

DEVELOPMENT MANAGEMENT AGREEMENT

THE CITY OF CALGARY

- and -

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

- and -

CAA SPORTS CANADA ULC d/b/a CAA ICON

MADE AS OF OCTOBER 5, 2023

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	2
1.1 Definitions	2
1.2 Accounting Terms	19
1.3 Extended Meanings	20
1.4 Business Days	20
1.5 Calculation of Interest	20
1.6 Statute References	20
1.7 Schedules	20
1.8 Currency	21
1.9 Headings	21
1.10 Interpretation	21
ARTICLE 2 APPOINTMENT OF THE DEVELOPMENT MANAGER.....	21
2.1 Appointment of Development Manager	21
2.2 Acceptance	21
2.3 Standard of Performance	21
2.4 Development Manager as Independent Contractor	22
2.5 Limitation of Scope of Services	22
2.6 Non-Arms Length Contracts	22
2.7 Employees of the Development Manager	23
2.8 Contributing Parties' Obligations.....	23
ARTICLE 3 INFORMATION, APPROVALS, REPORTING.....	24
3.1 Information	24
3.2 Project Committee and Steering Committee Meetings	24
3.3 Approval of Decisions and Major Decisions.....	25
3.4 Approval of Other Decisions	26
ARTICLE 4 CONSTRUCTION AND DEVELOPMENT.....	27
4.1 General Development Duties	27
4.2 Project Requirements, Design Framework and Project Execution Plans	27
4.3 Consulting Contracts.....	29
4.4 Planning and Design Phase.....	29
4.5 Project Schedule.....	30
4.6 Budget.....	31
4.7 Construction	31
4.8 Construction Contracts	31
4.9 Liens	32
4.10 Completion, Overall Commissioning and Turnover	33
4.11 Construction Delays.....	35
4.12 Warranties.....	37
4.13 Accounts and Records.....	37
4.14 Reconciliation upon Completion	38
4.15 Reporting as a Civic Partner and on the Use of Public Funds.....	38
4.16 Acknowledgement.....	38
ARTICLE 5 ACCESS TO THE LANDS	39
5.1 Non-Exclusive Access	39

5.2	Title to Lands, Community Rink and Event Centre	39
5.3	Permitted Entrants	39
ARTICLE 6 CHANGE ORDERS		39
6.1	Change Orders	39
ARTICLE 7 PRE-CONSTRUCTION PHASE AND CONSTRUCTION PHASE		41
7.1	Pre-Construction Phase and Construction Phase	41
ARTICLE 8 ELIGIBLE COST OVERRUNS		41
8.1	Eligible Cost Overruns	41
ARTICLE 9 PAYMENT OF PROJECT COSTS		42
9.1	Recommendation for Payment	42
9.2	43
ARTICLE 10 INSURANCE.....		43
10.1	Insurance	43
10.2	Project Insurance	45
ARTICLE 11 INDEMNITIES AND LIABILITY		45
11.1	Indemnity by the Development Manager	45
11.2	Indemnity by CSERELP	46
11.3	Indemnity by The City	46
11.4	Consequential Damages.....	47
11.5	Duration	47
11.6	Notice of Claim.....	47
ARTICLE 12 TERM OF AGREEMENT AND DEFAULT		48
12.1	Term.....	48
12.2	Development Manager Events of Default	49
12.3	Rights of The City and CSERELP Upon the Development Manager Event of Default.....	49
12.4	Rights of the Development Manager Upon Failure to Pay Development Manager's Fee	49
12.5	Rights of the Contributing Parties upon Termination	50
12.6	Termination of Project Framework Agreement	50
ARTICLE 13 REPRESENTATIONS AND WARRANTIES		50
13.1	Representations and Warranties of The City	50
13.2	Representations and Warranties of CSERELP.....	51
13.3	Representations and Warranties of the Development Manager	52
ARTICLE 14 DISPUTE RESOLUTION		53
14.1	Dispute Notice.....	53
14.2	Negotiation	54
14.3	Expert Mediation	54
14.4	Commencement of Arbitration	55
14.5	Arbitration Procedure	56

14.6	Other Remedies	57
14.7	Payments Not Suspended	57
ARTICLE 15 RELATIONSHIP MANAGEMENT		57
15.1	Communications Protocol	57
15.2	Public Recognition	58
ARTICLE 16 CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY		58
16.1	Freedom of Information and Protection of Privacy Act	58
16.2	Confidentiality	58
16.3	Disclosure of Information	58
16.4	Survival	59
16.5	Improper Disclosure or Use	59
16.6	Indemnity	59
ARTICLE 17 INTELLECTUAL PROPERTY		60
17.1	Delivery of Construction Data and Intellectual Property	60
17.2	Jointly Developed Materials	60
17.3	Claims	61
17.4	Survival	61
ARTICLE 18 POLICIES, PRACTICES AND GUIDELINES		61
18.1	Practices and Policies	61
18.2	Adherence to City Policies	61
ARTICLE 19 GENERAL		62
19.1	Notices	62
19.2	Enforceability	63
19.3	Successors and Assigns	63
19.4	Capacity of The City	64
19.5	Time of Essence	64
19.6	Governing Law	65
19.7	Third Parties	65
19.8	GST	65
19.9	Entire Agreement	65
19.10	Survival of Covenants	66
19.11	Waivers	66
19.12	Counterparts	66
19.13	[REDACTED]	66
19.14	[REDACTED]	66

THIS AGREEMENT made as of the 5th day of October, 2023 (the “**Effective Date**”).

AMONG

THE CITY OF CALGARY

(hereinafter referred to as “**The City**”),

- and -

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

(hereinafter referred to as “**CSERELP**”),

- and -

CAA SPORTS CANADA ULC d/b/a CAA ICON, a Nova Scotia unlimited liability company

(hereinafter referred to as the “**Development Manager**”)

WHEREAS The City and CSERELP desire to collaborate in and contribute funding for the design, permitting, construction and development of a new event centre and associated amenities (as further defined below, the “**Event Centre**”) and community rink and associated amenities (as further defined below, the “**Community Rink**”) and together with the Event Centre and as further defined below, the “**Project**”) that will be located on the Lands to be acquired by The City;

AND WHEREAS CSERELP will participate in funding the Project for purposes of acquiring a leasehold interest therein pursuant to the Management and Lease Agreement;

AND WHEREAS the Parties acknowledge that various agreements are necessary to develop and construct the Project;

AND WHEREAS at the April 25, 2023 Regular Meeting of Council, Council acknowledged the City Manager’s authority under the Execution of Contracts Bylaw 43M99, to negotiate and execute various definitive agreements which are necessary or desirable to deliver the Event Centre Project and related district-wide improvements as generally outlined in Report C2023-0482 including the attachments thereto;

AND WHEREAS the Development Manager has the necessary expertise to act as development manager for the Project;

AND WHEREAS The City and CSERELP have entered into the Project Framework Agreement pursuant to which The City and CSERELP have agreed to contribute funds that will be used to design, permit, construct, and develop the Project and to agree on

governance and the process for decision-making in respect of the Project, on the terms and conditions set out therein;

AND WHEREAS The City, CSERELP and the Development Manager are entering into this Agreement whereby the Development Manager will manage development of the Project, all on the terms and conditions set out below;

THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants, agreements, representations, warranties and indemnities of the Parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party hereto), the Parties hereby agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

The following definitions shall apply in the interpretation of this Agreement and in the Recitals and the Schedules hereto (provided that where a word or term is defined in a Schedule hereto, the word or term as defined in such Schedule shall apply in the interpretation of the Schedule and in this Agreement):

"Affiliate" of any Person means any Person that, directly or indirectly, Controls, is Controlled by or under common Control with such Person including:

- (a) an "affiliate" within the meaning of the *Business Corporations Act* (Alberta);
- (b) a partnership, the majority of whose partnership interests are directly or indirectly held by such Person or an Affiliate of such Person and such majority is sufficient to Control the affairs of such partnership; or
- (c) a trust, the majority of whose beneficial interests are directly or indirectly held by such Person or an Affiliate of such Person or of which such Person or an Affiliate of such Person is, directly or indirectly, a trustee or manager which directs the management or policies of the trust;

"Agreement", **"this Agreement"**, **"the Agreement"**, **"hereto"**, **"hereof"**, **"herein"**, **"hereby"**, **"hereunder"** and similar expressions mean or refer to this Agreement as amended from time to time and any agreement or instrument supplemental hereto and the expressions **"Article"**, **"Section"**, **"Subsection"** and **"Schedule"** followed by a number or letter mean and refer to the specified Article, Section, Subsection or Schedule of or attached to this Agreement;

"Applicable Laws" means, with respect to any Person, property, agreement, transaction or event, all applicable present and future laws, statutes, bylaws, codes, ordinances, decrees, rules, regulations, treaties, City Policies, federal or provincial policies or guidelines and judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards, general principles of common law and conditions of any grant of approval, permission, authority, licence or registration of any federal or provincial court, statutory body, regulatory authority, agency, commission, tribunal, board, department of any government, or any other Governmental

Authority, including any self-regulatory organization recognized by such Governmental Authority;

“Approval Form” means a request for the Approval of the Steering Committee or Approval of the Project Committee submitted to the Steering Committee or the Project Committee, as the case may be, by the Development Manager in the form attached as Schedule E to this Agreement;

“Approved”, “Approval”, “Approved by the Project Committee”, “Approval of the Project Committee”, “Approved by the Steering Committee” or “Approval of the Steering Committee” has the meaning ascribed thereto in the Project Framework Agreement;

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

“Arbitration Court” has the meaning ascribed thereto in Section 14.5(b);

“Arbitration Notice” has the meaning ascribed thereto in Section 14.5(a);

“Award” has the meaning ascribed thereto in Section 14.5(f);

“Architect” means either a professional architect that is registered as a member in good standing with the Alberta Association of Architects or an architectural firm employing such professional architects;

“Bank Rate” means the prime rate of interest per annum published by Royal Bank of Canada, from time to time, as may be in effect on the first day of each month as its reference rate of interest used to determine rates of interest for commercial loans in Canada in Canadian funds, expressed as an annual rate;

“Business Day” means any day which is not a Saturday, Sunday or a day observed as a holiday under the laws of the Province of Alberta or the federal laws of Canada applicable therein;

“Certificate of Substantial Completion” means a certificate issued by the Project Architect or independent certifier, as applicable, that Substantial Completion has been achieved, in a form satisfactory to the Project Committee and consistent with industry standards;

“Change Order” has the meaning ascribed thereto in Section 6.1(a);

“City Additional Costs” has the meaning ascribed thereto in the Project Framework Agreement;

“City Administration” means administration staff of The City;

“City Manager” means the person appointed to the position of chief administrative officer of The City pursuant to the *Municipal Government Act* (Alberta), or such person’s designate from time to time;

“City Policies” means those policies of The City of Calgary, in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement, which are listed in Schedule G hereto (to the extent such policies are applicable to the Project), and such amendments thereto or such other policies of The City of Calgary in such capacity as, in either case, may be Approved by the Project Committee from time to time as applying to the Project;

“City Representative” means the individual or individuals designated by The City from time to time as members of the Project Committee or the Steering Committee, as the case may be, and otherwise acting as a representative of The City, all as contemplated hereunder and under the Project Framework Agreement;

“Claim” means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever;

“Communications Activities” has the meaning ascribed thereto in Section 15.1;

“Communications Protocol” has the meaning ascribed thereto in Section 15.1;

“Community Rink” means a separate community skating rink which will: (i) be an integral part of the Project and will include seating for approximately 1,000 spectators, (ii) comply with applicable NHL standards for an NHL practice facility, (iii) include concourses, MEP systems and amenities which are shared with the Event Centre, and (iv) be located entirely within the Lands;

“Community Rink Equipment” means all furniture, furnishings, equipment, fixtures, apparatus and other personal property used in, held in storage for use in, or required in connection with the use or operation of the Community Rink;

“Comparable Event Centres” means Little Caesars Arena in Detroit, T-Mobile Arena in Las Vegas, Rogers Place in Edmonton, Nationwide Arena in Columbus, and Xcel Energy Center in St. Paul;

“Completion” means when all of the following have occurred:

- (a) Substantial Completion has been achieved;
- (b) the Project (including all Servicing) is ready for Turnover in the condition required by, and in accordance with, the Permits, the Project Requirements, the Design Plans, and this Agreement, and in compliance with Applicable Laws and City Policies subject only to the Minor Deficiencies List items established pursuant to Section 4.10;
- (c) an occupancy permit has been issued for the Community Rink and the Event Centre by The City of Calgary, in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement; and
- (d) all Overall Commissioning has been completed in accordance with the Overall Commissioning Program;

as all of the foregoing is evidenced by a Turnover Certificate;

“Confidential Information” means information considered proprietary by a Party that is delivered or disclosed pursuant to this Agreement (and, for certainty, shall not include this Agreement) and identified as such, and includes any and all material, data and information (regardless of form and whether or not patentable or protectable by copyright and whether or not identified as confidential or proprietary) that is not available to the public or required to be disclosed by Applicable Laws such as technical and business information, financial plans and records, Construction Data, marketing plans, business strategies, trade secrets, present and proposed products, customer lists and information regarding customers and suppliers;

“Construction Contracts” means the General Construction Contract and any other agreement or contract, purchase order, or other written commitment entered into by the Contributing Parties with a Contractor;

“Construction Data” means electronic versions of all of the following documents:

- (a) as-built drawings of the Project and documentation in respect of all Warranties obtained, detailed operational and maintenance manual with list of contractors, product data sheets, test and balance reports, a complete list of all Permits and certificates obtained as part of the Project (including copies of the Permits and certificates), including certificates of occupancy, final inspection certifications and signed off Permits, geotechnical reports, energy models, building information models, sustainability documentation to satisfy City Policies, building systems and envelope commissioning plans and reports, operations and maintenance manuals, and other similar information;
- (b) drawings, authenticated record drawings, shop drawings, diagrams, illustrations, schedules, performance charts, progress reports, and other data provided by the Development Manager, any Consultant, a Contractor or a Subcontractor to illustrate details of portions of work undertaken in connection with the Project;
- (c) updated plans, shop drawings, drawings, diagrams, illustrations, technical details, and other data provided with and included in any Construction Contracts incorporating all Approved changes and modifications authorized during the construction period that provide a complete record of the Project as built, including copies of all design calculations where applicable; and
- (d) all final versions of the Reviewable Design Data;

“Construction Phase Design Plans” means Design Plans for a specific phase of the Project where such phase specific Design Plans have been completed to an extent as is reasonably sufficient to allow the commencement of work under the General Construction Contract in respect of the construction and completion of the Project, and which Design Plans shall be determined in accordance with Section 4.4(a);

“Construction Phase Project Budget” means a Project Budget which: (a) is based on the final Project Requirements, the Construction Phase Design Plans, the Construction Phase Project Schedule and the General Construction Contract; and (b) includes all labour and material costs, and all final contingencies and allowances, and which Project Budget shall be determined in accordance with Section 4.6(a);

“Construction Phase Project Schedule” means a Project Schedule which is based on the final Project Requirements, the Construction Phase Design Plans, and the GMP Amendment, and which Project Schedule shall be determined in accordance with Section 4.5(a);

“Consultant” means any Architects (including the Project Architect), Engineers, professionals, experts, advisors, accountants, consultants, inspection and testing firms, and surveyors named or engaged by the Contributing Parties from time to time in respect of the Project, but excluding any Contractors;

“Consulting Contracts” means any agreement or contract, purchase order or other written commitment entered into by the Contributing Parties with a Consultant;

“Contractor” means any Person retained by the Contributing Parties with respect to the provision of services or materials or both to or in respect of the Lands or the construction of the Project or both, but excluding the Consultants.

“Contributing Parties” means The City and CSERELP, and **“Contributing Party”** means either of them, as the context requires;

“Contributing Party Delay” has the meaning ascribed thereto in Section 4.11(a);

“Control” or **“Controlled”** means: (a) with respect to any Person that is a corporation, incorporated or unincorporated association, incorporated or unincorporated syndicate, or other incorporated or unincorporated organization, trust or other legal entity that has issued voting securities, the ownership in the aggregate, directly or indirectly, of voting securities of such Person carrying 50% or more of the votes for the election of directors (or individuals performing a similar function or occupying a similar position, including the trustees of a trust); (b) with respect to any Person that is a trust that has not issued voting securities, control by the trustees of such trust; or a Person who Controls each trustee of such trust and in each case, ownership in the aggregate, directly or indirectly of 50% or more of the beneficial interests in such trust held by Persons that are not charities; (c) with respect to any Person that is a partnership that does not have directors (or Persons performing a similar function or occupying a similar position) (other than a limited partnership), the ownership in the aggregate directly or indirectly of 50% or more of the interests in such partnership; or (d) with respect to any Person that is a limited partnership, the Control of each general partner of such limited partnership and the ownership in the aggregate directly or indirectly of 50% or more of the limited partnership interests in such limited partnership; and a Person is Controlled (within the meaning of paragraphs (a) to (d) of this definition) by a Person when one or more of such first-mentioned Persons are directly or indirectly Controlled (within the meaning of paragraphs (a) to (d) of this definition) by the second-mentioned Person, and the terms **“Controlling”**, **“Controlled by”** and **“under common Control with”** will have corresponding meanings;

“Council” means the municipal council of The City;

“Council Project Approvals” means all approvals, directions and policies of Council respecting the Project made as of the Effective Date, and such other approvals, directions and policies of Council respecting the Project from time to time after the Effective Date;

“CP Indemnity Beneficiaries” means The City, CSERELP and each of their respective directors, officers, employees and agents, and, in the case of The City, City elected officials;

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

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

“CSERELP Additional Costs” has the meaning ascribed thereto in the Project Framework Agreement;

“CSERELP Board” means the board of directors of CSE Real Estate Corporation, in its capacity as general partner of CSERELP;

“CSERELP Representative” means the individual or individuals designated by CSERELP from time to time as members of the Project Committee or the Steering Committee, as the case may be, and otherwise acting as a representative of CSERELP, all as contemplated hereunder and in the Project Framework Agreement;

“Deadlock” has the meaning ascribed thereto in the Project Framework Agreement;

“Decision” means any decision or approval required in respect of the Project to be made by the Project Committee from time to time under this Agreement, including

- (a) the Project Requirements;
- (b) each of the Risk Mitigation Plan, the Project Management Plan and the Project Procurement Plan;
- (c) any determination with respect to the classification of Eligible Costs or Ineligible Costs;
- (d) the Project Budget and any matter or item relating to the Project that may affect the Project Budget including, without limitation, the management of any contingency amounts;
- (e) the Design Framework, Design Plans and all Reviewable Design Data;
- (f) the Project Schedule;
- (g) the selection of the General Contractor, the terms of the General Construction Contract, any amendments to the General Construction Contract (other than Minor Change Orders) and any matter related to the enforcement or termination of the General Construction Contract or waiver of any rights or obligations thereunder;

- (h) the appointment and replacement of the Project Architect;
- (i) the Communications Protocol;
- (j) insurance related to the Project and the disposition of any insurance proceeds and the application of any condemnation award, including the settlement of any insurance proceeds in excess of thresholds as may be determined by the Project Committee from time to time, or the settlement of any condemnation award with any condemning authority;
- (k) the execution of any Construction Contracts or Consulting Contracts, to the extent required by the Project Procurement Plan;
- (l) the making of any expenditure in the aggregate in excess of the threshold determined by the Project Committee from time to time, unless such expenditure is specified in the Design Plans and Project Budget;
- (m) the execution and delivery of any guarantee, indemnity (other than customary indemnities included in any Construction Contract or Consulting Contract that is entered into in accordance with this Agreement) or similar agreement on behalf of any Contributing Party;
- (n) any environmental matters relating to the Project;
- (o) the institution, defending or settlement of any litigation, action, arbitration or other proceeding related to the Project where the amount claimed or in dispute is in excess of the threshold determined by the Project Committee from time to time;
- (p) the selection of auditors for the Project and, after any such selection, the determination to change the auditors (but not, for certainty, in respect of any auditor retained solely by a Party); and
- (q) any other matter that by the express terms of this Agreement, requires the Approval of the Project Committee or the Contributing Parties;

but excluding any decision or approval which constitutes a Major Decision and is required to be made by the Steering Committee;

“Design Framework” has the meaning ascribed thereto in Section 4.2(b);

“Design Plans” has the meaning ascribed thereto in Section 4.4(a);

“Design Review” means the design review process in respect of the Reviewable Design Data which is established by the Parties and Approved by the Project Committee;

“Development Manager” means CAA Sports Canada ULC d/b/a CAA ICON and its successors and permitted assigns;

“Development Manager Event of Default” has the meaning ascribed thereto in Section 12.2;

