termination Event, the consent of the relevant Project Co Party shall be required;

- (e) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if the City so elects, execute such sale) to the City at a fair value (determined as between a willing vendor and willing purchaser), free from all encumbrances, all or any part of the stocks of material and other tangible assets, road vehicles and other moveable property owned by Project Co or any Project Co Party and dedicated to or predominantly used in respect of the Infrastructure, and reasonably required by the City in connection with the operation of the Infrastructure or the provision of the O&M;
- (f) Project Co shall deliver to the City (to the extent such items have not already been delivered to the City) one complete set of the most recent maintenance, operation and training manuals for the Infrastructure;
- (g) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the City, free from all encumbrances, the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Infrastructure;
- (h) Project Co shall deliver to the City all information, reports, documents, records and the like referred to in Section 16.3 and all other data required by the City to operate the Infrastructure, except where such are required by Applicable Law to be retained by Project Co or any Project Co Party (in which case complete copies shall be delivered to the City);
- (i) Project Co shall use commercially reasonable efforts to ensure that any unionized employees of Project Co or any Project Co Party engaged in the O&M are made available to be employed by the City or any successors providing to the City services in the nature of any of the O&M or any part of the O&M to enable the City to carry out the activities previously carried out by Project Co under this Agreement; and
- (j) in the case of the termination of this Agreement at the expiry of the Term, the Infrastructure and elements of the Infrastructure shall be in the condition required in accordance with Section 10.

20.6 Transitional Arrangements

On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall:

- (a) cooperate fully with the City and any successors providing to the City services in the nature of any of the Existing Facilities O&M, the O&M or any part of the Existing Facilities O&M or the O&M in order to achieve a smooth transfer of the manner in which

- the City obtains services in the nature of the Existing Facilities O&M or the O&M, as applicable;
- (b) as soon as practicable remove from the Lands all property belonging to Project Co or any Project Co Party that is not acquired by the City pursuant to Section 20.5 or otherwise, and, if Project Co has not done so within 60 days after any notice from the City requiring it to do so, the City may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (c) forthwith deliver to the City Representative:
 - (i) all keys to, and any pass cards and other devices used to gain access to any part of the Infrastructure; and
 - (ii) to the extent transferable and without prejudice to the City's rights pursuant to Section 26, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Infrastructure; and
 - (d) as soon as practicable vacate the Lands and, without limiting Project Co's obligations under Section 10, leave the Lands and the Infrastructure in a safe, clean and orderly condition.

If the City wishes to conduct a competition prior to the expiry of the Term with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the O&M, following the expiry of this Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with the City fully in such competition process, including by:

- (a) providing any information which the City may reasonably require to conduct such competition; and
- (b) assisting the City by allowing any or all participants in such competition process unrestricted access to the Lands and the Infrastructure.

20.7 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:

- (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 20.4(c);
- (c) the obligation of the City to make the Termination Payment specified in Section 21;

- (d) the obligations in relation to Confidential Information set out in Sections 22.4, 22.5, 22.6 and 22.7; and
- (e) the obligations in relation to the Dispute Resolution Procedure set out in Section 24.

21. TERMINATION PAYMENTS

21.1 Construction Period Termination

Subject to Section 21.2, upon a Construction Period Termination, the City shall pay to Project Co a Termination Payment equal to the Capital Amount less:

- (a) the Milestone Payment, to the extent paid;
- (b) the reasonable cost to the City, established by competitive bidding process (and including out-of-pocket costs incurred by the City in relation to that process), of completing the Works; and
- (c) \$10 million as a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of the Construction Period Termination.

21.2 Termination While City Holds Financing and Initial Performance Letter of Credit

Notwithstanding Section 21.1, if a Construction Period Termination occurs while the City continues to hold the Financing and Initial Performance Letter of Credit and the condition for release and surrender of the Financing and Initial Performance Letter of Credit set out in Section 4.5 has not occurred, then the City shall have no obligation to make a Termination Payment to Project Co and Project Co shall have no obligation to make any payment to the City, whether under Section 21.10 or otherwise, in respect of such Construction Period Termination.