“Development Manager Fee” has the meaning ascribed thereto in Section 9.2;

“Development Manager Indemnity Beneficiaries” means the Development Manager and its directors, officers, employees and agents;

“Disposition” has the meaning ascribed thereto in Section 19.3(b);

“Dispute” has the meaning ascribed thereto in Section 14.1;

“Dispute Notice” has the meaning ascribed thereto in Section 14.1;

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

“Eligible Costs” has the meaning ascribed thereto in Schedule B;

“Eligible Cost Overrun” has the meaning ascribed thereto in Section 8.1;

“Engineer” means either a professional engineer licensed by the Association of Professional Engineers and Geoscientists of Alberta (APEGA) with a valid permit to practice issued by APEGA, or an engineering firm employing such professional engineers;

“Event Centre” means the new event centre being developed by the Parties, and all associated on-site parking (whether below, at or above grade), all as more particularly described in Schedule A-2; and also including, upon finalization and Approval by the Project Committee of any Project Plans, any other components of the Event Centre as may be set out such Project Plans;

“Event Centre Equipment” means all furniture, furnishings, equipment, fixtures, apparatus and other personal property used in, held in storage for use in, or required in connection with the use or operation of the Event Centre;

“Event of Insolvency” means with respect to a Person the occurrence of any one of the following events:

- (a) if such Person shall:
 - (i) be wound up, dissolved, or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada), as amended or re-enacted from time to time, or have its existence terminated or have any resolution passed therefor, unless, in any such case it forms part of a bona fide corporate reorganization or a merger or amalgamation not forming part of any relief being sought under any present or future law relative to bankruptcy, insolvency or other relief for debtors, provided that it shall not be an Event of Insolvency if the Person, being a corporation, is dissolved involuntarily pursuant to its governing legislation and the Person is revived within 45 Business Days of any of the directors or officers of such corporation at the time of its dissolution becoming aware of such dissolution; or
 - (ii) make a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada) as amended or re-

enacted from time to time, or shall be declared bankrupt or insolvent by a court of competent jurisdiction; or

- (iii) propose a compromise or arrangement under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation, as amended or re-enacted from time to time, or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relative to bankruptcy, insolvency or other relief for debtors; or
 - (iv) become insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada); or
- (b) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such Person seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 30 days (whether consecutive or not) from the day of entry thereof; or if any trustee in bankruptcy, receiver or receiver and manager, liquidator, monitor or any other officer with similar powers shall be appointed for such Person or of all or any substantial part of its property with the consent or acquiescence of such Person, or such appointment shall remain unvacated and unstayed for an aggregate of 30 days (whether or not consecutive);

"Expert" has the meaning ascribed thereto in Section 14.3;

"Expert Notice" has the meaning ascribed thereto in Section 14.3;

"Final Completion" means when all of the following have occurred:

- (a) Substantial Completion and Completion has been achieved;
- (b) all Minor Deficiencies and all other outstanding defects or deficiencies have been completed and rectified;
- (c) all lien periods have expired in respect of work or materials supplied to the Project and all lien holdbacks in respect thereof have been released in accordance with all Applicable Laws;
- (d) a "close out book" as contemplated in Section 4.10(i) has been delivered to the Contributing Parties;
- (e) Community Rink Equipment has been delivered to the Contributing Parties;
- (f) Event Centre Equipment has been delivered to the Contributing Parties;

- (g) the Development Manager has delivered all records required pursuant to Section 4.10 of this Agreement and provided a final accounting with respect to all Project Costs as set forth in Section 4.14; and
- (h) all delivery obligations of the Development Manager in respect of the Project have been fully completed in accordance with this Agreement subject only to the management and enforcement of Warranties.

For greater certainty, Final Completion shall not require the completion of any items of work undertaken directly by a Contributing Party and outside of the Development Manager's responsibilities under this Agreement;

"Fit Up Costs" means any costs pertaining to tenant improvements and fit up work in respect of the retail components of the Event Centre that are street facing and are therefore subject to property taxes pursuant to the Tax Agreement;

"Force Majeure" means any act, event, cause or condition beyond the control of a Party (other than as a result of financial incapacity or financial inability of such Party, which, for greater certainty, shall not be considered an event beyond the control of a Party) and not caused by an act or omission of such Party and which by the exercise of reasonable diligence and at a commercially reasonable cost such Party is unable to prevent or control, in the nature of:

- (a) a lack of or an inability to obtain materials, goods, equipment, services, utilities or labour or reasonable substitutes;
- (b) any new Applicable Law passed or made or coming into effect after the date of this Agreement;
- (c) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used commercially reasonable efforts to oppose said order, judgment, legislation, ruling or direction;
- (d) an inability to obtain or delay in obtaining any licence, Permit, permission or authority in respect of the Project from an entity beyond time periods typical for The City of Calgary (in its capacity as a Governmental Authority and not in its capacity as a party to this Agreement) or other Approving Authority, despite using commercially reasonable efforts to obtain;
- (e) a strike, labour dispute, work stoppage, lockout, slow-down or other combined action of workers that provide labour or services to the Project;
- (f) fire, explosions, unavoidable casualties, natural disasters such as floods, earthquakes, tornadoes, hurricanes and other adverse weather conditions (including rain and snow), provided that the affected Party or Contractor or Subcontractor is precluded or materially limited from carrying out the Project as a result of such adverse weather condition;

- (g) an act of terrorism, civil commotion, war, invasion, embargo, insurrection, rebellion, sabotage (other than by the Parties), riot, violence, malicious mischief (other than by the Parties), act of public enemy, or extortion;
- (h) local, regional or national states of emergency; or
- (i) an act of God;

and which in any such case shall cause such Party to be unable to fulfil or to be delayed or restricted in the fulfilment of any obligation hereunder;

“Fundamental Principles” has the meaning ascribed thereto in the Project Framework Agreement;

“General Construction Contract” means the Construction Contract with the General Contractor for the construction of the Project, on terms and conditions Approved by the Project Committee;

“General Contractor” means the general contractor or construction manager under the General Construction Contract;

“GMP Amendment” means the amendment to the General Construction Contract pursuant to which the guaranteed maximum price is established in respect of the General Construction Contract;

“Good Industry Practice” means those good, sound and professional practices, methods and acts engaged in or approved by a significant proportion of the industry in Canada and the United States of America which is involved in the management of developing, designing, engineering, permitting, constructing, or operating and maintaining a facility similar (in terms of size, age, and nature of use) to the Project or undertaking and performing work and services similar to the work and services hereunder, or any other practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with Applicable Laws, reliability, safety and expedition; provided that “Good Industry Practice” is not restricted to the optimum practice or course of action to the exclusion of all others, but rather to a spectrum of recognized acceptable practices, methods and acts;

“Governmental Authority” means any: (a) federal, provincial, municipal, local or other governmental or public department, central bank, court, utility, commission, board, bureau, agency or instrumentality, domestic or foreign, having jurisdiction over the Project or the Parties; (b) any subdivision or authority of any of the foregoing, including the subdivision authority, development authority, municipal planning commission and subdivision and development appeal board of The City of Calgary (in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement); and (c) any professional body or quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing or regulating professional standards for any of the Consultants, Contractors or Subcontractors engaged in connection with the Project;

“Gross Negligence” means a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct and reckless disregard for harmful, foreseeable and avoidable consequences;

“GST” means the tax imposed under Part IX of the *Excise Tax Act* (Canada), or any tax replacing such imposition and any similar tax that may hereafter be imposed under the laws of the Province of Alberta or Canada, including in any such case any interest thereon and penalties relating thereto;

“Ineligible Costs” has the meaning ascribed thereto in Schedule B;

“Initiating Party” has the meaning ascribed thereto in Section 14.5(a);

“Intellectual Property” means all intellectual property, works, reports, data, compilations of information, computer programs, written presentations, memoranda, research, drawings, sketches, layouts, commercial material, working papers, documents, copy, ideas, photographs and negatives, films, videotapes, video, audio and audio-visual productions and other materials in all forms and however fixed, stored, expressed or embodied, created, developed, generated, authored or produced by the Development Manager or a Contributing Party in performance of this Agreement;

“Intellectual Property Rights” means all intellectual and industrial property rights including, but not limited to, all copyright, all copyright applications, trademarks, patents, inventions, patent applications, industrial designs, trade secrets and rights in Intellectual Property;

“Joint Communications” means all Communications Activities that are to be jointly developed and/or undertaken by the Contributing Parties and, where applicable, the Development Manager;

“Jointly Developed Material” has the meaning ascribed thereto in Section 17.2(a);

“Land Use Redesignation” means a land use redesignation of the Lands (for which appeal periods have expired) to allow the use of the Lands for the purposes of the Project;

“Lands” means the lands, all in The City of Calgary, as shown for reference purposes in heavy black outline on the plan attached as Schedule A-1 hereto; provided that, the exact area and dimensions of the Lands shall be determined according to the Subdivision Plan approved by the Approving Authority and this definition of “Lands” shall upon registration of the Subdivision Plan, be deemed for all purposes under this Agreement to be the Lands set forth in the registered Subdivision Plan and the certificate of title issued by the Alberta Land Titles Office upon such registration;

“Lien Act” means the *Prompt Payment and Construction Lien Act* (Alberta);

“Major Decision” means the decisions and approvals from time to time respecting the substance of the following matters:

- (a) the classification of Project Costs as City Additional Costs or CSERELP Additional Costs;

- (b) the approval of the GMP Amendment;
- (c) the resolution of funding an Eligible Cost Overrun under the Project Management Agreement;
- (d) any amendment of the Project Schedule which would result in the Scheduled Substantial Completion being delayed beyond August 31, 2026; or
- (e) any other matter that by the express terms of this Agreement requires the Approval of the steering Committee and is not otherwise a Decision or specifically stated under the terms of this Agreement to be determined by the Project Committee;

“Management and Lease Agreement” means the management and lease agreement between The City and CSERELP dated October 5, 2023, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

“Milestone Dates” has the meaning ascribed thereto in Section 4.5(b);

“Minimum Reporting Requirements” means the reporting and status update requirements of the Development Manager to the Contributing Parties for the duration of the Project, as described in Schedule D;

“Minor Change Orders” means amendments or change orders to any Construction Contract that do not result in any deviation from the Project Plans and which have an impact on the Eligible Costs of less than a threshold amount which shall be Approved by the Project Committee;

“Minor Deficiencies” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Final Completion and which would not materially impair The City’s or CSERELP’s use and enjoyment of the Project;

“Minor Deficiencies List” has the meaning ascribed thereto in Section 4.10;

“Overall Budget Limit” has the meaning ascribed thereto in the Project Framework Agreement;

“Overall Commissioning” means all the building commissioning activities, testing, and completion of documentation to be undertaken, performed and delivered by the Contractors and Subcontractors and a third party commissioning agent under the direction of the Development Manager prior to the Turnover Date, including building commissioning and handover activities, in accordance with the Overall Commissioning Program, including:

- (a) the supply, installation, start-up, testing, adjustment and cleaning of each item of Community Rink Equipment and building systems provided as part of the Project, including bringing each item of such Community Rink Equipment and building system to normal operating condition, all in accordance with Good Industry Practice;

- (a) the supply, installation, start-up, testing, adjustment and cleaning of each item of Event Centre Equipment and building systems provided as part of the Project, including bringing each item of such Event Centre Equipment and building system to normal operating condition, all in accordance with Good Industry Practice;
- (b) the delivery to the Contributing Parties of each of the following plans or programs, as Approved by the Project Committee, in respect of the Community Rink and the Event Centre: (i) a building condition assessment and asset management plan; (ii) a security and technology plan; (iii) a master key plan; (iv) a Warranty identification and process plan; and (v) an operations management plan;
- (c) support by the Development Manager of the transition of Contractors from the Project into operational matters;
- (d) transition of utilities;
- (e) the completion of all required training of personnel and representatives of the Contributing Parties in respect of all Community Rink Equipment, Event Centre Equipment and overall building systems;
- (f) the preparation and finalization of all documents required by Section 18.1(a)(v) and (vi) of the Management and Lease Agreement; and
- (g) the completion and delivery of all pre-Turnover on-site support by the Contractors and Subcontractors;

“Overall Commissioning Program” means the plan and program to be jointly developed and agreed to by the Parties for Overall Commissioning in accordance with Section 4.10(c);

“Parties” means The City, CSERELP and the Development Manager, and **“Party”** means any of them;

“Permits” has the meaning ascribed thereto in Section 4.4(b);

“Permitted Entrant” has the meaning ascribed thereto in Section 5.3;

“Person” or **“person”** means any individual, partnership, corporation, joint venture, association, society, joint stock company, trust, unincorporated organization or a Governmental Authority, and “corporation” shall include “company” and vice versa;

“Preliminary Design Framework” means a Design Framework, as Approved by the Project Committee, which is based on the preliminary work of the design consultation team and the results of any preliminary design consultation processes, which in either case are undertaken in accordance with Section 4.2(b);

“Preliminary Project Budget” means a Project Budget Approved by the Project Committee which: (a) is based on the Preliminary Project Requirements, the Preliminary Design Framework, the Preliminary Project Schedule, and preliminary site information and

existing conditions; (b) takes market conditions as well as basic implementation logistics into consideration; and (c) includes labour and material costs and initial construction contingencies and allowances; which preliminary Project Budget shall be determined in accordance with Section 4.6(a);

“Preliminary Project Requirements” means Project Requirements Approved by the Project Committee which take into account any initial requirements which are proposed by the Contributing Parties pursuant to the process for determining and finalizing Project Requirements which is described in Section 4.2(c);

“Preliminary Project Schedule” means a preliminary Project Schedule Approved by the Project Committee which is based on the Preliminary Project Requirements and Preliminary Design Framework, and is determined in accordance with Section 4.5(a);

“Previous Design Development Report” means the design development report previously developed by the Contributing Parties in respect of the Event Centre and set forth in Schedule I which the Parties acknowledge does not include the Community Rink nor all of the associated infrastructure and improvements now contemplated, such as the number of parking stalls and indoor and outdoor plazas;

“Primary Contracts” has the meaning ascribed thereto in Section 4.16;

“Procurement Plan Requirements” means the requirements to be included in the Project Procurement Plan, as described in Schedule C;

“Project” means the planning, design, development, pre-construction, construction and post-construction (including warranty, follow-up and final documentation) of the Community Rink and the Event Centre and any associated infrastructure and improvements, and the fit up work that is necessary to complete the Community Rink and the Event Centre in accordance with this Agreement and as further described in Schedule A-2 but, notwithstanding anything to the contrary contained in this Agreement, limited to the foregoing items within that certain site boundary as conceptually depicted and described on Schedule A-3;

“Project Architect” means (as appropriate to the context) the independent Architect and/or Engineer who is engaged by the Contributing Parties to: prepare the Project Requirements and Design Plans or any other plans and specifications relating to the Project; oversee the construction of the Project or any architectural and engineering aspect of it; conduct field reviews of the Project and to act as “Prime Design Consultant” as necessary under Construction Contracts and Consulting Contracts; and includes any subconsultants retained by the Project Architect;

“Project Books” has the meaning ascribed thereto in Subsection 4.13(a);

“Project Budget” has the meaning ascribed thereto in Section 4.6;

“Project Costs” means the aggregate of all Eligible Costs, City Additional Costs and CSERELP Additional Costs;

“Project Committee” means the committee formed under the Project Framework Agreement for purposes of providing day-to-day management of the Project and of the

Development Manager, including proposing concepts, strategies and policies, making Decisions and providing input and giving instructions and directions to the Development Manager in respect of the Project;

“Project Framework Agreement” means the project framework agreement dated October 5, 2023 between The City and CSERELP, as amended, modified, and supplemented from time to time in accordance with the provisions thereof;

“Project Management Plan” has the meaning ascribed thereto in Section 4.2(d)(ii);

“Project Plans” means, collectively, the Design Framework, the Risk Mitigation Plan, the Project Management Plan, the Project Procurement Plan, the Design Plans, the Project Schedule, and the Project Budget;

“Project Procurement Plan” has the meaning ascribed thereto in Section 4.2(d)(iii);

“Project Representatives” means the CSERELP Representatives and The City Representatives, and **“Project Representative”** means any of them, as the context requires;

“Project Requirements” means all of the functional requirements related to the design, performance and technical specifications of the Project which are specified in this Agreement and are developed by the Development Manager and Approved by the Project Committee in accordance with Section 4.2(c), including functional program requirements, special equipment and facility needs, constraints, space needs and relationships, site requirements, specifications and criteria and which requirements shall include any items, components or specifications of the Project that:

- (a) are required by Applicable Laws, or any Governmental Authority;
- (b) are required to comply with Council Project Approvals;
- (c) are, in the case of the Event Centre, required to meet the requirements of a multi-purpose, state-of-the-art event facility and to meet the standards required to host and sustain a National Hockey League franchise;
- (d) are, in the case of the Community Rink, required to meet the requirements of a Calgary municipal community skating rink and to meet the standards required for a practice facility for a National Hockey League franchise;
- (e) are elements which are required to satisfy The City’s obligation to provide public space or facility for the benefit of the public; or
- (f) that otherwise comply with the Fundamental Principles.

“Project Schedule” has the meaning ascribed thereto in Section 4.5(a);

“Proper Invoice” means: an invoice that is subject to and meets the definition of a proper invoice under section 32.1 of the Lien Act and as supplemented by the Construction Contract or Consultant Contract, as the case may be.

“Recommendation for Payment” means the request for the payment of Project Costs, the form of which is attached hereto as Schedule F;

“Recommended Change Order” has the meaning given to it in Section 6.1(a).

“Required Change Order” has the meaning ascribed thereto in Section 6.1(a);

“Responding Parties” has the meaning ascribed thereto in Section 14.5;

“Reviewable Design Data” means, in respect of any Design Plan for a stage of design or development, all relevant documentation which will be submitted to the Project Committee for Design Review and which is necessary for the Project Committee to make informed decisions in respect of the Design Plans in respect of such stage recommended by the Development Manager;

“Risk Mitigation Plan” has the meaning ascribed thereto in Section 4.2(d)(i);

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

“Scheduled Substantial Completion Date” means the date specified in the Project Schedule by which Substantial Completion is to be achieved;

“Services” means the duties, services and functions to be performed by the Development Manager hereunder;

“Servicing” mean the construction of the infrastructure required to develop the Lands for the purposes of the Project including: roads, curbs, curb cuts, street lighting, cable/internet wiring, watermains, gas pipes, electricity service, storm and sanitary sewers, grading and other infrastructure amenities and services required by development agreements and permits mandated by Governmental Authorities, and **“Servicing”** is understood to be included and considered as one component within the definition of the Project but only to the extent such Servicing occurs on the Lands; and for greater certainty, **“Servicing”** shall specifically exclude: (i) the construction (and costs) of any infrastructure developed or constructed exclusively for any property other than the Lands; and (ii) the removal of any existing road and utility infrastructure on or under the Lands which is not capable of being incorporated into the Project, including, without restriction, the relocation of the municipal road and related infrastructure known as 5th Street SE where it is currently within the Lands as well as the utility infrastructure currently located thereunder to the new municipal road to be constructed immediately to the east of the Lands and to be known as 5A Street SE;

“Sole Cost Item” means any design feature, functional component, other specification or Change Order included in the Project Requirements, Preliminary Design Framework or Construction Phase Design Plans or otherwise incorporated in or implemented in respect of the Community Rink or Event Centre at the sole cost of one of the Contributing Parties, as determined in accordance with Project Framework Agreement;

“Standard of Performance” means the standard of performance to be met by the Development Manager as described in Section 2.3;

“Steering Committee” means the committee formed under the Project Framework Agreement to approve Major Decisions and give instructions and directions to the Project Committee and resolve Deadlocks of the Project Committee, on behalf of the Contributing Parties;

“Subcontractors” means any Person that enters into a contract with the General Contractor, a Construction Contractor or another Subcontractor for the provision of labour, materials or services in relation to the Project, including sub-subcontractors of any tier;

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

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

“Substantial Completion” means that all work required to achieve “substantial performance” of the General Construction Contract has been completed, giving to the term “substantial performance” the meaning of substantial performance of a contract under the Lien Act, as is evidenced by the issuance of a Certificate of Substantial Completion;

“Tax Agreement” means the property tax agreement between The City, CSERELP and Calgary Sports and Entertainment Corporation in its capacity as general partner for and on behalf of Calgary Flames Limited Partnership dated October 5, 2023, as amended, modified and supplemented from time to time in accordance with the provisions thereof;

“The City” means The City of Calgary and any successor thereto;

“Turnover” means the grant of possession of the Community Rink and the Event Centre to CSERELP under the Management and Lease Agreement;

“Turnover Certificate” means a certificate, in a form satisfactory to the Project Committee and issued by the Project Architect or independent certifier, as applicable, certifying that in the opinion of the Project Architect or independent certifier, as applicable, all conditions for satisfaction of Completion have been satisfied and the Community Rink and the Event Centre is ready for Turnover, along with a list of all outstanding Minor Deficiencies (if any);

“Turnover Date” means the date upon which Turnover occurs; and

“Warranties” has the meaning ascribed thereto in Section 4.12.