21.3 Operating Period Termination

Upon an Operating Period Termination, the City shall, by written notice to Project Co, elect to pay to Project Co either a Termination Payment under Section 21.4 or a Termination Payment under Section 21.5. If the City fails to make such election by notice to Project Co within 10 Business Days after an Operating Period Termination, then the City shall be irrevocably deemed to have elected to make a Termination Payment under Section 21.5.

If the City elects to make a Termination Payment under Section 21.4, the City shall, as soon as practicable and, in any event, within 90 days, solicit expressions of interest in order to assess whether there are likely to be two Suitable Bidders. If the City fails to elicit, within such 90 day period, at least two bona fide expressions of interest from Suitable Bidders, it shall immediately re-elect to make a Termination Payment under Section 21.5.

Between the time of the Operating Period Termination and the making of the Termination Payment, the City shall make advance payments to Project Co against the Termination Payment in accordance with and subject to the following:

- (a) the advance payments shall be made monthly, at the times and in the amounts that would have been payable by the City as the Capital Payment had this Agreement not been terminated; and
- (b) if the City reasonably concludes that making or continuing to make the advance payments may result in a negative net balance owing by the City on account of the Termination Payment, then the City shall have no obligation to make or continue to make (as the case may be) the advance payments.

In the event the City, pursuant to Section 21.3(b), ceases to make or continue to make, as the case may be, the advance payments, the City shall immediately re-elect to make a Termination Payment under Section 21.5, unless either (i) Project Co agrees otherwise, or (ii) the bidding process has by the date of such cessation already progressed to receipt of final bids.

21.4 Payment Based on Sale of Contractual Rights

If, upon an Operating Period Termination, the City elects to make a Termination Payment under this Section 21.4, then the following provisions shall apply:

- (a) the City shall, within six months after the Operating Period Termination, obtain at least two bona fide, fully committed bids, each from a Suitable Bidder, for acquiring all rights and obligations (both present and future) of Project Co under this Agreement as if this Agreement had not been terminated;
- (b) the City shall conduct the bidding process so as to obtain the maximum cash purchase price (but otherwise, to the extent practicable, generally in accordance with its usual procurement processes), and shall select the winning Suitable Bidder accordingly;
- (c) the City shall, as soon as practicable (having regard to Section 21.4(a)), implement and complete the bidding process and enter into an agreement with, and collect the purchase price from, the winning Suitable Bidder;
- (d) upon receiving the purchase price from the winning Suitable Bidder, the City shall pay to Project Co a Termination Payment consisting of:
 - (i) the purchase price received by the City from the winning Suitable Bidder; less
 - (ii) the City's reasonable costs reasonably incurred in establishing and conducting the bidding process and entering into the new agreement;
- (e) if the City fails to:
 - (i) within 6 months after the Operating Period Termination, obtain two bids in accordance with Section 21.4(a); or
 - (ii) within 12 months after the Operating Period Termination, enter into an agreement with, and collect the purchase price from, the winning Suitable Bidder,

then the City shall be deemed to have elected to make a Termination Payment under Section 21.5 rather than under this Section 21.4;

- (f) subject to Section 21.4(g), no bid shall be capable of acceptance by the City unless it would result in an amount greater than zero payable to Project Co under Section 21.4, having regard to any advance payments made by the City pursuant to Section 21.3; and
- (g) if acceptance of the winning bid would not result in an amount greater than the amount described in Section 21.4(f), the City may accept or not accept the bid, but, in either event, the City shall be deemed to have re-elected to make a Termination Payment under Section 21.5 in lieu of a Termination Payment under Section 21.4.

21.5 Payment of Fair Market Value

If, upon an Operating Period Termination, the City elects a Termination Payment under this Section 21.5, or if by Section 21.3 or Section 21.4(e) or 21.4(g) is deemed to have elected a Termination Payment under this Section 21.5, then the following provisions shall apply:

- (a) the City and Project Co shall seek to arrive at agreement on the fair market value of Project Co's rights and obligations under this Agreement, calculated:
 - (i) as of the date of the Operating Period Termination and as if this Agreement had not been terminated and no Termination Event had occurred or was imminent;
 - (ii) on the assumption that the purchaser would be responsible for curing any existing default (or, in the case of an Incurable Default, taking the remedial action contemplated by Section 19.3(l)(iii)) by Project Co under this Agreement;
 - (iii) on the assumption of a willing and qualified purchaser and Project Co as a willing vendor; and
 - (iv) having regard to the future Monthly Payments expected for the duration of the Term, the costs of curing or taking required remedial action in respect of any existing default and the projected costs of carrying out the O&M without incurring Payment Adjustments, including a reasonable allowance for contingencies;
- (b) if the City and Project Co have not, within 30 days after the election or deemed election, arrived at agreement under Section 21.5(a), then the fair market value of Project Co's rights and obligations under this Agreement shall be determined by the Dispute Resolution Procedure, applying the same assumptions as set out in Section 21.5(a); and
- (c) upon the fair market value of Project Co's rights and obligations under this Agreement being determined under Section 21.5(a) or Section 21.5(b), the City shall pay to Project Co as a Termination Payment an amount consisting of the fair market value so determined, less:
 - (i) the City's reasonable costs incurred in calculating the fair market value; and

- (ii) the City's reasonable costs, or the City's reasonable pre-estimate thereof, of either selecting and entering into a new agreement with a new provider of services or undertaking the performance of the services itself, in lieu of Project Co's performance of the O&M under this Agreement.

21.6 Force Majeure Termination - Construction Period

Upon a Force Majeure Termination during the Construction Period, the City shall pay to Project Co a Termination Payment equal to the lesser of:

- (a) the Capital Amount less the Milestone Payment, to the extent paid; and
- (b) the amount actually expended (including any irrevocable commitment to purchase and pay for materials not readily returnable or readily deployable other than on the Project provided arrangements are made satisfactory to the City, acting reasonably, to transfer to the City ownership of such materials free and clear of any security interests) in furtherance of the design, build and financing of the Works by Project Co, less the amount of the Milestone Payment, to the extent paid,

less, in either case, all insurance proceeds available as a result of events occurring prior to the Force Majeure Termination or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Agreement, provided that, if the amount payable hereunder is not sufficient to enable Project Co to fully repay the Senior Debt Financing, including any makewhole amounts on early repayment of the Senior Debt Financing that are within the parameters set out in the definition of Redemption Payment (the "**Termination Shortfall Amount**"), then any Termination Payment paid in accordance with this Section 21.6 will be increased by the Termination Shortfall Amount.

21.7 Force Majeure Termination - Operating Period

Upon a Force Majeure Termination during the Operating Period, the City shall pay to Project Co a Termination Payment equal to the Force Majeure Capital Amount less:

- (a) all principal repaid on the Senior Debt Financing prior to the Force Majeure Termination plus any amounts that could have been repaid based on any cash, cash equivalents or reserves (including loans or investments by Project Co) available for repayment of or held as security for the Senior Debt Financing as at the date of the Force Majeure Termination (but excluding reserves in the form of surety bonds or letters of credit or similar instruments unless they are secured by cash, financial instruments or securities, and provided that, if any surety bonds, letters of credit or similar instruments have been drawn and the proceeds used, prior to the Force Majeure Termination, to repay principal on the Senior Debt Financing, such principal repayments shall not be included under this Section 21.7(a) to the extent that the reimbursement obligations remain outstanding);
- (b) all distributions on or return of Equity (including, in the case of subordinated debt, all payments of principal and interest) made prior to the Force Majeure Termination, and all such distributions that Project Co, immediately prior to the Force Majeure Termination, could have made (on the basis of free cash in hand and any cash equivalents, investments,

or reserves accessible by Project Co) but had not yet made, but not exceeding, in aggregate, the amount of the Equity; and

- (c) all insurance proceeds available as a result of events occurring prior to the Force Majeure Termination or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Agreement,

and any Termination Payment paid in accordance with this Section 21.7 will be increased by the Termination Shortfall Amount, if applicable.