1.2 Accounting Terms

The accounting terms used herein unless otherwise defined, shall have the meaning accorded thereto from time to time by Canadian generally accepted accounting principles.

1.3 Extended Meanings

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Whenever a statement or provision in this Agreement is followed by words denoting inclusions or examples (such as “including” or “such as” or “by way of example”) and then a list of, or reference to, specific matters or items, such list or reference shall not be read as to limit or restrict the generality of such statement or provision, even though words such as “without limitation” or “without limiting the generality of the foregoing” or “but not limited to” do not precede such list or reference.

1.4 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

1.5 Calculation of Interest

In calculating interest payable under this Agreement for any period of time, the first day of such period shall be included and the last day of such period shall be excluded. Interest shall accrue from day to day on the basis of a 365 day year, for the actual number of days elapsed and shall be calculated monthly in arrears. Where the calendar year of calculation contains 366 days, each rate of interest herein shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) as such rate multiplied by 366 and divided by 365.

1.6 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.7 Schedules

The Schedules attached to this Agreement and listed below shall have the same force and effect as if the information contained therein were contained in the body of this Agreement:

Schedule A-1	–	Lands
Schedule A-2	–	Project Description
Schedule A-3	--	Site Boundary
Schedule B	–	Eligible Costs and Ineligible Costs
Schedule C	–	Procurement Plan Requirements
Schedule D	–	Minimum Reporting Requirements
Schedule E	–	Approval Form
Schedule F	–	Recommendation for Payment Form
Schedule G	–	City Policies
Schedule H	–	Duties of the Development Manager
Schedule I	--	Pre-design Report
Schedule J	--	[REDACTED]
Schedule K	--	Close-Out Period Services

1.8 Currency

All references to money herein are references to lawful money of Canada.

1.9 Headings

The table of contents hereto and the headings of any article, section or part thereof are inserted for purposes of convenience only and do not form part hereof.

1.10 Interpretation

The interpretation of this Agreement shall not permit a revenue, expense, liability, recovery, receipt, payment, reserve or reimbursement to be duplicated.

ARTICLE 2
APPOINTMENT OF THE DEVELOPMENT MANAGER

2.1 Appointment of Development Manager

The City and CSERELP hereby jointly appoint and retain the Development Manager to act as the sole and exclusive development manager in connection with the design, permitting, construction and development of the Project. Such appointment shall continue through, and the Development Manager shall perform the Services until the second anniversary of Completion. The Services to be undertaken and performed by the Development Manager in respect thereof shall include managing of the selection and hiring, and oversight, of all Contractors and Consultants (other than the Architect and the General Contractor). The Development Manager shall undertake and perform Services in respect of such appointment in accordance with the terms and conditions of this Agreement, and subject to the Approval of the Project Committee with respect to each Decision and Approval of the Steering Committee with respect to each Major Decision. Notwithstanding anything to the contrary contained in this Agreement, the services to be provided by the Development Manager during the period commencing from the date of Completion and ending on second anniversary of Completion will be limited to those services described in Schedule K (the “**Closeout Period Services**”); provided, however, that the Development Manager’s performance of the Closeout Period Services is contingent on the services and availability of the Project Architect and General Contractor.

2.2 Acceptance

The Development Manager hereby accepts its appointment to act as development manager in connection with the design, permitting, construction and development of the Project through to the second anniversary of Completion, and agrees to perform the Services to be performed by it under this Agreement, including those Services outlined in Schedule H, in accordance with the terms and conditions of this Agreement, and subject to the Approval of the Project Committee with respect to each Decision and Approval of the Steering Committee with respect to each Major Decision.

2.3 Standard of Performance

The Development Manager shall

- (a) perform the Services; and

- (b) ensure all work and services to be performed by the Contractors and all Subcontractors and Consultants is performed;

in each case, in a professional, competent, diligent, efficient and safe manner in accordance with: (a) Good Industry Practice; (b) Applicable Laws; (c) Permits and (d) the terms of this Agreement (including as set forth in Schedule H). The Development Manager shall exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent person who is experienced in performing similar duties, services and functions for projects of similar size, quality and use as the Project.

2.4 Development Manager as Independent Contractor

The duties to be performed and the obligations assumed by the Development Manager as development manager under this Agreement shall be performed and assumed by it as an independent contractor and not as agent or in any other way as a representative of The City or CSERELP, except as expressly set forth herein or in another written agreement between such parties executed after the date hereof. Nothing in this Agreement shall be construed as or shall constitute a partnership or joint venture between the Development Manager and the Contributing Parties or either of them and for greater certainty, the rights and obligations of the Contributing Parties under this Agreement shall in every case be several and not joint and not joint and several. The Development Manager shall have neither the right or authority, nor the obligation, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of the Contributing Parties, except to the extent of and as specifically set forth in Schedule H or as otherwise expressly consented to or approved in writing by the Contributing Parties, or as otherwise set forth herein.

2.5 Limitation of Scope of Services

Notwithstanding anything to the contrary in this Agreement, the Contractors and Consultants engaged in respect of the Project are responsible to the Contributing Parties for providing: (a) services and advice regarding construction means, methods, sequences, techniques or procedures, (b) safety precautions or programs and (c) other services performed by an Engineer, Architect (including actual architectural work and design), insurance advisor or legal counsel. The Contributing Parties understand and agree that the Development Manager, subject to Section 11.1: (i) shall not be responsible for or liable to the Contributing Parties with respect to such services and advice; (ii) shall not be liable for any failure of performance of any Contractors, Subcontractors, Project Architect or Consultant; and (iii) shall not be liable to the Contributing Parties for any defects in the Project Plans or any materials or workmanship, and the Contributing Parties shall be required to pursue (or may require the Development Manager to assist the Contributing Parties to pursue) all Claims in respect of such matters directly against the relevant Contractor, relevant Subcontractor, Project Architect or Consultant. The Development Manager will assist any Contributing Party in pursuing all such Claims. The Development Manager shall not be responsible for any delay, loss or damage caused by a delay by any Person other than delays which arise as a result of the Development Manager's failure to perform the Services in accordance with this Agreement (including due to a Contributing Party Delay or delay by any Contractor, Subcontractor or Consultant).

2.6 Non-Arms Length Contracts

- (a) The Development Manager will not recommend that the Contributing Parties enter into any contract, agreement or legally binding arrangement in respect of the

Project, including in connection with the furnishing of goods or services to the Project, if any Person to such contract, agreement or legally binding arrangement is an Affiliate of the Development Manager or if the Development Manager does not deal at arm's length with such Person, unless the Development Manager has first obtained the Approval of the Project Committee after specific disclosure to the Project Committee of the non-arm's length relationship. For the purposes of this Section 2.6, any question as to whether someone is dealing at arm's length will be determined in accordance with section 251 of the *Income Tax Act* (Canada) as at the date hereof.

- (b) Each Contributing Party shall cause each of its Affiliates and other Persons with which such Contributing Party does not deal with at arm's length to notify the Development Manager of their relationship to the Contributing Party prior to such Person expressing any interest to the Development Manager in entering into any contract, agreement or legally binding arrangement in respect of the Project, including in connection with the furnishing of goods or services to the Project. Following receipt of any such notice, the Development Manager shall obtain the Approval of the Project Committee to proceed with consideration of such Person after specific disclosure to the Project Committee of the non-arm's length relationship prior to proceeding with such Person.

2.7 Employees of the Development Manager

The Development Manager will employ at all times such number of experienced personnel as may be necessary to perform its duties hereunder. All matters pertaining to the employment, supervision, compensation, promotion and discharge of the employees comprising such personnel will be the sole responsibility of the Development Manager, which is in all respects the employer of such employees; provided that the Contributing Parties may direct the Development Manager to reassign or replace personnel that the Contributing Parties, acting reasonably, determine to be unqualified or otherwise unsatisfactory with respect to performance of the Services. The Development Manager will negotiate with any union lawfully entitled to represent any such employees and may execute in its own name, and not as agent for the Contributing Parties, collective bargaining agreements or labour contracts. The Development Manager covenants to comply fully with all Applicable Laws relating to workers' compensation, social security, unemployment insurance, hours of labour, wages, working conditions, employment standards and other employer-employee related subjects.

2.8 Contributing Parties' Obligations

- (a) Project Information. The Contributing Parties shall provide full information to the Development Manager regarding the Contributing Parties' requirements for the Project, including the Contributing Parties' objectives, schedule, constraints, special equipment and facility needs, functional program requirements, space and operational needs and relationships, site requirements and criteria throughout the development of the Project, all as required or requested by the Development Manager from time to time. The Contributing Parties shall cause the Project Committee or the Steering Committee, as the case may be, to promptly review all material submitted to it and make decisions and provide direction to the Development Manager in a timely manner to facilitate the Development Manager delivery of the Services.

- (b) Coordination through the Development Manager. The Contributing Parties acknowledge and agree that all instructions from the Contributing Parties to the Project Architect, Consultants, the Contractors and Subcontractors in connection with the Project shall be coordinated solely through the Development Manager to ensure consistent instructions and communications to such Persons. Notwithstanding the foregoing, each of the Project Representatives shall be permitted to be involved in all discussions and meetings between the Development Manager and such Consultants, Contractors and Subcontractors, and to provide input by way of a Decision of the Project Committee to the Development Manager with respect to such instructions.

- (c) Project Decisions. CSERELP and The City shall: (i) cause their respective representatives on the Project Committee and the Steering Committee, as the case may be, to make all decisions required or requested by the Development Manager in respect of Decisions or Major Decisions, respectively, or other matters submitted to the Project Committee or the Steering Committee, as the case may be, for Approval; and (ii) shall cause their respective Project Representatives to make all decisions required or requested by the Development Manager in respect of matters relating to proposals and recommendations to go before the Project Committee or the Steering Committee, as the case may be, in either case subject to the Development Manager providing proper, timely and accurate information to such representatives so that informed decisions may be made. CSERELP and The City shall ensure that such decisions are made and communicated to the Development Manager in a timely manner and in accordance with the terms and conditions of this Agreement.

ARTICLE 3 **INFORMATION, APPROVALS, REPORTING**

3.1 Information

The Development Manager shall keep the Project Committee on a weekly basis, and the Steering Committee on a monthly basis, fully informed of all material events and developments pertaining to the design, permitting, construction and development of the Project and will provide the Project Committee and the Steering Committee with all such information and advice as they reasonably require from time to time for the purpose of assessing the progress or status of the development and construction of the Project or for the purpose of enabling the Project Committee or the Steering Committee, as the case may be, to make informed decisions concerning the Project. The Development Manager shall facilitate and maintain an electronic platform for the sharing of information relating to the Project acceptable to the Contributing Parties, acting reasonably, provided that such platform shall permit the sharing of information with such Persons designated or identified by each of them.

3.2 Project Committee and Steering Committee Meetings

The Development Manager shall appoint a representative to attend all Project Committee meetings and all Steering Committee meetings, provided that such the Development Manager representative shall not be entitled to vote at any meeting of the Project Committee or of the Steering Committee or otherwise participate in providing Approvals of the Project Committee or Approvals of the Steering Committee. For regularly scheduled weekly meetings of the Project Committee, the Development Manager will circulate to the Project Committee members and

supporting representatives the following documents not less than one Business Day prior to the applicable Project Committee Meeting and for regularly scheduled monthly meetings of the Steering Committee, the Development Manager will circulate to the Steering Committee members and supporting representatives, the following documents not less than five Business Days prior to the applicable Steering Committee meeting:

- (a) the meeting agenda;
- (b) the minutes from the previous meeting;
- (c) the monthly written status report advising on progress against key milestones in accordance with the reporting requirements set out in this Agreement or any update thereto in the event that it is a supplemental meeting; and
- (d) to the extent known, matters to be addressed at the next scheduled Project Committee meeting or Steering Committee meeting, as the case may be.

The Development Manager will be responsible for developing minutes from each Project Committee meeting and Steering Committee meeting, together with instruments evidencing all written resolutions of the Project Committee or Steering Committee, as the case may be, which will create a permanent record of Decisions, Major Decisions and action items. A copy of such minutes and instruments will be sent to each member of the Project Committee and Steering Committee upon request to the Development Manager. Any failure to send minutes of a meeting to each member of the Project Committee or Steering Committee within the aforesaid period shall not affect the validity of any Decision or Major Decision made at the meeting.

3.3 Approval of Decisions and Major Decisions

- (a) All Decisions with respect to the Project are subject to Approval by the Project Committee. In respect of each Decision, the Development Manager shall collaborate with the Project Representatives to develop the Development Manager's recommendation for Approval by the Project Committee. Each such recommendation shall take into account any concepts, strategies, or input proposed by the Project Representatives.
- (b) All Major Decisions with respect to the Project are subject to Approval by the Steering Committee. In respect of each Major Decision, the Development Manager shall collaborate with the Project Representatives to develop the Development Manager's recommendation for Approval by the Steering Committee. Each such recommendation shall take into account any concepts, strategies, or input proposed by the Project Representatives.
- (c) In order to obtain Approval from the Project Committee in respect of any Decision or Approval from the Steering Committee in respect of any Major Decision, the Development Manager shall either: (a) submit to the Project Committee or Steering Committee, as the case may be, an Approval Form, in the form attached hereto as Schedule E, as modified to reflect the character of the Decision, Major Decision or other matter submitted for Approval; or (b) prepare and present a resolution for Approval at a Project Committee meeting or Steering Committee meeting, as the case may be. The Approval Form or resolution shall be accompanied by

appropriate supporting information and documentation in relation to the Decision or Major Decision being submitted for Approval.

- (d) The Contributing Parties shall cause the Project Committee and the Steering Committee to exercise diligent efforts to respond to any request for Approval in respect of a Decision or a Major Decision, as the case may be, as soon as reasonably practicable and in any event within five Business Days following receipt by both of the Approval Form (or resolutions) and accompanying materials, unless the Approval Form (or resolutions) specifies an alternate response period or a Contributing Party's representative on the Project Committee or Steering Committee, as the case may be, acting reasonably, requests additional time to respond. Failure by the Project Committee or the Steering Committee to: (i) respond within such period, or (ii) request additional time, shall be deemed to constitute non-approval of the recommendation in respect of the relevant Decision, Major Decision or other matter by Project Committee or Steering Committee, as the case may be. If the Project Committee or Steering Committee, as the case may be, agrees with the recommendation for Approval, such recommendation shall be Approved. If the Project Committee or Steering Committee, as the case may be, does not agree with the recommendation for Approval, then: (i) such recommendation shall not be Approved; (ii) the Project Committee or Steering Committee may, but shall not be obligated to, provide direction to the Development Manager to revise and resubmit the recommendation for Approval; (iii) in the absence of any express direction from the Project Committee or Steering Committee, or any contractual obligation hereunder to obtain an Approval from the Project Committee or an Approval from the Steering Committee with respect to the subject matter of the recommendation, the Development Manager may elect whether or not to revise and resubmit the recommendation for Approval; and (iv) if a Deadlock is submitted by the Project Committee or the Steering Committee to dispute resolution pursuant to the Project Framework Agreement and during any such dispute resolution process the Development Manager shall make commercially reasonable efforts to mitigate the impact of the delay in receiving Approval on the Project.
- (e) Any direction or instruction of the Project Committee or the Steering Committee must be provided in accordance with the terms of the Project Framework Agreement, failing which such direction or instruction shall constitute input by such Contributing Party's representative.

3.4 Approval of Other Decisions

Save and except as otherwise specifically provided for in this Agreement, the Development Manager, in accordance with the Standard of Performance, shall have the authority to make decisions, other than Decisions or Major Decisions and other than where the Project Committee or the Steering Committee has otherwise directed, with respect to the management of the design, permitting, construction and development of the Project. The Development Manager shall collaborate with the members of the Project Committee in respect of such decisions and shall take into account any concepts, strategies or input proposed by the members of the Project Committee. Notwithstanding the foregoing, the Development Manager shall in any event make any material decisions, including any decisions that would materially affect operations or programming, in consultation with and at the direction of the Project Committee, and if a decision with respect to a material matter or item in connection with the design, permitting, construction,

development or management of the Project arises that is not expressly set out in the list of items comprising a Decision or a Major Decision, the Development Manager agrees to act in accordance with the Standard of Performance in determining whether the matter or item should nevertheless be treated as a Decision or a Major Decision and be subject to the Approval of the Project Committee or Approval of the Steering Committee, as the case may be, and the Development Manager shall in any event treat any matter or item as a Decision if so directed by the Project Committee or a Major Decision if so directed by the Steering Committee.

ARTICLE 4

CONSTRUCTION AND DEVELOPMENT

4.1 General Development Duties

Subject at all times to the Project Committee's Approval of Decisions, the Steering Committee's Approval of Major Decisions and any directions received from the Project Committee or the Steering Committee from time to time, the Contributing Parties hereby authorize the Development Manager to, and the Development Manager hereby covenants and agrees that it shall, in accordance with the Standard of Performance, do all such acts and things as are necessary or desirable in accordance with this Agreement to supervise, administer and manage the development, Completion, Turnover and Final Completion of the Project, including those items set out in Schedule H. The Development Manager shall, for and on behalf of the Contributing Parties, manage the design, development, construction and management of the Project to ensure that the Project proceeds in accordance with, the Project Requirements and the Project Plans, and the Development Manager shall, in furtherance of its duties under this Section 4.1, convene regular meetings of the Project Committee, the Project Architect, the General Contractor and any other Consultants and Contractors to facilitate open dialogue amongst such parties.

4.2 Project Requirements, Design Framework and Project Execution Plans

- (a) Project Architect. The Development Manager acknowledges that Dialog Alberta Architecture, Engineering, Interior Design, Planning Inc. has been previously appointed as the Project Architect with responsibility to administer, program, design, document, oversee and conduct field reviews of the Project.
- (b) Design Framework. The Development Manager acknowledges that it has received the Predesign Report and shall, forthwith following the Effective Date, establish, supervise, administer and manage a Project design consultation team to further the design consultation process and enhance the design criteria, concept, outline specifications, and concept drawings for the Project as may be necessary or desirable (collectively, and as amended from time to time, the "**Design Framework**"), presented in the form of a revised design report, completed at the pre-design stage and updated during schematic design, design development, contract documentation and procurement stages, using commercially reasonable efforts to take into account any reports submitted to the Project Committee by The City in respect of the results of any and all community engagement programs previously conducted in respect of the Community Rink or the Event Centre. Such Project design consultation team shall meet regularly and shall diligently and expeditiously establish such Design Framework as soon as reasonably possible following the Effective Date. The Development Manager will coordinate, schedule and conduct design consultation meetings, which will include design presentation meetings, the provision of verbal and/or written feedback by the design

consultation team, engagement, design workshops and other design matters. The Design Framework, design reports and any amendments thereto from time to time, shall be subject to the Approval of the Project Committee. Notwithstanding any other provision of this Agreement, the Design Framework shall, to the extent practicable, be based upon the Previous Design Development Report, with such changes as may be Approved by the Project Committee (including, for certainty, in respect of, *inter alia*: the increased size of the Lands; the relocation of utilities; the addition of an indoor gathering space; an increase in the size of the parking garage from 200 to 500 spaces; the addition of the Community Rink and LEED certification).