21.8 Termination for Convenience or Termination by Project Co

Upon a Termination for Convenience or a Termination by Project Co, the City shall pay to Project Co a Termination Payment calculated as follows:

- (a) the Redemption Payment; plus (without duplication)
- (b) Project Co's reasonable damages, including amounts payable to Project Co's subcontractors, equity investors and other contracting parties having regard to the principles set out in Section 18.4; less
- (c) if the Termination for Convenience or Termination by Project Co occurs during the Construction Period, any amount of the Project Financing that has been drawn or, in the case of bond financing, issued, whether or not available to Project Co, but not yet expended on the Project,

and any Termination Payment paid in accordance with this Section 21.8 will be increased by the Termination Shortfall Amount, if applicable.

21.9 Set-off Against Termination Payments

The City may set off against any Termination Payment the amounts of any Payment Adjustments triggered prior to the termination and not set off against a Monthly Payment, provided that, where Section 21.8 applies, the City shall be entitled to claim a set-off only to the extent that the net Termination Payment is not reduced below the amount of the Redemption Payment.

21.10 Negative Amounts

If the amount of the Termination Payment calculated under any of Sections 21.1, 21.4 or 21.5 is a negative number, the City shall be entitled to claim that amount (stated as a positive number) from Project Co.

21.11 Delivery of Information

Upon any termination of this Agreement, each party shall as soon as practicable deliver to the other all information within the possession of, or that thereafter from time to time comes into the possession of, that party that is relevant to the determination and calculation of the Termination Payment.

Upon the initial closing of the Senior Debt Financing, Project Co shall deliver to the City particulars of:

- (a) the amount of the Senior Debt Financing;
- (b) the basis for determining the amount by which the Senior Debt Financing by its terms can be redeemed in advance of its maturity;
- (c) any hedging transactions material or potentially material to any Termination Payment that may in future become payable under this Agreement; and
- (d) the Original Spread as well as the benchmark yield to which the Original Spread is applied, including full details on how it was determined,

and, after the initial closing of the Senior Debt Financing, Project Co shall deliver to the City particulars of any material changes in or additions to the information delivered under Section 21.11(a) within five Business Days of those changes or additions being effected.

22. COMMUNICATIONS

22.1 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 or e-mail, to the following respective addresses:

- (a) if to the City:

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

Attention: Brent Sjoberg, Deputy City Manager & COO
Fax: (306) 777-6818
E-mail: BSJOBERG@regina.ca

- (b) if to Project Co:

EPCOR Water Prairies Inc.

[REDACTED]

Attention:
Fax:
E-mail:

[REDACTED]

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

22.2 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:

Brent Sjoberg, Deputy City Manager & COO

Telephone: (306) 777-7000
Fax: (306) 777-6818
Email: BSJOBURG@regina.ca

- (b) in the case of Project Co:

Telephone:
Fax:
Email:

In the absence of any further designation or limitation communicated with reference to this Section 22.2, 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.

22.3 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, or as otherwise required by Applicable Law.

22.4 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.

22.5 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, rating agencies, surety companies and prospective guarantors and, in the case of the City, PPP Canada Inc.) 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.

22.6 Public Disclosure of Agreement

Notwithstanding Sections 22.4 and 22.5, Project Co agrees that, excepting only any information that may be exempt from disclosure pursuant to Applicable Law, the City will be at liberty to disclose this Agreement, any information contained in or derived from this Agreement and any records kept in accordance with this Agreement related to the performance of Project Co or any Project Co Party. In the event of a request under LAFOIP for access to any information contained in this Agreement, Project Co will be given written 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.

22.7 Collection, Use and Disclosure of Personal Information

For the purposes of this Section 22.7, “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 fulfill 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 22.7.

22.8 Naming Rights

Project Co acknowledges that the City, as owner of the Lands, the Existing Facilities and the Infrastructure, has the exclusive right to name and re-name the Existing Facilities and the Infrastructure and all related improvements. Project Co shall not name nor purport to name the Works, Existing Facilities, the Infrastructure, or any portions thereof. Where the City has named the Existing Facilities or the Infrastructure, Project Co shall not publicly refer to the Existing Facilities or the Infrastructure except as so named by the City.