- (c) Project Requirements. As soon as reasonably practicable following the delivery of the final Predesign Report and in any event no later than twenty-one (21) days thereafter, the Project Committee shall submit to the Development Manager in writing its requirements in respect of the Project Requirements that are in addition to those already set out in the Predesign Report and the Project Committee may modify or submit additional requirements from time to time thereafter. The Development Manager shall thereafter coordinate, schedule and conduct meetings among the Development Manager, the Project Representatives, the Project Architect, the General Contractor and the Project design team referenced in subsection (b) above to discuss and agree upon a final determination of the Project Requirements, which final Project Requirements, conveyed through the design reports, will be subject to the Approval of the Project Committee. The Parties acknowledge and agree that the Fundamental Principles set forth in the Project Framework Agreement shall be considered in determining the final determination of the Project Requirements. Any amendments to the Project Requirements pursuant to this provision shall be subject to the Approval of the Project Committee.
- (d) Project Execution Plans. The Development Manager shall, following the Effective Date:
- (i) Risk Mitigation Plan: coordinate a full risk analysis developed through risk workshops coordinated and conducted by the Development Manager including the Contributing Parties and all appropriate Persons designated by them; produce a detailed risk matrix; and propose a comprehensive risk mitigation strategy and plan, all of which shall be submitted to the Project Committee no later than November 10, 2023 for review and Approval (such strategy and plan, as initially Approved by the Project Committee, and as amended from time to time by Approval of the Project Committee, the “**Risk Mitigation Plan**”); and such Risk Mitigation Plan will include a recommended interval for the re-evaluation of risks as the Project advances to maintain an up to date risk matrix and risk mitigation strategy and plan at all times;
 - (ii) Project Management and Implementation Plan: develop a detailed project management, implementation, and execution plan and strategy for the Project, including consideration of the delivery model for design and construction, to be submitted to the Project Committee no later than December 1, 2023 for review and Approval (such plan, as initially Approved

by the Project Committee, and as amended from time to time by Approval of the Project Committee, the “**Project Management Plan**”); and

- (iii) Project Procurement Plan: develop a procurement plan for the Project that addresses all of the content and complies with all the requirements in the Procurement Plan Requirements and deliver same to the Project Committee no later than January 5, 2024 for review and Approval (such plan, as initially Approved by the Project Committee, and as amended from time to time by Approval of the Project Committee, the “**Project Procurement Plan**”).
- (e) The Development Manager shall, following the Approval by the Project Committee of all of the foregoing plans, implement, update and adhere to such plans.
- (f) The Contributing Parties agree to provide the Development Manager with a copy of the Project Framework Agreement upon execution and any amendments made thereto within five Business Days of such amendment.

4.3 Consulting Contracts

The Contributing Parties shall enter into each Consulting Contract. The Development Manager shall not have the authority to enter into a Consulting Contract for and on behalf of the Contributing Parties unless it has first obtained the Approval of the Project Committee to do so.

4.4 Planning and Design Phase

- (a) Design Plans. Following Approval by the Project Committee of the Design Framework and the Project Requirements, the Development Manager shall in accordance with the Design Review, coordinate and cause to be prepared the Reviewable Design Data at each of the reviewable design and development stages set out in the Design Review. The Development Manager shall submit the applicable Reviewable Design Data for each applicable design and development stage to the Project Committee for Approval (such Reviewable Design Data, as Approved by the Project Committee for such development stage, the “**Design Plans**”). Once Design Plans have been Approved by the Project Committee for a reviewable design stage, any material changes thereto will require the further Approval of the Project Committee. The Parties acknowledge that following the issuance of “issued for construction” drawings and specifications, no changes to the Approved Design Plans may be made except pursuant to a Change Order in accordance with Article 6 of this Agreement. All working drawings, plans and specifications and copies thereof and all models with respect to the Project shall be and remain the property of the Contributing Parties to the extent same are not the property of the Consultant who prepared them.
- (b) Permits. The Development Manager shall in a timely manner manage the preparation, application, and submission of the Design Plans and all other required applications and documents to the Approving Authorities and all other required Governmental Authorities, including any and all public utility companies or departments of transportation having jurisdiction over components of the Project, to cause to be obtained all required permits, licenses, variances, consents and approvals for the Project and in order to achieve Completion of the Project and to

occupy the Community Rink and the Event Centre, including (to the extent applicable):

- (i) permits and approvals relating or pertaining to demolition, excavation, grading and Servicing;
- (ii) site plan approvals, engineering permits, traffic and department of transportation permits and approvals, sewer permits, parking variances, any required land plan amendments, whether to the Rivers District Master Plan, the Beltline Area Redevelopment Plan or otherwise, or any zoning or land use redesignations;
- (iii) building permits, development permits, development completion permits, and occupancy permits;
- (iv) environmental permits and approvals;
- (v) other permits or approvals relating to the Project that must be issued or obtained in order for a building permit and a certificate of occupancy to be issued for the Community Rink and the Event Centre; and
- (vi) approvals necessary for the completion, occupancy and use of the Project;

(collectively, the “**Permits**”). The Development Manager shall assist with and support in the negotiations in respect of any required agreement with any Governmental Authority in respect of the Permits and any such agreements shall be subject to the Approval of the Project Committee. The Development Manager will cause to be obtained all Permits and related agreements as are necessary in order to ensure that the development, construction and proposed use and occupancy of the Project and any phasing thereof will comply with all Applicable Laws and the Development Manager cause to be obtained all such Permits as promptly as practicable and in sufficient time to comply with the Project Schedule.

4.5 Project Schedule

- (a) The Development Manager shall, in conjunction with preparing its proposals for Approval in respect of both the Design Framework and the Project Requirements, prepare (or cause a qualified Consultant to prepare) a preliminary schedule for the Project in accordance therewith, setting forth the various major activities to be undertaken in connection with the Project and the approximate timing of the commencement and completion of such activities and shall update (or cause to be updated) such schedule from time to time, in the normal course of its development activities. The Development Manager shall submit such initial schedule and any updates thereto to the Project Committee for Approval (such schedule, as initially Approved by the Project Committee, and as amended from time to time by Approval of the Project Committee, the “**Project Schedule**”).
- (b) The Project Schedule shall include milestone dates on which various phases of the design and construction of the Project should be completed, including major design and construction decisions that must be made in order to achieve such

dates and other material dates and timelines contemplated in this Agreement (collectively, the “**Milestone Dates**”).

- (c) Upon learning of any event or series of events that results in any Milestone Date or the Development Manager’s or the Contractor’s achievement of any of those dates being, or likely to be, impacted, the Development Manager shall promptly provide the Project Committee with written notice of such impact or likely impact. the Development Manager shall promptly notify the Project Committee in accordance with Article 6 of such impact including, if applicable whether a change to the Project Schedule may be required.

4.6 Budget

- (a) As soon as possible after the Effective Date, the Development Manager will prepare or cause to be prepared an initial detailed cost budget for the Project setting forth, in reasonable detail, line by line estimates of the Project Costs, including contingencies and allowances (as may be reasonably specified by the Project Committee), which budget shall not in any event evidence the expenditure of Eligible Costs that in aggregate exceed the Overall Budget Limit. The Development Manager shall update such budget from time to time in the normal course of its development activities and the Development Manager shall submit material updates to the Project Committee for Approval. The initial budget and each update thereafter prepared by the Development Manager shall be submitted to the Project Committee for Approval by the Project Committee (such budget, as initially Approved by the Project Committee, and as amended from time to time by Approval of the Project Committee, the “**Project Budget**”).
- (b) The Development Manager will notify the Project Committee if it reasonably expects that the Project Budget will be exceeded in respect of any line item by more than a specified threshold percentage or amount which will be established by the Project Committee.
- (c) The Project Budget shall include reasonable allowances and contingencies as determined by the Project Committee. Such allowances and contingencies may only be drawn upon, exceeded or reallocated in accordance with such policies and directives as may be Approved by the Project Committee from time to time.

4.7 Construction

Without limiting the Development Manager’s obligations under this Article 4, the Development Manager shall perform all duties and obligations in connection with the construction of the Project, in accordance with the terms and conditions of this Agreement and subject at all times to the Approval of the Project Committee with respect to all Decisions and the Approval of the Steering Committee with respect to all Major Decisions, and any direction received from the Project Committee or the Steering Committee from time to time.

4.8 Construction Contracts

The Development Manager acknowledges that CANA Management Ltd. has been previously appointed as the General Contractor and that the Contributing Parties have entered into the General Construction Contract. The Contributing Parties will enter into any other

Construction Contracts as may be required. The Development Manager shall not have the authority to enter into a Construction Contract as agent for and on behalf of the Contributing Parties unless it has first obtained the Approval of the Project Committee to do so.

4.9 Liens

- (a) The Development Manager shall:
- (i) be responsible to administer and manage with the appropriate Consultants all payments under the Construction Contracts and other contracts with respect to or relating to the Project and the disbursement all Project Costs are all in compliance with the Lien Act and any other applicable construction lien legislation, including, all holdback provisions under such legislation are complied with for and on behalf of the Contributing Parties;
 - (ii) administer and manage that the Lands are protected from all liens arising from time to time at common law or under the provision of any statute (including liens for labour or materials under the Lien Act or similar legislation), which shall include, holding back from the amounts due and owing to any party the appropriate holdback required to be made pursuant to the Lien Act and only releasing such holdbacks upon the expiry of the applicable lien period all related to the Project;
 - (iii) if requested by the Project Committee, administer and manage with the appropriate Consultants (either from the General Contractor or otherwise) title searches concurrently with Requests for Payment and immediately prior to making any payment pursuant thereto;
 - (iv) promptly take, in coordination with the appropriate Consultants and the Contributing Parties, all reasonable steps required to discharge any lien or deal with any claim that is filed or registered against the Lands by reason or work supplied or claim to have been supplied for the Project and cause all such liens to be discharged, either by payment directly to the claimant or by payment into court (or posting security in lieu thereof) of an amount sufficient to obtain an order from such court discharging and vacating the said lien or by using commercially reasonable efforts, in coordination with the appropriate Consultants and the Contributing Parties, to pursue any contractual obligation of a Consultant or Contractor to discharge any lien or deal with any claim that is filed or registered against the Lands; and
 - (v) be entitled to reimbursement of all third party costs (including legal fees on a full indemnity basis) incurred in connection with fulfilling its obligations under Section 4.9(a)(iv) except where any lien or claim arises from a breach or non-performance of a the Development Manager obligation under this Agreement, a negligent act or negligent omission by the Development Manager or a failure by the Development Manager to comply with all of the obligations of the Lien Act for and on behalf of the Contributing Parties (in their capacity as an “owner” under such legislation or otherwise), including any failure to maintain all required holdbacks in the amounts required by the Lien Act, in which case such costs shall be

payable by the Development Manager without reimbursement under this Agreement.

- (b) The City will advise the Development Manager within 10 Business Days following receipt by The City of a notice of a lien filed or registered against the Lands and the Development Manager will advise the Project Committee forthwith upon becoming aware of the existence of any such liens.
- (c) Unless otherwise Approved by the Project Committee, the Development Manager shall ensure that each Construction Contract provides that in the event a claim for a builders' or construction lien is registered against the title to the Lands for work or services provided under such Construction Contract and not due to any default of the Contributing Parties, unless the Contractor makes alternate arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the Project Committee, acting reasonably, the Contributing Parties shall be entitled to withhold such portion of any payment otherwise due to such Contractor in an amount as would be required to satisfy the applicable lien claimant and any costs and expenses associated therewith until such time as such claim has been satisfied or discharged from title.

4.10 Completion, Overall Commissioning and Turnover

- (a) The Development Manager shall, subject to Force Majeure or a Contributing Party Delay and subject to delays arising as a result of any Change Order in accordance with Article 6 and in coordination with the appropriate Consultants, cause Substantial Completion to be achieved on or before the Scheduled Substantial Completion Date. The Development Manager shall coordinate with the Project Architect or such other independent certifier who will be responsible for the inspection and certification of the Substantial Completion contemplated and the determination of the achievement of Substantial Completion and to deliver a Certificate of Substantial Completion.
- (b) The Development Manager shall, subject to Force Majeure or a Contributing Party Delay and in coordination with the appropriate Consultants, cause Turnover of the Project to be achieved in accordance with the Project Schedule. The Development Manager shall give the Project Committee at least 30 days' notice prior to the date upon which the Development Manager anticipates all requirements for Completion shall be satisfied. Upon satisfaction of all requirements for Completion, the Development Manager shall cause the Project Architect or independent certifier, as applicable, to issue the Turnover Certificate and the Development Manager shall deliver the Turnover Certificate to the Project Committee. If the Project Committee disputes that all requirements for Completion have been satisfied, it shall deliver a notice within 10 days to the other Parties setting out the reasons as to why it considers that the Turnover Certificate should not be issued. The Development Manager shall, or shall cause the Project Architect or independent certifier, as applicable, to, promptly respond to the Project Committee's notice setting out in detail a proposal to address all matters set out in such notice to the satisfaction of the Project Committee. If the matters are not addressed to the satisfaction of Project Committee, the Project Committee may submit such matters to dispute resolution in accordance with Article 14.

- (c) The Development Manager shall cause the Overall Commissioning to be performed by the appropriate Consultants, and shall facilitate the performance of all commissioning activities to be carried out by The City and CSERELP in accordance with the Overall Commissioning Program. The Development Manager shall, in consultation with the Project Committee, the Project Architect and all other appropriate Persons, prepare a draft Overall Commissioning Program and shall provide a copy thereof to the Project Committee for the Approval of the Project Committee.
- (d) The Parties acknowledge that CSERELP may perform its own commissioning activities both before and after the Turnover Date. Prior to the Turnover Date, the Development Manager shall cause that CSERELP is provided reasonable unfettered access to the Event Centre at such times as may be set out in the Overall Commissioning Program, and subject to the terms and conditions set out therein, to enable CSERELP to undertake its commissioning activities in accordance with the Overall Commissioning Program. CSERELP shall comply, and shall ensure all its employees, agents, contractors, consultants and subcontractors comply, with the directions, procedures and safety guidelines established by the General Contractor, The City and the Development Manager for the Lands and shall avoid any material disruption to the performance of all other Overall Commissioning and the achievement of Turnover.
- (e) The Development Manager shall cause to be delivered by the appropriate Consultants such training as may be required to render The City and CSERELP fully knowledgeable about the operation of the Event Centre post-Turnover.
- (f) Turnover shall occur within five Business Days of issuance of the Turnover Certificate. The Event Centre shall be turned over to The City and CSERELP in a clean condition, free of construction debris and equipment, and free of encumbrances under the Lien Act which arise in connection with the Services provided by the Development Manager hereunder, including in connection with any of the Construction Contracts or Consulting Contracts.
- (g) In the event that Minor Deficiencies exist when the Certificate of Substantial Completion is issued, the Project Architect or other independent certifier shall, in consultation with the Development Manager and the Project Committee, prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies. The Development Manager shall withhold from payment to the General Contractor such amounts as may be required to complete and rectify all Minor Deficiencies. The Development Manager shall, in consultation with the Project Committee, cause the completion and rectification of all Minor Deficiencies within the timeline established at the time of preparation of the Minor Deficiencies List and so as to minimize to the greatest extent possible, any disruption to the Completion of the Project or operations of the Community Rink and the Event Centre. The Development Manager will cause the performance by the appropriate Consultants, of the completion and rectification of Minor Deficiencies before and after the Turnover Date. After the Turnover Date, CSERELP and The City shall give the Development Manager, the General Contractor, Contractors, Consultants and Subcontractors reasonable access to the Community Rink and the Event Centre

at such reasonable times to enable the completion and rectification of the Minor Deficiencies in accordance with the Minor Deficiencies List.

- (h) Should the Contractor fail to diligently complete the rectification or correction of all Minor Deficiencies:
 - (i) within 75 days of the issuance of the Minor Deficiencies List where no time for rectification or completion has been specified by the Project Architect; or
 - (ii) within 30 days after the time for completion and rectification of any Minor Deficiency where such time has been specified in the Minor Deficiencies List by the Project Architect;

then the Development Manager, for and on behalf of the Contributing Parties, may, upon instructions from the Project Committee, engage other Contractors to perform the work necessary to complete and rectify any such Minor Deficiencies, as an Eligible Cost.

- (i) Within 60 days after the date of Turnover, the Development Manager shall deliver to each Contributing Party a “close out book” that shall include, but not be limited to the Construction Data.
- (j) Within 30 days after the date of Final Completion, the Development Manager shall deliver to the Contributing Parties:
 - (i) a statutory declaration sworn by a duly authorized officer of the Development Manager stating that: (A) Final Completion has been achieved, (B) the builders’ lien period has expired and there are no builders’ liens or similar encumbrances or liens registered against the Lands in respect of work completed in respect of the Project to date, and (C) all Contractors and Consultants have been paid in full for any and all work performed and material and equipment supplied by them on or for the Project; and certifying the total amount expended by the Development Manager and the Contractor in respect of the Project; and
 - (ii) a clearance certificate issued under any workers’ compensation or similar workplace safety legislation in force in Alberta in respect of each Contractor that did work in connection with the Project.

4.11 Construction Delays

The time for achieving the Milestone Dates, the Scheduled Substantial Completion Date, Turnover and any other obligation of the Development Manager under this Agreement shall be extended by the length of any delay in achieving same resulting from any Contributing Party Delay and any Force Majeure. Following a Contributing Party Delay or a Force Majeure that affects the Project Schedule, the Development Manager shall modify the Project Schedule to reflect the adjusted dates as soon as reasonably practical and determinable. If a Contributing Party Delay or Force Majeure occur simultaneously (or two or more of either of them), the length of the simultaneous delays shall be deemed to be one period of delay.

- (a) **“Contributing Party Delay”** means any delay to the Project Schedule or in achieving a Milestone Date, the Scheduled Substantial Completion Date or Turnover in the Project Schedule or in the performance of the Development Manager’s obligations under this Agreement that is caused by or contributed to by the Contributing Parties or either of them, including: (i) a Contributing Party’s failure to approve or provide requested changes to the Reviewable Design Data within the time periods set forth in the Design Review; (ii) any other matters specifically identified as a “Contributing Party Delay” in this Agreement; (iii) a Contributing Party’s failure to provide Approval, direction or instructions for any other matter relating to the Project that requires the Approval, direction or instructions of the Project Committee or the Steering Committee within the time periods set forth in Section 3.3(d) or such other time period as may be expressly stated in this Agreement or in the Approval Form; (iv) Change Orders; (v) any unreasonable delay in responding to the Development Manager’s request for cooperation or information in connection with the Development Manager’s efforts to obtain all Permits; (vi) a Contributing Party’s or its contractors’, agents’, and employees’ interference with the Development Manager’s performance and completion of the Project. Upon becoming aware of the occurrence of a Contributing Party Delay, the Development Manager shall promptly (within 10 Business Days) notify the Project Committee of such occurrence and specifying the action or inaction by the Contributing Party that the Development Manager contends constitutes the Contributing Party Delay and an estimate of the impact of such alleged delay on any line item costs included in the Project Budget. A Contributing Party Delay shall result in an equitable extension to the Milestone Date and, if applicable, Scheduled Substantial Completion Date and/or Turnover Date in the Project Schedule and in the performance of the Development Manager’s obligations under this Agreement. For purposes of calculating the length of any Contributing Party Delay, the Contributing Party Delay shall be deemed to have commenced on the start of such Contributing Party Delay and shall continue until such time that the cause of the Contributing Party Delay is cured. A delay shall not be a Contributing Party Delay to the extent it is also a Force Majeure.
- (b) If an event of Force Majeure shall occur, the Party wishing to claim the benefit of a Force Majeure delay shall give written notice of the underlying Force Majeure event to the other Parties promptly (within 10 Business Days) upon becoming aware of the occurrence of the Force Majeure event and that such occurrence will result in a delay in the performance of such Party’s obligations under this Agreement. Provided the Party wishing to claim the benefit of a Force Majeure delay has timely notified the other Parties of a Force Majeure event as required by this Section, then the time for such Party’s performance shall be extended on an equitable basis by the time of the delay actually caused by such Force Majeure event. If a Party fails to give such timely notice, the Party shall have the period of time to which it would otherwise be entitled to a Force Majeure delay (but for the late notice) reduced on a day for day basis for each day that the notice is late. The Party claiming the benefit of a Force Majeure delay must use commercially reasonable efforts to avoid or mitigate the impact of the Force Majeure and must reasonably demonstrate that, but for the occurrence of the applicable Force Majeure event, such Party would have been ready and able to timely perform the delayed obligations. For greater certainty, no event of Force Majeure shall excuse either Contributing Party from making a payment under this Agreement when due.

- (c) Notwithstanding anything to the contrary in this Section 4.11, if a delay is caused by a Contractor or a Consultant, the Development Manager will use its reasonable commercial efforts to mitigate the effect of such delay on the overall Project Schedule, including, without limitation, the achievement of Milestone Dates, the Scheduled Substantial Completion Date and Turnover.

4.12 Warranties

The Development Manager shall undertake that Construction Contracts and Consulting Contracts entered into from and after the date hereof to provide, for the benefit of the Contributing Parties, such construction, manufacturers and other warranties, guarantees, benefits and other performance commitments as required by the Project Committee from such Contractor and its Subcontractors (including manufacturers and suppliers) in relation to the construction of the Project (collectively, "**Warranties**"), all as will be further specified in the Project Procurement Plan. The Development Manager shall, at the option of the Contributing Parties, administer, on behalf of the Contributing Parties, the enforcement of all Warranties obtained up until the second anniversary of Completion, in which case the Development Manager shall (a) enforce all Warranties and (ii) cause the Contractor and all other providers of Warranties to promptly perform the repairs and replacements with respect to items covered by the Warranties.

4.13 Accounts and Records

- (a) The Development Manager shall, and shall require the Contractors to, keep comprehensive, true, complete and accurate books, records, accounts, documents, reports, studies, tests, plans, drawings, permits, models, studies, quotations, tenders, changes, instructions and other construction-related material with respect to the entire construction process, all funds received and disbursements made by the Development Manager and all transactions pertaining to the foregoing (collectively, the "**Project Books**"). Notwithstanding the foregoing, no Contractor or Consultant shall be required to include in Project Books the build-up of any rates or prices for goods or services provided on a fixed price basis.
- (b) The Development Manager shall provide such evidence as to the payment of Project Costs as The City or CSERELP shall reasonably require.
- (c) Each of The City's and CSERELP's authorized representatives, including its auditors, shall have full access to inspect the Project Books and to make extracts or copies and perform audits of the Project Books provided that The City and CSERELP do not unreasonably disrupt the management of the Project. The Development Manager will at all times furnish correct information, accounts and statements to the Contributing Parties and their auditors concerning the Project and the assets, liabilities and contracts related thereto and all transactions pertaining to the Project without any concealment or suppression and will otherwise provide such co-operation as may be reasonably required in connection with any audit of the Project Books.
- (d) The Development Manager shall ensure that prompt and timely corrective action is taken in response to any audit finding. The Development Manager will submit to the Project Committee, in a timely fashion, a report on follow-up actions taken to address any recommendations and the results of any audit. The cost of any

audit conducted by a Contributing Party will be the responsibility of the Contributing Party conducting the audit.

- (e) CSERELP and the Development Manager additionally agree to fully cooperate and provide full access to The City's auditor to the Project Books and any and all agreement, plans, strategies, frameworks, studies and other documents and materials as may be required to satisfy any such City auditor's requirements.

4.14 Reconciliation upon Completion

On or before the date that is 90 days after Turnover, the Development Manager shall provide to the Project Committee a full accounting and reconciliation of the final actual expended Project Costs incurred in the Completion of the Project based on (i) the actual amounts expended or incurred for each of the line items set forth in the Project Budget, or as otherwise agreed to by the Project Committee pursuant to the Change Order process set forth in this Agreement (including Change Order costs relating to a Sole Cost Item which constitute City Additional Costs or CSERELP Additional Costs, as the case may be, and are paid directly by the Contributing Parties pursuant to this Agreement) and including details of the allocation of any contingencies and allowances; plus (ii) as to items that were included in the Project Budget, but which may not be completed and paid for at the time that the actual expended Project Costs are calculated (for example, seasonal deficiencies), the price to complete the item in question. Except for amounts to be retained for items described in (ii) above and any other anticipated liabilities of the Contributing Parties with respect to the Project, to the extent there is a positive balance in the Project Account, the Development Manager shall pay to each of the Contributing Parties (or as they may direct), to the extent of their respective interest and amount contributed, such excess funds.

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

- (a) As a 'Partner' under the *Investing in Partnerships Policy* (CP2017-01), each of CSERELP and the Development Manager may be requested to participate in an annual corporate reporting process. If and to the extent so requested to participate, CSERELP and the Development Manager shall participate as required.
- (b) The Development Manager and CSERELP acknowledge that The City is accountable to the public for the use of public funds through an open and transparent process which identifies expected outcomes, measures performance, reports results to the public (through Council) and provides for follow up. As such, as and to the extent requested by The City, the Development Manager and CSERELP each agree to cooperate with The City in meeting any accountability or audit requirements pertaining to the Project.

4.16 Acknowledgement

The Parties acknowledge that, prior to the date hereof, the Contributing Parties entered into the General Construction Contract with the General Contractor and Consulting Contract with the Project Architect (the "**Primary Contracts**"). The Development Manager represents and warrants that (a) it has reviewed the Primary Contracts and is satisfied with the terms and conditions thereof, and (b) it has taken the terms and conditions of the Primary Contracts into account in agreeing to execute and deliver this Agreement, including the formulation of the

Development Manager Fee. The Development Manager is not entitled to claim any adjustment to the Development Manager Fee, any extension of time, or any other relief, in connection with or as a result of the terms and conditions of the Primary Contracts. The Development Manager shall be deemed to have waived any and all such claims by executing this Agreement.

ARTICLE 5 **ACCESS TO THE LANDS**

5.1 Non-Exclusive Access

Concurrently with the acquisition of the Lands by The City, The City shall grant the Development Manager non-exclusive and unimpaired access to the Lands for the purpose of performing its obligations under this Agreement. The Development Manager may, for any purpose in furtherance of the Project, grant a right of access to the Project Architect, Contractors, Subcontractors and Consultants necessary to complete the Project and its agents and employees in respect of the Lands, but no such right of access shall have effect beyond the expiry or termination of this Agreement.

5.2 Title to Lands, Community Rink and Event Centre

The Development Manager acknowledges and agrees that the Development Manager shall not acquire any estate, right, title or ownership interest in the Lands, the Community Rink or the Event Centre pursuant to this Agreement or otherwise. CSERELP acknowledges and agrees that CSERELP shall not acquire any estate, right, title or ownership interest in the Lands, the Community Rink or the Event Centre pursuant to this Agreement. Notwithstanding any provision herein to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, the Community Rink and the Event Centre, shall at all times remain unencumbered by any interest of the Development Manager or CSERELP, other than as expressly permitted in writing by The City.

5.3 Permitted Entrants

The Development Manager shall accommodate any reasonable requests from any consultants or representatives of The City or CSERELP (the "**Permitted Entrant**") to enter upon the Lands for the purposes of inspecting and monitoring the completion of the Project, subject to the directions, procedures and safety guidelines of the Development Manager and the "prime contractor" to ensure the safety for the Lands and the Project.

ARTICLE 6 **CHANGE ORDERS**

6.1 Change Orders

- (a) The Project Committee or the Development Manager may from time to time request the implementation of a change to the Project Requirements Approved by the Project Committee, Design Plans Approved by the Project Committee, Project Plans Approved by the Project Committee or General Construction Contract (each, a "**Change Order**"). For the purposes of this Agreement, Change Orders shall be categorized as follows: (i) Change Orders due to errors or omissions or other deficiencies in the design or development of the Project; (ii) Change Orders required to comply with Applicable Laws or Permits, the requirements of any

Governmental Authority or that are required for public safety or health reasons (as recommended by the Project Architect); (iii) Change Orders required or recommended by the Project Architect for the structural integrity or durability of the Community Rink or the Event Centre, for the integrity or durability of the base building equipment, services or systems or which will materially improve the sustainability of the Community Rink or the Event Centre or any of its components (the foregoing Change Orders described in subsections (i) to (iii) inclusive are collectively, “**Required Change Orders**”); (iv) a Change Order initiated by the Project Committee, whether or not in respect of a Sole Cost Item (a “**Project Committee Change Order**”); and (v) a Change Order initiated by the Development Manager that is not a Required Change Order that provides some other benefit to the Project (a “**Recommended Change Order**”).

- (b) Any Change Order request shall be submitted in writing to the Project Committee, detailing the change and the supporting rationale.
- (c) Within five Business Days after receipt of the Change Order request, or such other time period the Project Committee may determine as being as is reasonable in the circumstances, taking into account the nature and complexity of the requested change, the Development Manager will provide the Project Committee with an estimate of the cost and timeline for any work necessary to implement the proposed Change Order, including any anticipated impact on cost, on the Project (including performance specifications and the Project Requirements), on the Project Budget, on the Project Schedule and whether such Change Order requires a new Permit or a modification to a Permit.
- (d) The Project Committee will review the proposal in respect of the Required Change Order, the Project Committee Change Order, or the Recommended Change Order, as the case may be, along with the cost and timeline estimate provided by the Development Manager, and determine whether the proposal in respect of such Change Order is Approved; provided however that the Project Committee must Approve all Required Change Orders (but may request the Development Manager to revise and resubmit its proposal in respect of same for purposes of alternative proposals for addressing the subject matter of such Required Change Order). For greater certainty, the Project Committee shall not be required to Approve any Project Committee Change Order or Recommended Change Order.
- (e) In the case of any Project Committee Change Order which is Approved, the Project Committee will advise the Development Manager whether the costs of such Change Order are Eligible Costs, or if such Change Order is in respect of a Sole Cost Item, that the costs attributable to such Sole Cost Item are City Additional Costs or CSERELP Additional Costs, as the case may be.
- (f) Upon Approval from the Project Committee, the Development Manager will prepare the proper documentation for the Change Order to direct the Contractors accordingly and proceed with the Project with the Change Order in place.

ARTICLE 7
PRE-CONSTRUCTION PHASE AND CONSTRUCTION PHASE

7.1 Pre-Construction Phase and Construction Phase

- (a) Pre-Construction Phase: The Development Manager shall deliver recommendations to the Project Committee in respect of preliminary or early-stage versions of each of the following items as part of the creation of a pre-report on a timely basis (with sufficient time to allow for feedback from, and resubmission to, the Project Committee if such initial recommendation is not Approved), such that the Project Committee may provide an Approval in respect of each such item on or prior to December 21, 2023:
 - (i) Preliminary Project Requirements;
 - (ii) Preliminary Design Framework;
 - (iii) Preliminary Project Schedule;
 - (iv) Preliminary Project Budget; and
 - (v) the Project Procurement Plan.

- (b) Construction Phase: The Development Manager shall deliver recommendations to the Project Committee in respect of each of the following items on a timely basis (with sufficient time to allow for feedback from, and resubmission to, the Project Committee if such initial recommendation is not approved), such that the Project Committee may provide an Approval in respect of each such item on or prior February 29, 2024:
 - (i) Project Requirements;
 - (ii) Construction Phase Design Plans;
 - (iii) General Construction Contract (either executed or in final form) as well as the GMP Amendment;
 - (iv) Construction Phase Project Schedule; and
 - (v) Construction Phase Project Budget.

ARTICLE 8
ELIGIBLE COST OVERRUNS

8.1 Eligible Cost Overruns

If at any time the Development Manager determines that the total aggregate Eligible Costs necessary to complete the Project, including Change Orders (except and to the extent that the costs thereof constitute City Additional Costs or CSERELP Additional Costs), are likely to exceed the Overall Budget Limit (any such excess, an “**Eligible Cost Overrun**”), the Development Manager shall provide notice of the Eligible Cost Overrun to the Project Committee, including details regarding the nature and extent of the Eligible Cost Overrun. In the event of an Eligible

Cost Overrun or likely Eligible Cost Overrun, and at the request and direction of the Project Committee, the Development Manager shall make recommendations, if available, in respect of the following:

- (a) the availability of allowances or contingency amounts in the Project Budget;
- (b) value engineering options;
- (c) reductions in the scope of the Project; and
- (d) other mitigation strategies;

which, if implemented, could eliminate or reduce the Eligible Cost Overrun.

ARTICLE 9

PAYMENT OF PROJECT COSTS

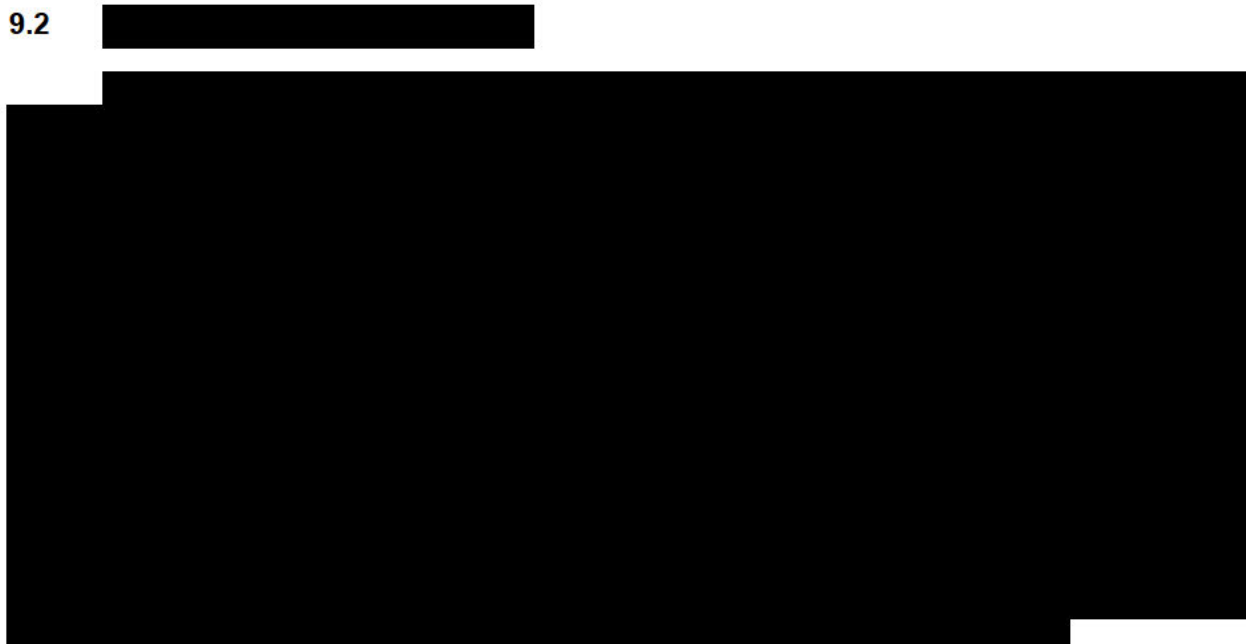
9.1 Recommendation for Payment

The Development Manager shall prepare a Recommendation for Payment, in accordance with the Project Budget, for review by and Approval of the Project Committee. Following the Project Committee's Approval, in whole or in part, of the Recommendation for Payment, The City will pay all Project Costs in the amounts set forth in the Recommendation for Payment which have been Approved by the Project Committee. The Deof all Eligible Costs, City Additional Costs and CSERELP Additional Costs in accordance with the Project Budget. The Development Manager shall administer the procedure for payment of Project Costs in accordance with the following terms and conditions:

- (a) The Development Manager shall submit a Recommendation for Payment, in the form attached hereto as Schedule F, no later than 10 days after the receipt of Proper Invoices submitted to the Development Manager by a Contractor or Consultant. The Development Manager shall coordinate and ensure that all Proper Invoices from Contractors and Consultants are submitted, no more and no less than once per month, on the same date or in close enough proximity such that all monthly Proper Invoices may be included in a single monthly Recommendation for Payment.
- (b) Each Recommendation for Payment shall include and be accompanied by the following:
 - (i) a statement signed by an officer of the Development Manager which includes:
 - (A) the dates prescribed by the Lien Act for the provision of a notice of dispute and the payment of undisputed proper invoices;
 - (B) any recommended notices of dispute in the prescribed form under the Lien Act;

- (C) the total amount of payments to be made pursuant to the Recommendation for Payment and the aggregate amount of payments for Project Costs previously made; and
 - (D) a schedule of the specific Payments in respect of Project Costs to be made under the Recommendation for Payment together with confirmation that each such payment relates to a cost which constitutes a Project Cost and that such Project Costs are provided for in the Project Budget;
- (ii) all material supporting documentation, including copies of detailed invoices from Consultants and Contractors for payments for Project Costs made since the last Recommendation for Payment; and
 - (iii) an invoice for the Development Manager Fee.

9.2



ARTICLE 10
INSURANCE

10.1 Insurance

- (a) Without limiting its obligations or liabilities set forth in this Agreement, the Development Manager shall obtain and maintain, at its sole cost and expense, as a minimum, with insurance companies satisfactory to the Project Committee, the following insurance for the duration of this Agreement:
 - (i) workers compensation insurance covering all personnel engaged in the performance of the Services in accordance with Applicable Law;
 - (ii) commercial general liability insurance, on an occurrence basis, with a combined, single limit of not less than \$5,000,000 inclusive for bodily injury

including death and/or property damage (including loss of or loss of use of property) per occurrence and otherwise on terms consistent with industry practice having regard to the nature of the Services; which insurance shall include coverage re: cross liability, non-owned automobile, damage to hired automobiles, broad form products and completed operations, broad form property damage, contractual liability, contractor's protective liability, personal injury, pollution liability in respect of the liabilities assumed under this Agreement (and which covers environmental damage in the form of pollution of the air, land or water arising from a sudden, unintended, or unexpected happening resulting from or associated with the Services), employer's liability (for all personnel not covered by the insurance referenced in sub-section (i) above) and employer's contingent liability;

- (iii) automobile liability insurance covering all motor vehicles owned, leased or licensed by the Development Manager, with limits of not less than \$2,000,000.00 for injury or death of one or more persons, or damage to or destruction of property as a result of any one accident;
 - (iv) insurance covering loss of or damage to all equipment, materials and supplies to be provided by the Development Manager, if any;
 - (v) errors and omissions insurance, to be maintained during the performance of the Services and for the duration of any warranty period, with limits of not less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate covering the professional negligence of the Development Manager in respect of any professional services performed as part of the Services; and
 - (vi) any other insurance that may be required by Applicable Law.
- (b) If requested by the Project Committee, the Development Manager shall, within 10 days of any such request and prior to the expiry of any such insurance policies required to be carried, provide the Project Committee with insurance certificates confirming the existence of the above insurance or the renewal thereof, as the case may be.
- (c) The limits and coverage of the policies of insurance obtained by the Development Manager shall in no way limit the liabilities or obligations assumed by the Development Manager. The Development Manager shall ensure that each of the Contributing Parties is expressly added and included as additional insured to the commercial general liability insurance policy referenced above, to the full extent of coverage available. The insurance policies maintained by the Development Manager above shall, to the extent reasonably practicable, contain a waiver on the part of the insurer, by subrogation or otherwise, of all rights against any of the CP Indemnity Beneficiaries.
- (d) The Development Manager is responsible for the full amount of any deductibles under the insurance policies obtained and maintained by it pursuant to this Section 10.1.

- (e) The insurance policies referenced in this Article shall include a provision for the Project Committee to be given 30 days written notice prior to cancellation or material change (restricting coverage). The Development Manager shall promptly advise the Project Committee should any policies of insurance lapse or otherwise be discontinued.

10.2 Project Insurance

Promptly following execution of this Agreement, the Development Manager shall, in consultation with the Project Representatives and any Consultants Approved by the Project Committee, develop a recommendation for all insurance (including details of coverages, insurers, insureds, deductibles, risks insured, premiums and any other information reasonably required by the Project Committee) to be obtained and maintained by the Development Manager for the benefit of the Project and the Parties and submit such recommendation for Approval to the Project Committee. Upon Approval by the Project Committee of such insurance, the Development Manager shall obtain and maintain throughout the term of this Agreement all such insurance as Approved by the Project Committee for the benefit of the Project and the Parties, and the premiums and all deductible amounts in respect of such insurance shall be an Eligible Cost

ARTICLE 11 INDEMNITIES AND LIABILITY

11.1 Indemnity by the Development Manager

Subject to Section 11.4, the Development Manager will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the CP Indemnity Beneficiaries, of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the CP Indemnity Beneficiaries, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses that may be sustained, incurred or paid by the CP Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

- (a) any breach by the Development Manager, its officers, employees, agents or other Persons for whom it is legally responsible, of any terms and provisions of this Agreement;
- (b) any negligence or wilful misconduct of the Development Manager, its officers, employees, agents or Persons for whom it is responsible in law (other than any Contractors or Consultants) in connection with the performance of its obligations pursuant to this Agreement; or
- (c) any action taken by the Development Manager in contravention of the terms and provisions of this Agreement or contrary to the direction of the Project Committee or the Steering Committee pursuant to this Agreement;

and will pay to the CP Indemnity Beneficiaries any loss, costs, damages and expenses (including legal fees and disbursements on a solicitor and client substantial indemnity basis) that may be sustained, incurred or paid by the CP Indemnity Beneficiaries in consequence thereof or in consequence of any such action, suit, claim, lien, execution or demand or in settlement or in discharge or on account thereof.

11.2 Indemnity by CSERELP

Subject to Section 11.4, CSERELP will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Development Manager Indemnity Beneficiaries of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the Development Manager Indemnity Beneficiaries, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

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

and will pay to the Development Manager Indemnity Beneficiaries any loss, costs, damages and expenses (including legal fees and disbursements on a solicitor and client substantial indemnity basis) that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries in consequence thereof or in consequence of any such action, suit, claim, lien, execution or demand or in settlement or in discharge or on account thereof; provided however that the indemnity provided under this Section shall not extend to:

- (i) any breach by the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity of any of the terms and provisions of this Agreement;
- (ii) any negligent act or omission, or wilful misconduct of the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity or Persons for whom they are respectively responsible at law; or
- (iii) any action taken by the Development Manager in contravention of the terms and provisions of this Agreement or contrary to the direction of the Project Committee or the Steering Committee pursuant to this Agreement.