23. CONTRACT ADMINISTRATION

23.1 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.

23.2 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.

24. DISPUTE RESOLUTION

24.1 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.

24.2 Exception

Where 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.

24.3 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.

24.4 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.

24.5 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.

25. ASSIGNMENT, SUBCONTRACTING AND CHANGE IN OWNERSHIP**25.1 Assignment by Project Co**

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:

- (a) the proposed transferee is of good reputation and has suitable technical, commercial and financial resources to undertake the Project; and

- (b) 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.

25.2 Subcontracting by Project Co

Project Co may subcontract its obligation to carry out the Works and its obligations to perform the Existing Facilities O&M and the O&M only to:

- (a) the Design and Construction Subcontractor; and
- (b) any additional subcontractors approved in advance by the City.

Project Co may replace a subcontractor or engage additional subcontractors 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 25.2, subcontractor means a party having a direct contractual relationship with Project Co, and excludes subcontractors of such parties.

25.3 Change in Ownership

Project Co shall not, prior to one 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:

- (a) the proposed owner is of good reputation and has suitable technical, commercial and financial resources to undertake the Project; and
- (b) 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 25.3, (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.

25.4 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.

25.5 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.

26. INTELLECTUAL PROPERTY

26.1 Assigned Intellectual Property

All intellectual property created by Project Co or any Project Co Party for the Project or in the course of Project Co’s or a Project Co Party’s carrying out of the Project, including, but not limited to, copyright, patents, industrial designs, Project Co’s Designs and all other plans, drawings, designs, documentation, information and reports created by Project Co or any Project Co Party (collectively, the “**Assigned Intellectual Property**”), shall be owned by the City and the City shall have all rights to do any and all things with the Assigned Intellectual Property that the owner of such Assigned Intellectual Property could do.

26.2 Licensed Intellectual Property

The City shall also be granted a non-exclusive, irrevocable, perpetual, royalty-free license in and to, and shall have rights to modify, load, transmit, access, execute, use, store, display, copy, adapt, translate and incorporate into other materials, all pre-existing intellectual property belonging to third parties, Project Co or any Project Co Party necessary for the use of Assigned Intellectual Property or necessary for the carrying out of the Project in accordance with this Agreement (the “**Licensed Intellectual Property**”), subject to and in accordance with the following:

- (a) the City hereby grants to Project Co an irrevocable, perpetual, royalty-free license to any of the Assigned Intellectual Property (including a right to grant sub-licenses or otherwise commercialize the Assigned Intellectual Property), provided that Project Co shall, as soon as reasonably practicable, give the City notice of each time Project Co intends to grant sub-licenses or otherwise commercialize the Assigned Intellectual Property; and
- (b) Project Co shall ensure that all Project Co Parties waive all moral rights in respect of the Assigned Intellectual Property.

Notwithstanding Section 26.2(a), Project Co may, without notice to the City, grant to any Project Co Party such permissions and, if applicable, sub-licenses in respect of the Assigned Intellectual Property as are reasonably required for the carrying out of the Project or the use by a third party,

other than in furtherance of the Project, of a design or invention or process developed by that third party in its capacity as a Project Co Party.

27. GENERAL PROVISIONS

27.1 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 24.4, Saskatchewan courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each party accepts the jurisdiction of Saskatchewan courts.

27.2 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.

27.3 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.

27.4 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.

27.5 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.

27.6 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 27.4 shall not be construed as obligating the City to amend or enact any by-law or regulation.

27.7 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.

27.8 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]

Regina Wastewater Treatment Plant Upgrade Project

**DBFOM Agreement
Execution Version**

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

THE CITY OF REGINA

Per: _____

Name: _____

Title: _____

**Jim Nicol
City Clerk**



Per: _____

Name: _____

Title: _____

EPCOR WATER PRAIRIES INC.

Per: _____

Name: _____

Title: Senior Vice President,
Water Canada and Technologies

Per: _____

Name: _____

Title: Senior Vice President
and Chief Financial Officer