11.3 Indemnity by The City

Subject to Section 11.4, The City will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Development Manager Indemnity Beneficiaries of, from and against all manner of actions, suits, claims, executions and demands that may be brought against or made upon the Development Manager Indemnity Beneficiaries, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries, or any of them, by reason of, or on account of, or in consequence of:

- (a) any breach by The City, its officers, employees, agents or other Persons for whom it is legally responsible, of any terms and provisions of this Agreement; or

- (b) any negligence or wilful misconduct of such The City, its officers, employees, agents or Persons for whom its responsible in law in connection with the performance of its obligations pursuant to this Agreement;

and will pay to the Development Manager Indemnity Beneficiaries any loss, costs, damages and expenses (including legal fees and disbursements on a solicitor and client substantial indemnity basis) that may be sustained, incurred or paid by the Development Manager Indemnity Beneficiaries in consequence thereof or in consequence of any such action, suit, claim, lien, execution or demand or in settlement or in discharge or on account thereof; provided however that the indemnity provided under this Section shall not extend to:

- (i) any breach by the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity of any of the terms and provisions of this Agreement;
- (ii) any negligent act or omission, or wilful misconduct of the Development Manager Indemnity Beneficiaries seeking the benefit of this indemnity or Persons for whom they are respectively responsible at law; or
- (iii) any action taken by the Development Manager in contravention of the terms and provisions of this Agreement or contrary to the direction of the Project Committee or the Steering Committee pursuant to this Agreement.

11.4 Consequential Damages

Notwithstanding anything to the contrary contained in this Agreement (except as set out below in this Section 11.4), no Party (in this Section, the “**First Party**”) will be liable to any other Party (in this Section, the “**Other Party**”) for any loss, expense, injury, death, damage or other liability of any indirect, special or consequential nature suffered by the Other Party which arises due to the First Party’s failure to perform its obligations under this Agreement or for any other reason (including negligence or willful misconduct on its part or on the part of any Person for whose act it is responsible in law), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise, even if advised of the possibility thereof; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature shall include loss of revenue, loss of profits (whether direct or indirect), loss of production, loss of earnings, loss of contract, cost of purchased or replacement capacity, cost of capital, and loss of the use of any facilities or property owned, operated, leased or used by the Other Party.

11.5 Duration

The obligations to indemnify contained in this Agreement shall survive any termination or expiration of this Agreement. Nothing in Article 11 shall create or extend any right for the benefit of any third party, except as expressly stated herein.

11.6 Notice of Claim

When a Party to this Agreement receives notice or otherwise becomes aware of a Claim which that Party determines may give rise to a claim for indemnification from another Party, that Party (in this Section, the “**Indemnified Party**”) shall give prompt notice to the other Party (in this Section, the “**Indemnifier**”), including a copy of such Claim (in this Section, the “**Notice of**

Claim”). Following receipt by the Indemnifier of a Notice of Claim, the Indemnifier shall be entitled to make a reasonable investigation of the Claim, as the Indemnifier considers necessary or desirable at its sole cost and expense. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifier all information concerning the Claim or relied upon by the Indemnified Party to substantiate the claim for indemnification. Within 30 days following receipt by the Indemnifier of a Notice of Claim, the Indemnifier shall elect to either (a) assume control of and proceed in a diligent manner with the investigation, defence, or settlement of the Claim, including choice of counsel and other advisors, in consultation with the Indemnified Party or (b) direct the Indemnified Party to do so, at the Indemnifier’s sole cost and expense. Subject to the next sentence, the Party assuming the defence of the Claim shall, in its discretion, acting reasonably, do such acts and things and conduct such negotiations, take or defend such proceedings, and make such settlement as it deems advisable with respect to the Claim. Except with the prior written consent of the Indemnified Party, the Indemnifier shall not settle or compromise any Claim or admit liability in respect thereof or disclose the existence of the indemnity, other than as may be required in defence of a court action, in respect of matters arising out of or relating to the indemnities contained in this Article 11. If the Indemnified Party shall withhold its consent to any compromise or settlement recommended by the Indemnifier, the Indemnified Party shall thereafter be responsible for all further defence costs (provided that if the ultimate disposition of the Claim results in an outcome more favourable than the compromise or settlement proposed by the Indemnifier, the Indemnifier shall be liable for and shall indemnify the Indemnified Party for all such defence costs), and, should the ultimate disposition of the Claim result in an outcome less favourable than the compromise or settlement proposed by the Indemnifier, the Indemnified Party shall be solely responsible for the difference between the ultimate result and the compromise or settlement not accepted. Each Party shall cooperate with the others fully in respect of any Claim, including providing each other on an ongoing basis with all information which may be relevant to the Indemnified Party’s or the Indemnifier’s liability hereunder and supplying copies of all relevant documentation promptly, as it becomes available, and each shall make available such witnesses as are under its control. Any payment shall be made where practically possible to give effect to any tax savings. Notwithstanding anything contained in this Article 11, the indemnities provided under this Article 11 shall not extend to any debt, cost, expense, claim or demand for which insurance proceeds have been recovered by the Indemnified Party under insurance policies which are placed for the benefit of the Project and the Parties pursuant to Section 10.2. Subject to the exceptions in Sections 11.2 and 11.3, for the purposes of the benefit of the indemnities and limitations of liability set out in this Article 11, The City is hereby acting as agent or trustee on behalf of and for the benefit of its elected officials, directors, officers, employees and agents, CSERELP is hereby acting as agent or trustee on behalf of and for the benefit of their respective directors, officers, employees and agents, and the Development Manager is hereby acting as agent or trustee on behalf of and for the benefit of its directors, officers, employees and agents.

ARTICLE 12

TERM OF AGREEMENT AND DEFAULT

12.1 Term

The term of this Agreement shall commence as of the Effective Date and, subject to earlier termination in accordance with this Agreement, shall continue in full force and effect until the second anniversary of Completion.

12.2 Development Manager Events of Default

Any of the following events shall constitute an event of default (a “**Development Manager Event of Default**”) hereunder by the Development Manager:

- (a) the occurrence of any Event of Insolvency of the Development Manager;
- (b) if the Development Manager defaults in the payment or performance of a material obligation under this Agreement and, in the case of a payment default, such default is not cured within 10 days after notice of such default has been given to the Development Manager by The City or CSERELP or, in the case of any other default of a material obligation such default is not cured within 30 days after notice of such default has been given to the Development Manager by The City or CSERELP;
- (c) the occurrence of a Disposition by the Development Manager in contravention of Section 19.3;
- (d) the Development Manager making any representation or warranty herein that is false or misleading when made; or
- (e) any failure by the Development Manager to comply with any determination, order or Award made and binding against the Development Manager in accordance with Article 14.

Notwithstanding anything to the contrary contained in this Agreement, if this Agreement is terminated the Development Manager shall be entitled to receive the amount of any Development Manager Fee which has been earned to but not yet paid as of the date of termination.

12.3 Rights of The City and CSERELP Upon the Development Manager Event of Default

If a Development Manager Event of Default has occurred and is continuing, The City and CSERELP shall have the right (without prejudice to any other right or remedy available to The City or CSERELP pursuant to this Agreement or at law or in equity) to:

- (a) suspend payment of the Development Manager Fee; or
- (b) terminate this Agreement by notice in writing to the Development Manager, which termination shall be effective on the date set out in the notice, which date shall be not less than two Business Days but not more than 30 days immediately following delivery of such notice.

12.4 Rights of the Development Manager Upon Failure to Pay Development Manager’s Fee

If Contributing Parties fail to pay the Development Manager’s Fee when due, allowing for reasonable time to pay, and such default is not cured within 10 days after notice of such default has been given to the Contributing Parties by the Development Manager, the Development Manager shall have the right to:

- (a) suspend performance of the Services; or

- (b) terminate this Agreement by notice in writing to the Contributing Parties, which termination shall be effective on the date set out in the notice, which date shall be not less than two Business Days but not more than 30 days immediately following delivery of such notice.

Notwithstanding the above, the Development Manager shall not have the rights under this Section 12.4 in the event that the Contributing Parties are disputing all or any part of the Development Manager's Fee.

12.5 Rights of the Contributing Parties upon Termination

Upon any termination of this Agreement or a termination of the Development Manager as the development manager under this Agreement, the Development Manager shall deliver to the Contributing Parties original copies of all records, documents and books of account maintained by the Development Manager with respect to the Project pursuant to the terms of this Agreement which are in the possession or control of the Development Manager. If required by the Project Committee, the Development Manager shall meet and reasonably cooperate with, and make its key Project personnel reasonably available to the Contributing Parties and any new development manager to the extent reasonably requested by either of the Contributing Parties or such new development manager for purposes of addressing transition issues relating to the handover and transfer of Development Manager's obligations in respect of the Services to such new development manager in a manner which, to the extent reasonably possible, minimizes the negative impact on the Project. The provisions of this Section 12.5 shall survive the termination of this Agreement.

12.6 Termination of Project Framework Agreement

If the Project Framework Agreement is terminated, this Agreement shall likewise concurrently terminate.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of The City

The City represents and warrants as of the date hereof as follows and acknowledges that CSERELP and the Development Manager are each relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) The City has the power, approval, financial capacity and right:
 - (i) to enter into and deliver this Agreement; and
 - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (b) this Agreement constitutes a valid and legally binding obligation of The City, enforceable against The City in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;

- (c) the entering into and the delivery of this Agreement and the performance of the obligations of The City hereunder will not result in the violation of:
 - (i) any agreement or other instrument to which The City is a party or by which The City is bound; or
 - (ii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; and
- (d) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting The City or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority.

13.2 Representations and Warranties of CSERELP

CSERELP represents and warrants as of the date hereof as follows and acknowledges that The City and the Development Manager are each relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) CSE Real Estate Limited Partnership is a limited partnership duly formed and subsisting under the laws of the Province of Alberta and its general partner, CSE Real Estate Corporation, is a corporation duly incorporated, organized and subsisting under the laws of the Province of Alberta;
- (b) CSE Real Estate Corporation, in its capacity as general partner and for and on behalf of CSE Real Estate Limited Partnership, has the power, authority, financial capacity and right:
 - (i) to enter into and deliver this Agreement, and to bind CSE Real Estate Limited Partnership to this Agreement; and
 - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of CSERELP, enforceable against CSERELP in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;
- (d) the entering into and the delivery of this Agreement and the performance of the obligations of CSERELP hereunder will not result in the violation of:
 - (i) any of the provisions of the limited partnership agreement of CSE Real Estate Limited Partnership or the constating documents or bylaws of CSE Real Estate Corporation; or

- (ii) any agreement or other instrument to which CSERELP is a party or by which CSERELP is bound; or
 - (iii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; or
 - (iv) any obligations of CSERELP to, or the requirements of, the National Hockey League, American Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body;
- (e) CSERELP has obtained all necessary approvals and consents from the National Hockey League, American Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body to enter into, deliver and perform this Agreement;
- (f) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting CSERELP or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority; and
- (g) CSERELP is in good standing under any and all contracts, licenses, collective bargaining agreements, permits and undertakings to which it is a party or subject to, as the case may be, where failure to be in good standing is reasonably likely to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement.

13.3 Representations and Warranties of the Development Manager

The Development Manager represents and warrants as of the date hereof as follows and acknowledges that The City and CSERELP are each relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) the Development Manager is an unlimited liability company duly incorporated, organized and subsisting under the laws of Nova Scotia and is extraprovincially registered in Alberta;
- (b) the Development Manager has the power, authority, financial capacity, and right:
 - (i) to enter into and deliver this Agreement; and
 - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of the Development Manager, enforceable against the Development Manager in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of

- creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;
- (d) the entering into and the delivery of this Agreement and the performance of the obligations of the Development Manager hereunder will not result in the violation of:
 - (i) any of the provisions of the constating documents or by-laws of the Development Manager;
 - (ii) any agreement or other instrument to which the Development Manager is a party or by which the Development Manager is bound; or
 - (iii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction;
 - (e) the Development Manager has, or retains individuals with, all of the requisite skills, knowledge, experience and resources, including a sufficient number of qualified and competent personnel, to carry out its obligations under this Agreement and to discharge such obligations in accordance with the Standard of Performance;
 - (f) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting the Development Manager or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority; and
 - (g) the Development Manager is in good standing under any and all contracts, licenses, permits and undertakings to which it is a party or subject to, as the case may be, where failure to be in good standing is reasonably likely to have an adverse effect on the Project or its ability to carry out its obligations in this Agreement.

ARTICLE 14

DISPUTE RESOLUTION

14.1 Dispute Notice

Any disagreements relating to the validity, construction, meaning, performance or effect of this Agreement, or to the rights or liabilities of the Parties or any other matter related to this Agreement (each a "**Dispute**") that cannot be resolved by the Project Committee (including the Development Manager representative to the Project Committee) will be referred to the Steering Committee (including the Development Manager representative to the Steering Committee) for resolution. If the Dispute cannot be resolved by the Steering Committee, such Dispute will then be referred to The City Manager, the Chairman of the Board of CSERELP's general partner, and the president of the Development Manager for resolution. This process may be triggered by any Party providing written notice to the other Parties (a "**Dispute Notice**") of the Dispute, briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought. For greater certainty, a Dispute Notice shall be sent to all other Parties, notwithstanding that one Party may not be involved in the Dispute.

14.2 Negotiation

Within five Business Days of a Party delivering a Dispute Notice to the other Parties, or such longer period as the Parties may agree, the Steering Committee will meet and make good faith efforts to resolve the Dispute through without prejudice negotiations. If the Steering Committee cannot resolve the Dispute, a further Dispute Notice shall be issued and the City Manager, the Chairman of the Board of CSERELP's general partner, and the president of the Development Manager will meet within five Business Days after delivery of the further Dispute Notice and make good faith efforts to resolve the Dispute through without prejudice negotiations.

14.3 Expert Mediation

If the Dispute is not resolved pursuant to Section 14.2 to the mutual satisfaction of the Parties to the Dispute within 10 Business Days of a Party delivering a Dispute Notice to the other Parties, or such longer period as the Parties to the Dispute may agree, a Party may: by notice to the other Parties (an "**Expert Notice**") request the appointment of an independent person or persons generally recognized as having familiarity with and expertise in the matter which is the subject of the Dispute (an "**Expert**") to resolve the Dispute as set out below:

- (a) within five Business Days of the delivery of an Expert Notice, each Party to the Dispute will submit in writing to the other Party(ies) to the Dispute, the names of no more than two candidates for Expert who are independent of the Parties, experienced in the resolution of similar disputes and immediately available to perform the role of Expert in respect of the Dispute at hand;
- (b) if a Party to the Dispute has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other Parties to the Dispute;
- (c) if for any reason within five Business Days of the delivery of an Expert Notice, an Expert has not been appointed, then any Party to the Dispute may apply to the Court of King's Bench of Alberta for the appointment of such Expert;
- (d) the Expert's fees and expenses will be shared as to 50% by the Development Manager and as to 50% by the Contributing Parties;
- (e) the Expert will conduct an impartial review of the Dispute in such manner as the Expert thinks fit, including carrying out on site inspections and interviews with any persons that the Expert thinks fit. The Parties will comply with all reasonable requests from the Expert for additional information, documents and access to personnel which the Expert considers necessary for the review. Any submission or documentation in respect of the Dispute provided to the Expert by a Party will also be provided to the other Parties to the Dispute;
- (f) the Expert may, with the written approval of the Parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by a Party to the Dispute to retain such other professional persons or experts;
- (g) the Expert will not be obliged to conduct enquiries in the presence of the Parties or receive submissions from the Parties, except to the extent that the Expert thinks fit, and may render a decision notwithstanding the failure of a Party to participate in the proceedings;

- (h) the Expert will render a brief, written, reasoned and impartial decision on the Dispute, with copies to each Party within 15 Business Days after the signing by the Expert and the applicable Parties of an agreement appointing such Expert, or such longer period as agreed to in writing by the Parties. The Expert's decision will be in the form of a proposed determination of the rights of the Parties to the Dispute having regard to the Expert's understanding of the relevant contractual provisions, the Applicable Law and the facts as agreed by the parties or as best the Expert is able to determine them;
- (i) each Party acknowledges the value of having the Expert render a timely decision regarding the Dispute. If the Expert is unable to render his decision within the time set or as extended by mutual agreement of the Parties, then the Parties will request that the Expert provide to the Parties within such time such analysis of the Dispute as the Expert is able to make within that time and describe the further work the Expert recommends would be required in order to arrive at a reasoned decision;
- (j) a decision of an Expert is not binding on the Parties but is intended to assist the Parties to reach agreement with respect to the Dispute;
- (k) the proceedings under this Section 14.3 will be confidential and all information, data or documentation disclosed or delivered by any Party to the Expert as a result or in connection with his duties as Expert will be treated as confidential and neither the Parties nor the Expert will disclose to any Person any such information, data or documentation unless the Parties otherwise agree in writing. Nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Expert; and
- (l) the proceedings by or before an Expert will be without prejudice in any subsequent proceedings.

The Development Manager acknowledges and agrees that any dispute referred to adjudication under Part 5 of the Lien Act shall not be so referred until after such dispute is not resolved pursuant to Section 14.2 to the mutual satisfaction of the Parties to the Dispute within 10 Business Days of a Party delivering a Dispute Notice to the other Parties, or such longer period as the Parties to the Dispute may agree, and that any such referral to adjudication under Part 5 of the Lien Act shall be in lieu of referral of the dispute to an Expert pursuant to this Section 14.3.

The provisions of this Section 14.3 shall not apply to a Dispute in respect of all or any portion of the Development Manager's Fee.

14.4 Commencement of Arbitration

If the Dispute is not completely resolved by agreement between the Parties to the Dispute within 10 Business Days of the receipt of the Expert's decision or analysis pursuant to Section 14.3 (or such longer period as the Parties to the Dispute may agree) or within 10 Business Days of the date on which the Expert's decision or analysis ought to have been received under Section 14.3, or if neither Party to the Dispute elects to issue an Expert Notice pursuant to Section 14.3, then a Party may commence proceedings to have the Dispute finally settled by arbitration under Section 14.5. In any such proceedings the scope of issues will not be limited

strictly to the terms of the Dispute Notice but may extend to include directly related matters for the purpose of completely resolving the Dispute.

14.5 Arbitration Procedure

If a Party is entitled under Section 14.4 to commence proceedings to have a Dispute finally resolved by arbitration, such Party may submit the Dispute to arbitration in accordance with the following principles:

- (a) arbitration proceedings shall be commenced by the Party desiring arbitration (the **"Initiating Party"**) delivering, within the time and in the manner contemplated by this Agreement, notice of such election to have such matter or question determined by arbitration (the **"Arbitration Notice"**) to the other Party(ies) to the Dispute (the **"Responding Parties"**) as well as, in the case of a Dispute between two Parties, to the third Party;
- (b) within 10 Business Days following the delivery of the Arbitration Notice, the Initiating Party and the Responding Parties shall meet and attempt to appoint a sole arbitrator. If the Initiating Party and the Responding Parties do not so meet or are unable to agree on a sole arbitrator within such 10 Business Days period then, upon not less than 10 Business Days further notice given by either the Initiating Party or the Responding Parties to the other, such Person may apply to a court of competent jurisdiction pursuant to the *Arbitration Act (Alberta)* (the **"Arbitration Court"**) to appoint the sole arbitrator. The provisions of such enactment shall apply to any such application to the Arbitration Court;
- (c) the sole arbitrator selected to act hereunder shall be qualified by education, training and experience to pass upon the particular question or questions in dispute;
- (d) the compensation and expenses of the sole arbitrator and any expert (including legal counsel) or consultant appointed or retained by the sole arbitrator shall be allocated between the Parties as determined by the sole arbitrator or the Arbitration Court;
- (e) the sole arbitrator appointed shall proceed immediately to hear and determine the question or questions in dispute;
- (f) the decision of the sole arbitrator and reasons therefor (the **"Award"**) shall be drawn up in writing and signed by the sole arbitrator and shall be made and delivered by the sole arbitrator to all Parties within 20 Business Days after the appointment of the sole arbitrator (or such other longer period as may be agreed to among the Initiating Party, the Responding Parties and the sole arbitrator, in their respective sole discretions) and, in the event that the Award is not made within such time period, either the Initiating Party or the Responding Parties may elect to terminate the arbitration (except where the sole arbitrator has successfully applied to the Arbitration Court for an extension in the time within which the sole arbitrator is required to make the Award); and
- (g) the Award shall be final and binding upon the Initiating Party or the Responding Parties as to the question or questions so submitted to arbitration and the Initiating

Party and the Responding Parties shall be bound by the Award and comply with the terms and provisions thereof.

14.6 Other Remedies

Nothing contained in this Agreement will preclude a Party from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

14.7 Payments Not Suspended

- (a) In the event of a Dispute in respect of any monies to be paid by a Party pursuant to this Agreement, the obligation to make any other payment, other than in respect of such Disputed amount, shall continue and each Party shall be obligated to make any other payment that would have otherwise been required by it under this Agreement during the continuance of a Dispute. Upon resolution of the Dispute pursuant to this Article, by court order or pursuant to the mutual agreement of the Parties involved in the Dispute, the Parties shall make any necessary adjustments and payments to each other as may be required to comply with the resolution of the Dispute.
- (b) During the pendency of any Dispute, the Development Manager may suspend the design, permitting and construction on the Project but only to the extent reasonably required in relation to the matter in dispute until there is a resolution to the Dispute, and shall make commercially reasonable efforts to mitigate the impact of the delay and suspension on the Project.

ARTICLE 15 RELATIONSHIP MANAGEMENT

15.1 Communications Protocol

The Parties acknowledge and agree that the timely exchange of information and clear lines of communication are essential to support the implementation of the Project, to ensure consistency of messaging, and to support the Parties in accounting to the public at large. The Development Manager shall, in coordination with the appropriate Consultants and the Contributing Parties, be responsible for assisting in the preparation and coordination of all public communications pertaining to the Project, all in accordance with communications policies Approved by the Project Committee ("**Communications Activities**"). The Development Manager will provide as much prior notice as is reasonable in the circumstances to The City and CSERELP in respect of all such Communications Activities. Further to the foregoing, the Development Manager shall coordinate so that The City and CSERELP have the opportunity to participate in all such Communications Activities, be it as collaborators in the context of written communications, or as attendees or presenters in the context of non-written communications. No Communications Activities shall refer to The City without The City's prior written approval, and no Communications Activities shall refer to CSERELP without CSERELP's prior written approval. Each of the Parties shall have the right to continue to issue communications or press releases in respect of non-Project-related activities. The Development Manager agrees to consult with The City and CSERELP and will take their direction with respect to any Communications Activities

involving personal injuries, material property damage or safety concerns at or involving the Project other than in cases of emergency where, in the reasonable opinion of the Development Manager, time does not permit prior consultation with The City and CSERELP (in which case the Development Manager shall adhere to the emergency/disaster protocols and provisions set forth in the Communications Protocol). The Project Committee will determine and Approve a communications protocol in respect of all matters relating to the Project (the “**Communications Protocol**”) which shall be adhered to by the Parties. Notwithstanding anything contained in this Agreement, the Parties acknowledge and agree that City elected officials are not bound by this Communications Protocol.

15.2 Public Recognition

The Development Manager will give, or ensure the giving of, as applicable, appropriate and balanced textual recognition and acknowledgment of The City’s and CSERELP’s contribution and investment in the Project in all materials made public by the Development Manager related to the Project. The recognition contemplated in this Section shall be in accordance with any applicable policy of The City, including, Section 5.0 of The City’s *Corporate Brand Identity and Identifiers* (GN-023) policy.

ARTICLE 16

CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

16.1 Freedom of Information and Protection of Privacy Act

The Parties acknowledge that The City is subject to the protection and disclosure provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, Chapter F-25 (“**FOIP**”), as amended, revised or substituted from time to time and, notwithstanding anything contained in this Agreement, that information submitted and in the possession of The City may be governed by FOIP and may be eligible for disclosure in accordance with the requirements of same. In each case, if The City at any time receives a request for access to any CSERELP or Development Manager information pursuant to the FOIP Act, The City shall, unless prohibited by Applicable Law, withhold any CSERELP or Development Manager information as required by FOIP.

16.2 Confidentiality

The Parties will maintain the confidentiality of all Confidential Information and will not make use of Confidential Information or release it to employees, officials, officers, authorized representatives or external advisors or consultants other than as required for the performance of this Agreement or as required by Applicable Laws and will not otherwise release or disclose the Confidential Information to any unauthorized third party. The Development Manager and CSERELP each agree that The City may disclose any and all information it has in its power or control pertaining to this Agreement and the Project with members of Council and employees and officers of The City who require the subject information from time to time, as and when determined by The City, and the Development Manager and CSERELP each hereby agree to any and all such disclosure.

16.3 Disclosure of Information

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

- (a) disclosures of information contemplated in Sections 16.1 and 16.2;
- (b) disclosures of information by a Party to its professional advisors and consultants, to the extent necessary to enable the Party to perform its obligations or enforce its rights under this Agreement;
- (c) information that was already known to the Party receiving the information (in each case, the “**Receiving Party**”) at the time such information is received from the Party disclosing the information (“**Disclosing Party**”);
- (d) information that is developed by the Receiving Party without reference to any confidential information disclosed by the Disclosing Party;
- (e) information that is or has become or hereafter becomes publicly known or available through no fault or breach of confidence by the Receiving Party;
- (f) information that is required to be disclosed under Applicable Laws or similar requirements of or by a Governmental Authority, including a court of competent jurisdiction; or
- (g) information that is subsequently lawfully obtained by a Party from another Person in bona fide belief that such other Person is lawfully entitled to have and disclose the information without breach of any obligation of confidence on its part.

16.4 Survival

The duties and obligations to protect the Confidential Information survive termination of this Agreement and must continue until the Party originally claiming information to be confidential releases that claim by deed or action.

16.5 Improper Disclosure or Use

Improper disclosure or use of Confidential Information may cause irreparable harm to The City, CSERELP or the Development Manager, as the case may be, and such harm may not be adequately compensated by damages. As a result, in addition to all other remedies a Party may have, a Party may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use of any Confidential Information contrary to the provisions of the Agreement.

16.6 Indemnity

Each Party will indemnify and save the other Parties harmless from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses that may be brought against or suffered by the other Parties as a consequence of the disclosure by the indemnifying Party of the Confidential Information of the other Parties contrary to the terms of this Agreement.

ARTICLE 17
INTELLECTUAL PROPERTY

17.1 Delivery of Construction Data and Intellectual Property

The Development Manager:

- (a) will assist with the appropriate Consultants and the Contributing Parties to make or cause to be made all Construction Data and Intellectual Property Rights therein available to, and upon request shall assist the Contributing Parties in obtaining all necessary licenses, permissions and consents to ensure that the Construction Data and Intellectual Property Rights therein is available to the Contributing Parties;
- (b) hereby grants to the Contributing Parties an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable license, including the right to grant sub-licences, to use the Construction Data and Intellectual Property Rights owned by the Development Manager or for which the Development Manager is granted a license that it is permitted to sub-license for all purposes as may be required for the Contributing Parties to perform their obligations under this Agreement and for the design, construction, maintenance and/or operation of the Project; and
- (c) in coordination with the appropriate Consultants and the Contributing Parties and where any Intellectual Property Rights are or become vested in a third party, use commercially reasonable efforts to assist the Contributing Parties in obtaining the grant of equivalent license that is referred to in Section 17.1(b).

In this Section 17.1, “use” includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Construction Data and Intellectual Property Rights therein.

17.2 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by the Development Manager and either or both of the Contributing Parties pursuant to this Agreement or in relation to the Project or the Event Centre (the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that the Contributing Parties shall be the exclusive owners of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. the Development Manager shall, at the request of a Contributing Party, execute such further agreements any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) The Contributing Parties hereby grant the Development Manager an irrevocable, worldwide, royalty free, perpetual, non-exclusive and non-transferable license, with a right to grant sub-licences, to use the Jointly Developed Materials for any Development Manager business purpose.

17.3 Claims

Where a demand, claim, action or proceeding is made or brought against the Contributing Parties or either of them that arises out of the alleged infringement or misappropriation of any rights in or to any Construction Data prepared by the Development Manager or Intellectual Property Rights therein or the use thereof by a Contributing Party or because the use of any materials, machinery or equipment in connection with the Project provided by the Development Manager infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Construction Data or Intellectual Property Rights by the Contributing Party otherwise than in accordance with the terms of this Agreement, the Development Manager shall indemnify, defend and hold the Contributing Parties harmless from and against all such demands, claims, actions and proceedings. For greater certainty, this indemnity does not extend to any Construction Data or Intellectual Property Rights developed by or owned by any Contractor, Subcontractor, Consultant or any other third party.

17.4 Survival

This Article 17 shall survive expiry of this Agreement.

ARTICLE 18 POLICIES, PRACTICES AND GUIDELINES

18.1 Practices and Policies

At all times during the performance of its obligations under this Agreement, the Parties will endeavour to have in place and implement written practices and policies consistent with best practices that govern:

- (a) the provision of services;
- (b) conflicts of interest;
- (c) whistle blower protection;
- (d) financial administration;
- (e) cash management; and
- (f) the protection, safe-guarding, retention and destruction of records, which practices and policies shall be consistent with The City's practices and policies in such regard;

and, further, each Party will provide copies of any and all such written practices and policies to the other Parties as and when requested by such Party.

18.2 Adherence to City Policies

At all times during the performance of its obligations under this Agreement, the Development Manager and CSERELP will abide by City Policies. Where the terms of any such City Policies conflict with the terms of this Agreement, the terms of this Agreement will govern.

ARTICLE 19
GENERAL

19.1 Notices

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if delivered personally upon the party for whom it is intended, mailed by registered mail or written electronic communications at:

- (a) The City, addressed to it, at:

The City of Calgary
8th Floor, 800 Macleod Trail SE
Calgary, Alberta T2G 2M3

Attention: City Treasurer
Fax No.: 403-268-2578

Email: treasury@calgary.ca

With a copy to:

The City of Calgary
12th Floor, 800 Macleod Trail SE
Calgary, Alberta T2G 2M3

Attention: City Solicitor
Fax No.: 403-268-4634

Email: law.reception@calgary.ca

- (b) CSERELP, addressed to it, at:

c/o Calgary Sports and Entertainment Corporation
555 Saddledome Rise SE
Calgary, Alberta T2G 2W1

Attention: President and Chief Executive Officer
Fax No.: [REDACTED]

Email: [REDACTED]

With a copy to:

Norton Rose Fulbright Canada LLP
3700, 400-3rd Avenue SW
Calgary, Alberta T2P 4H2

Attention: Brad Hayden
Fax No.: [REDACTED]

Email: [REDACTED]

- (c) the Development Manager, addressed to it, at:

CAA ICON
Project Number #493
5074 South Syracuse Street, Suite 700
Denver, Colorado 80237

[REDACTED]

With a copy to:

CAA ICON
Project Number #493
5075 South Syracuse Street, Suite 700
Denver, Colorado 80237

Attention: General Counsel

[REDACTED]

or to such other address or in care of such other officers as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if delivered personally or by written electronic communication shall be deemed to be the date of delivery thereof (if such day is a Business Day and notice has been received prior to 4:00 PM local time, and if not, the next following Business Day), or if mailed as aforesaid, the date of delivery by the postal authority.

19.2 Enforceability

Save and except for any provisions or covenants contained herein which are fundamental to the subject matter of this Agreement (including those that relate to the payment of monies), the invalidity or unenforceability of any provisions of this Agreement or any covenants herein contained will not affect the validity or enforceability of any other provision or covenants hereof or herein contained and any such invalid provisions or covenants will be deemed to be severable. Each provision and covenant herein contained will be separately valid and enforceable to the fullest extent permitted by law.

19.3 Successors and Assigns

- (a) This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each party hereto.
- (b) No Party may assign, transfer, grant a security interest in or otherwise encumber (including by way of a floating charge), dispose of or otherwise alienate any interest in this Agreement (a "**Disposition**"), whether directly or indirectly except, in each case, with the prior written consent of the other Parties, which consent may be withheld or conditioned in the sole subjective and absolute discretion of the other Parties, and any Disposition made otherwise shall be void as between the parties

to such Disposition as well as between the Parties hereto. If any Party shall at any time effect or attempt to effect a Disposition in contravention of the provisions of this Agreement, the other Parties shall, in addition to all other rights and remedies of the other Parties under this Agreement or at law and/or in equity, be entitled to an order restraining and enjoining such action, and the offending Party shall not plead in defense thereto that there would be an adequate remedy at law and/or in equity, it being recognized and agreed that the injury and damage resulting from such a breach would be impossible to measure monetarily. A Party effecting a Disposition shall be responsible for all reasonable third party costs, including legal fees and disbursements, incurred by the other Parties arising from the Disposition. Nothing herein shall limit the rights of the Contributing Parties under Article 12 upon a the Development Manager Event of Default. Any permitted Disposition shall be subject to the Party effecting the Disposition (the “**Transferor**”) executing and causing the assignee, grantee or transferee of the Disposition, as the case may be (the “**Transferee**”) to execute promptly an assumption agreement in favour of the other Parties (in form satisfactory to the other Parties, each acting reasonably), whereby the Transferee agrees, *inter alia*: (a) to be bound by all of the terms, covenants and conditions contained in this Agreement as if such Transferee had originally executed this Agreement; (b) to pay all amounts required to be paid by the Transferor hereunder; and (c) notwithstanding the Disposition, the Transferor shall be jointly and severally liable with the Transferee under this Agreement and shall not be released from performing any of the terms, covenants and conditions of this Agreement (unless the other Parties consent to such release in writing).

- (c) Notwithstanding anything contained in this Agreement, no Disposition may be made unless the prospective new Party resulting from such Disposition enters into an agreement with the remaining Parties (in form and substance satisfactory to the remaining Parties, acting reasonably) whereby the prospective new Party agrees to be bound by, and entitled to the benefit of, this Agreement and the other agreements affecting the Project contemplated by this Agreement, to the extent of the Party’s interest (and obligations) or part thereof which is the subject of the Disposition.

19.4 Capacity of The City

Nothing in this Agreement shall constitute the granting by the municipality of The City of Calgary (including in its capacity as Approving Authority) of any approval or permit as may be required pursuant to the *Municipal Government Act* (Alberta) or any other legislation in force in the Province of Alberta. Nothing in this Agreement restricts the municipality of The City of Calgary, Council, its officers, employees or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a Governmental Authority or Approving Authority.

19.5 Time of Essence

Time shall in all respects be of the essence hereof; provided, however, that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by The City, CSERELP and the Development Manager or their respective solicitors and shall be subject to the provisions of Section 4.11 relating to Contributing Party Delays and Force Majeure.

19.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

19.7 Third Parties

None of the rights or obligations hereunder of any party shall enure to the benefit of or be enforceable by any party other than the parties to this Agreement and their respective successors and permitted assigns.

19.8 GST

In the event that GST or any other sales or use tax is applicable to any amounts payable to any Party hereunder after assessing all reasonably available exemptions, such taxes shall be payable in respect of (and in addition to) such amounts. Each of the Parties shall comply with the *Excise Tax Act* (Canada) and regulations thereunder (as the same may be amended, replaced or any successor legislation from time to time) and all other legislation and regulations applicable to GST from time to time (in this Section, collectively, the “**GST Act**”) and shall pay applicable GST on all amounts payable by such Parties under this Agreement, and each of the Parties shall comply with the *Income Tax Act* (Canada) and regulations thereunder (as the same may be amended, replaced or any successor legislation from time to time) and all other legislation and regulations applicable to income tax from time to time (in this Section, collectively, the “**ITA**”). Each of the Parties (in this Section, the “**Indemnifying Party**”) shall indemnify and hold harmless each of the other Parties, and its respective officers and employees (in this Section, each an “**Indemnified Party**”), from and against any and all actions, suits, claims, judgments, damages, penalties, interest, fines, assessments, reassessments, costs and expenses (in this Section, a “**Tax Claim**”), that the Indemnified Party may suffer, sustain, pay or incur, arising from or in respect of the failure of the Indemnifying Party to: (a) comply with the GST Act or the ITA in any respect; (b) pay GST, income tax or other taxes as required by law or the Canada Revenue Agency (or successor agency); and (c) perform its obligations in respect of GST, income tax or other taxes or submit any required returns or filings within the required time periods, such Tax Claims to include, without limitation, any legal fees on a solicitor and own client basis which the Indemnified Party incurs in response to or in defence of any Tax Claim and the Indemnifying Party shall further pay to the Indemnified Party interest on all amounts required to be paid by the Indemnified Party on account of a Tax Claim at the Bank Rate plus 5% per annum from the date paid or incurred to the date reimbursed by Indemnifying Party (both before and after judgment until fully paid).

19.9 Entire Agreement

This Agreement, together with the other agreements contemplated by this Agreement, constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, understandings, negotiations, proposals, representations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Agreement and in the other agreements contemplated by this Agreement.

19.10 Survival of Covenants

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

19.11 Waivers

No failure by The City, CSERELP or the Development Manager to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any other or subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

19.12 Counterparts

This Agreement may be executed in original counterparts, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the date first above written. Any such executed counterpart may be delivered by facsimile transmission or by email in PDF and will be deemed to be an original document.

19.13

[REDACTED]

19.14

[REDACTED]



[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF this Agreement has been executed by the Parties.

THE CITY OF CAL

by

Name: David
Title: City Manager

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

by

Name: John Bean
Title: President and CEO

by

Name: Cameron Olson
Title: Executive Vice President and
Chief Financial Officer

**CAA SPORTS CANADA ULC d/b/a CAA
ICON**

by

IN WITNESS WHEREOF this Agreement has been executed by the Parties.

THE CITY OF CALGARY

by _____
Name: David Duckworth
Title: City Manager

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

by _____
Name: John Bean
Title: President and CEO

by _____
Name: Cameron Olson
Title: Executive Vice President and
Chief Financial Officer

**CAA SPORTS CANADA ULC d/b/a CAA
ICON**

by _____

IN WITNESS WHEREOF this Agreement has been executed by the Parties.

THE CITY OF CALGARY

by _____
Name: David Duckworth
Title: City Manager

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

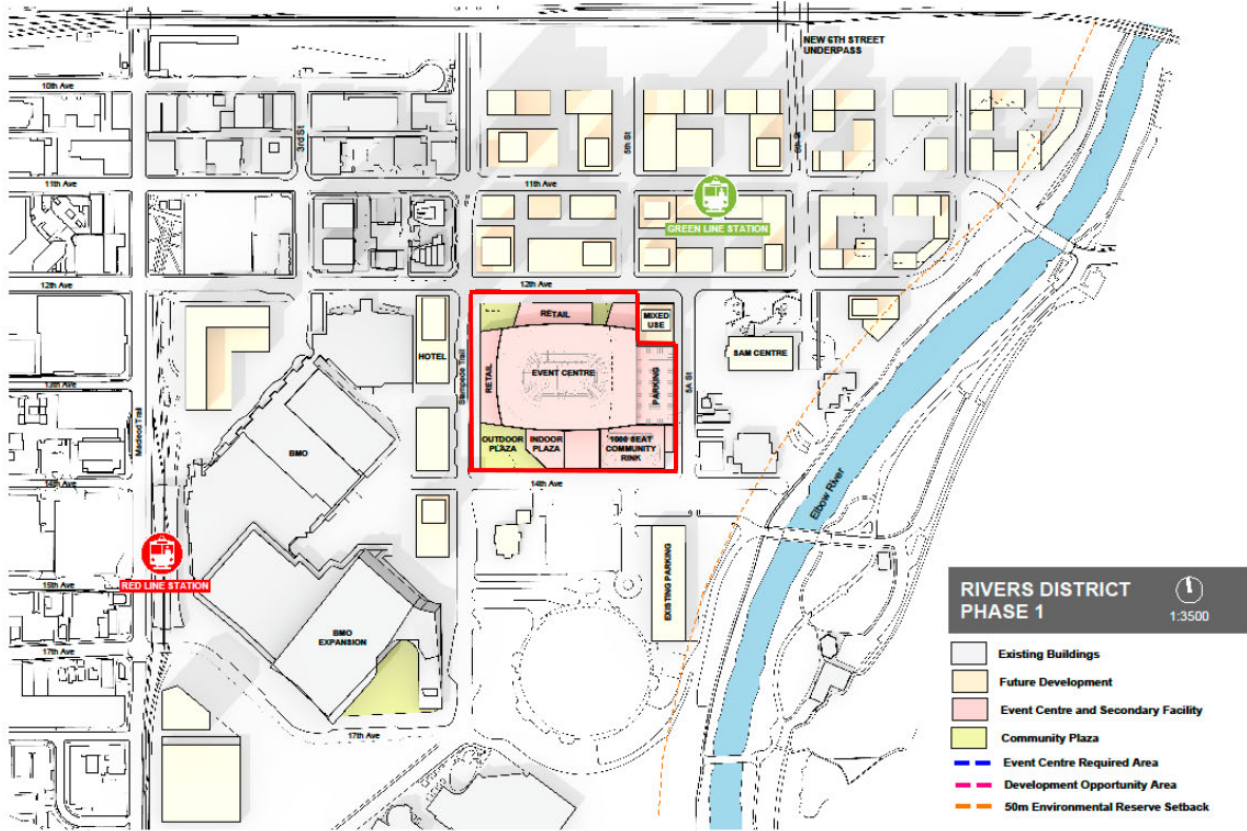
by _____
Name: John Bean
Title: President and CEO

by _____
Name: Cameron Olson
Title: Executive Vice President and
Chief Financial Officer

**CAA SPORTS CANADA ULC d/b/a CAA
ICON**

by _____
[Redacted Signature]

SCHEDULE A-1 LANDS



SCHEDULE A-2
PROJECT DESCRIPTION

The Project includes the Event Centre and the Community Rink.

The Event Centre is a new LEED certified, multipurpose, multi-level, state-of-the-art entertainment and sports gathering place for all Calgarians which uses include, but are not limited to, concerts, assemblies, festivals, professional and amateur sports that will serve as the home practice and competition venue of the NHL's Calgary Flames, the American Hockey League's Calgary Wranglers, the Western Hockey League's Calgary Hitmen and the National Lacrosse League's Calgary Roughnecks.

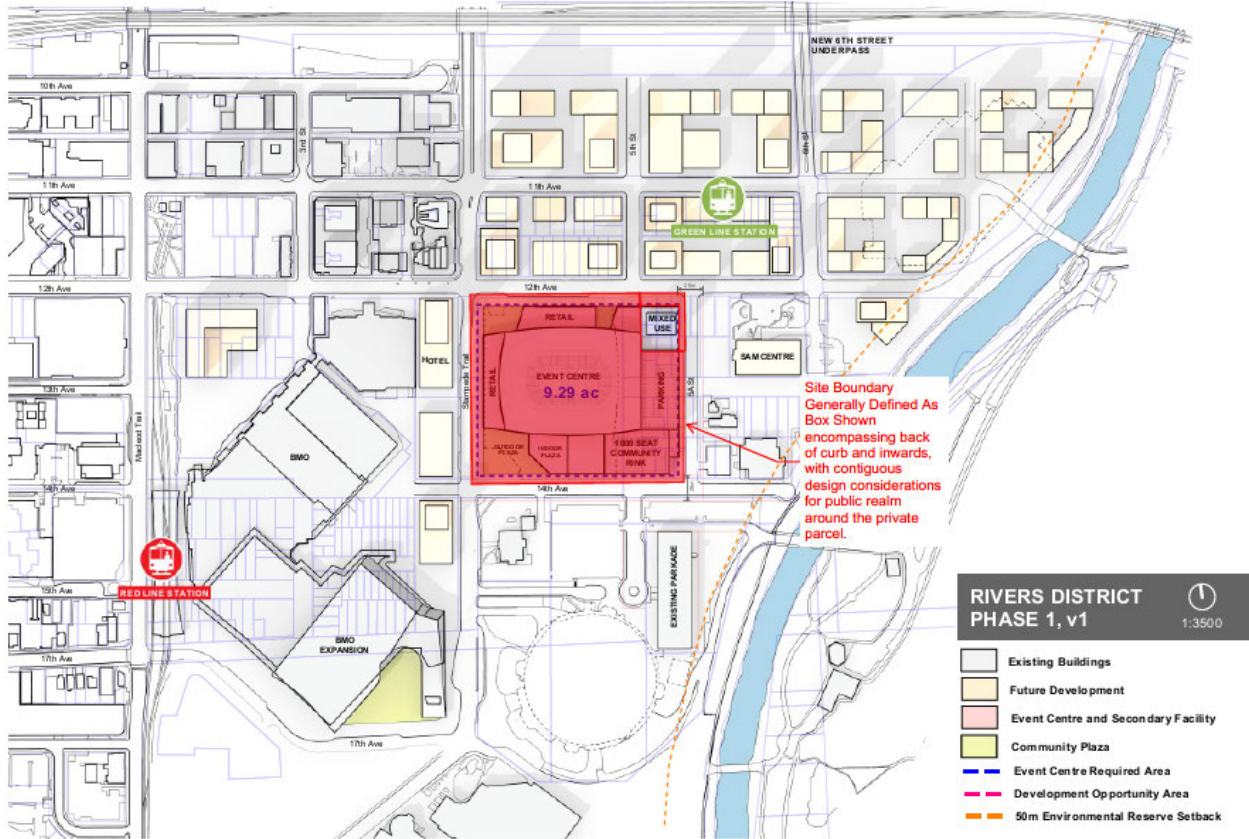
In addition, the Event Centre will host multiple annual concerts of varying seat capacities, Calgary Stampede events during the annual Stampede Festival, family shows, eSports, Televised Award Shows, Community events, conference and other events consistent with this type of facility.

The Event Centre will, in addition to other amenities and facilities as are agreed upon by the Contributing Parties, include amenities and facilities that are included in two or more comparable event centres utilized by the NHL teams in Edmonton, Detroit, Las Vegas, Columbus and St. Paul and will include, but not be limited to, seating for approximately 18,000, not to exceed 19,000, spectators, on-site parking with no fewer than 500 parking spaces, an indoor plaza, and an outdoor plaza.

The Community Rink will be for public benefit, with CSERELP having the right during the term of the Management and Lease Agreement to use the Community Rink as a primary practice, development and training camp facility for the Calgary Flames and associated teams they may own from time to time. The Community Rink will include at least one sheet of ice and seating for approximately 1,000 spectators.

The Project will be located on the Lands.

SCHEDULE A-3 SITE BOUNDARY



SCHEDULE B
ELIGIBLE COSTS AND INELIGIBLE COSTS

Eligible Costs

“**Eligible Costs**” means all actual and verifiable costs (without duplication) incurred by the Contributing Parties or the Development Manager on or after October 5, 2023 in respect of the public engagement, planning, designing, Permitting, development, constructing, Servicing and Overall Commissioning of the Project in accordance with the Project Budget or the Approval of the Project Committee or the Approval of the Steering Committee, including but not limited to the following items:

- (a) any costs and expenses the payment of which has been specifically agreed under the Pre-Development Agreement between The City and CSEC dated May 2, 2023;
- (b) the Development Manager Fee;
- (c) all reasonable costs for the design reviews conducted by The City’s corporate engineering team;
- (d) all costs incurred in investigating the feasibility of the Project and soil and other conditions of the Lands, including any studies and surveys in connection with the Project and the Lands;
- (e) other than the costs attributable to The City’s obligations under Section 2.4 and Section 4.2 of the Project Framework Agreement, the cost of securing any Permits or satisfying any development, building or other permit conditions;
- (f) costs of excavation, disposal of excavated materials and site preparation;
- (g) all payments under, pursuant to or in respect of the Construction Contracts or Consulting Contracts, including in respect of any Change Orders (except and to that the costs thereof constitute City Additional Costs or CSERELP Additional Costs), and including in respect of any claims arising under or in connection with the Construction Contracts or Consulting Contracts, other than claims resulting from the Gross Negligence or wilful misconduct of a Contributing Party;
- (h) all sums paid and expenses incurred (including payments or subsidies to suppliers of public utilities) in connection with utility connections and the provision of utilities required for the Project; except and to the extent any of the foregoing constitute City Additional Costs;
- (i) the costs of machinery, supplies, plant, equipment and apparatus acquired or used in connection with the construction of the Project;
- (j) the costs of all Community Rink Equipment and Event Centre Equipment included in the Project Requirements;
- (k) all Fit Up Costs, other than Fit Up Costs incurred in respect of any fit-out or tenant improvement work undertaken by any subtenant or licensee of any retail premises (other than CSEC or an Affiliate thereof);

- (l) other than the costs attributable to The City's obligations under Section 2.4 of the Project Framework Agreement costs for the removal and disposal of waste materials and debris;
- (m) all costs and expenses incurred in respect of: Permits; duties, excises and assessments in connection with the development and construction of the Project (including letters of credit and deposits made to a Governmental Authority); service connection and energization charges; development charges and building permits; insurance and necessary surety and other performance and/or labour and material bonds (or other security in lieu thereof) or similar assurances; and all accounting and legal expenses and other incidental expenses relating to the development, construction and operation of the Project;
- (n) all costs and expenses incurred to comply with all Applicable Laws;
- (o) costs for safety measures and programs (including all applicable equipment);
- (p) costs for sustainability measures and programs (including all applicable equipment);
- (q) premiums and deductibles paid by the Development Manager pursuant to any insurance policies it is specifically obligated to obtain in respect of the Project pursuant to this Agreement, excepting deductibles payable by the Development Manager in respect of any claim to the extent arising from or in respect of the negligence or wilful misconduct of the Development Manager;
- (r) other direct Project expenditures (without duplication), including for example a scale model and other public relations materials;
- (s) any workers' compensation or like payments required to be paid on or behalf of The City and CSERELP pursuant to Applicable Laws with respect to the construction of the Project, but excluding any workers' compensation or like payments or other source deductions required with respect to any employee of the Development Manager;
- (t) expenditures directly associated with Joint Communications and the Development Manager Communications Activities related to the Project and signage as contemplated in Sections 15.1 and 15.2;
- (u) all costs for inspections or tests or appraisals required from time to time by a Governmental Authority;
- (v) costs of Indigenous consultation, and where appropriate, accommodation;
- (w) contingencies and allowances as contemplated in Section 4.6(b);
- (x) all costs of Overall Commissioning; and the costs of preparing building condition assessments and asset management plans;

- (y) any costs incurred by the Development Manager in participating in a mediation, arbitration or other dispute resolution procedure in respect of a Dispute to which the Development Manager is not a Party;
- (z) costs arising from any suspension of the Project, including due to Contributing Party Delay, Force Majeure, or a Dispute (other than costs which are only payable by one Party pursuant to an Award);
- (aa) any other third party costs incurred by the Development Manager in performing its obligations under this Agreement, excluding any costs for third party project managers hired by the Development Manager;
- (bb) joint audit costs of the Contributing Parties in respect of the Development Manager's obligations under this Agreement relating to Project Costs;
- (cc) any costs identified in this Agreement as being Eligible Costs; and
- (dd) any other costs Approved by the Project Committee or the Steering Committee in respect of the Project;

provided that, notwithstanding anything to the contrary above, "Eligible Costs" shall not in any event include any City Additional Costs, CSERELP Additional Costs, or Ineligible Costs.

Ineligible Costs

"**Ineligible Costs**" means any of the following costs which are incurred by either of the Contributing Parties or the Development Manager in respect of the Project (which costs are the sole responsibility of the Party which incurred such costs):

- (a) expenditures incurred prior to October 5, 2023, as well as any and all expenditures related to contracts signed prior to October 5, 2023 other than the Pre-Development Agreement;
- (b) expenditures related to developing a business case or a funding proposal;
- (c) costs incurred by CSERELP in respect of accepting Turnover, including moving costs, pre and post opening expenses, any cost associated with decommissioning or vacating the Saddledome and operational planning and forecasting;
- (d) financing charges and interest payments on loans;
- (e) any overhead costs of any Contributing Party or the Development Manager, including salaries and other employment benefits of any employees of any such party, its direct or indirect operating, or administrative costs (except and to the extent included in the Development Manager Fee);
- (f) legal fees or disbursements in connection with negotiating this Agreement;
- (g) income, business or other taxes payable by a Contributing Party;

- (h) costs or expenses incurred by a Contributing Party pursuant to indemnities it gives under this Agreement or any other contract entered into for its own account (but, for certainty, excluding the Consulting Contracts and Construction Contracts);
- (i) the cost of any goods or services which are received through donations or in kind;
- (j) all costs which are City Additional Costs, including the costs of the obligations of The City under Sections 2.5, 4.2 and 4.3 of the Project Framework Agreement or CSERELP Additional Costs.

SCHEDULE C

PROCUREMENT PLAN REQUIREMENTS

The procurement plan will describe how an open, fair and transparent procurement process will be achieved that ultimately provides for the timely delivery of the Project while providing value for money at an acceptable level of risk.

The procurement plan will address, at a minimum, all of the content identified in Section 1 below and will comply with the requirements set out in subsequent sections of this Schedule.

1. Procurement Plan Contents

The procurement plan will set out an overall procurement strategy for the Project, giving appropriate consideration to all aspects of the procurement, and will, at a minimum, set forth information in respect of, or otherwise address, the following:

- project delivery model;
- project scope;
- de-scoping requirements;
- the Risk Mitigation Plan;
- bidding and evaluation methodologies;
- forms of contracts;
- procurement organization, staffing and advisors;
- procurement schedule (major Milestone Dates);
- procurement budgets; and
- approval processes.

2. Compliance with Legislation, Policies and Trade Agreements for Procurement

All procurement activities will be subject to:

- all Applicable Laws, rules and regulations;
- applicable trade agreements; and
- all applicable City Policies as they relate to procurement.

The procurement plan should address how such policies and procedures will be applied to procurement initiatives for all phases of the Project.

3. Conflict of Interest and Confidentiality Provisions

The procurement plan will establish reasonable requirements in respect of conflicts of interest and confidentiality.

4. Fairness Provisions

The procurement plan will establish requirements for ensuring that all procurement in respect of the Project is undertaken in a fair and consistent manner, including appropriate provision in respect of ethical bidding behaviour (subject to section 7 below of this Schedule C).

5. Engagement of Advisors

The Development Manager may, with the approval of the Project Committee, engage Consultants to assist the Project .

6. Contracting

- (a) The Development Manager shall award contracts pertaining to the Project in a fair, transparent and competitive manner that is consistent and compliant with the Project Procurement Plan and all applicable trade agreements in effect from time to time;
- (b) When accepting bids or awarding Construction Contracts, the Development Manager shall pursue opportunities for savings, and to secure for and credit to, the Contributing Parties any discounts, commissions or rebates obtainable as a result of such purchases or contracts for goods or services in accordance with all applicable trade agreements in effect from time to time;
- (c) Subject to compliance with: (i) any other requirement contained in this Agreement for the Approval of the Project Committee in connection with the execution and delivery of the General Construction Contract and any other Construction Contracts, and (ii) any requirements or directions from the Project Committee, the Development Manager, as agent for and on behalf of the Contributing Parties shall have the power and authority to negotiate and settle, and to execute and deliver the Construction Contracts, provided that the entering into of such Construction Contracts does not result in the total Project Costs being in excess of those specified in the Project Budget. Without limiting the generality of the foregoing, the Development Manager shall ensure that the General Construction Contract and any other Construction Contracts:
 - (i) require the applicable Person to assume “prime contractor” responsibility under the occupational health and safety legislation, regulations and codes in effect in Alberta from time to time and shall require such Person to be solely responsible for initiating, maintaining and supervising all safety precautions and programs as may be prudent under the circumstances to keep the Lands at all times in a safe and orderly state and to ensure the safe completion of the Project and the construction and installation of the Community Rink Equipment and the Event Centre Equipment that the Contractor has been retained to construct and install, all in compliance with all applicable health and safety regulations; and
 - (ii) ensure all bonds and performance security from Contractor are provided when required by the Project Committee and, for certainty, the Development Manager shall recommend, negotiate and, subject to the Approval of the Project Committee, obtain all such policies of insurance and bonds as the Project Committee considers necessary or desirable to protect the Contributing Parties from liability, damage or loss, including builder’s risk insurance, liability insurance and, except such policies of insurance and bonds as a Contributing Party may elect to negotiate for and procure on its own behalf, the Development Manager shall deliver to the Project Committee a certificate for each policy obtained by the

Development Manager in connection with the Project and copies of all performance, labour and material and other bonds forthwith upon receipt.

- (d) The Development Manager shall inspect all insurance policies and workers' compensation certificates to ensure compliance with requirements of contracts and Good Industry Practices and this Agreement and, when bonds and performance security are required by the Project Committee, shall maintain and manage all such bonds and performance security.
- (e) The Development Manager shall settle all insurance claims, and co-ordinate and supervise necessary restoration and repairs. The prosecution, defense or settlement of insurance claims in excess of a dollar amount determined by the Project Committee for any single claim or a dollar amount determined by the Project Committee in the aggregate over any 12 consecutive months, or such other matters as may from time to time be determined by the Project Committee shall require prior Approval of the Project Committee.
- (f) The Development Manager shall diligently oversee all amounts payable to the Contractors under the Construction Contracts, will secure the right to audit all costs under the Construction Contracts and will audit any costs that it considers to be suspect.
- (g) The Development Manager shall negotiate and enforce the Construction Contracts such that the Construction Contracts are completed in accordance with the Project Schedule, for no more cost than as identified in the Project Budget (except and to the extent otherwise provided for in this Agreement including in Article 6) and in accordance with the Standard of Performance enforce the Contributing Parties' rights under the Construction Contracts that may result in savings, and the Development Manager will consult with the Project Committee and afford the Contributing Parties the opportunity to participate in discussions regarding the enforcement of such rights to the extent the same is reasonably possible and consistent with the foregoing.

7. Bidding Practices

The procurement plan will establish requirements in respect of unethical bidding practices and restrictions on the participation by parties who engage in, or have been convicted in Canada of engaging in same.

SCHEDULE D
MINIMUM REPORTING REQUIREMENTS

1. Each monthly report to the Project Committee and the Steering Committee will cover the following to a level of detail that enables full and meaningful review of the status of the Project and current risk profile:
 - (a) cost, including total expenditures to date including a breakdown showing the total amount of Eligible Costs, City Additional Costs, and CSERELP Additional Costs, as well as comments on actual expenditures in relation to the Project Budget and a detailed explanation on any variances and how much of any allowances or contingencies, if any, set out in the Project Budget have been used and for what purpose;
 - (b) reconciliation of the Project Account;
 - (c) scope;
 - (d) environment, health and safety;
 - (e) risk; and
 - (f) progress narrative and site photos, including to the extent available status reports from the Project Architect and any other Consultant.
2. Design Review Status
 - (a) The City's and CSERELP's submissions and Approvals for Design Review;
 - (b) statutory submissions and approvals; and
 - (c) schedule of upcoming submissions and status of associated design documents.
3. Project Schedule
 - (a) covering design, procurement, construction and commissioning phases;
 - (b) showing progress against the Project Schedule;
 - (c) presented as Gantt chart showing all activities and milestones critical to Completion and Overall Commissioning with activities shown in sufficient detail to identify the planned sequence to progress the works and track progress of each activity on a monthly basis;
 - (d) identifying total float and free float and a clear critical path and the early and late start and finish dates for each activity; and
 - (e) if the actual schedule has deviated from the Project Schedule, a recovery plan.
4. Procurement schedule for all major and critical trades showing anticipated and actual dates for design, tender and award, aligned with the Project Schedule and with particular emphasis on long-lead items.

5. Project Risk Register
 - (a) a risk register providing an update on Project issues and risks, if any, and mitigation measures with full revision history, including an estimate of the cost and likelihood of each risk occurring and risk mitigation strategies and plans;
6. Cash-flow report
 - (a) reflecting the amount invoiced to date compared to the amount projected and structured in alignment with the contractor's applications for payment, showing:
 - (i) the key elements of the construction works;
 - (ii) consultancy and contingency line items; and
 - (iii) monthly forecast of cash-flow against the Project Budget, together with three months of historic data.
7. Environmental Health and Safety
 - (a) a description of any environmental, health and safety matters, together with details of any accidents, incidents and near misses within the reporting period, together with a root cause analysis and comparison of performance to date against key performance indicators; and a copy of all reports submitted to any Governmental Authority with respect thereto.
8. Change Orders Log
 - (a) Required Change Orders pending or issued to date, with details of the time, cost, scope and risk impact;
 - (b) Project Committee Change Orders pending or issued to date, with details of the time, cost (including whether the costs are Eligible Costs or constitute City Additional Costs of CSERELP Additional Costs as the case may be), scope and risk impact; and
 - (c) Recommended Change Orders pending or issued to date, with details of the time, cost, scope and risk impact.
9. Claims, potential claims or disputes that have arisen in the period or any other significant matters affecting or relating to the Project.

SCHEDULE E
APPROVAL FORM

Capitalized terms not otherwise defined herein shall have the respective meanings given to them in the Development Management Agreement dated October 5, 2023 (the “**Agreement**”) between The City of Calgary, CSE Real Estate Limited Partnership and CAA Sports Canada ULC d/b/a/ CAA ICON.

Pursuant to Section 3.3 of the Agreement, the Development Manager hereby requests the **[Approval of the Project Committee][Approval of the Steering Committee]** to the following actions:

1. **[List matters for which approval sought.]**

the Development Manager hereby requests a response from the **[Project Committee][Steering Committee]** within _____ Business Days of the date of this Approval Form.

This approval form may be executed in counterpart and transmitted by fax or email and the reproduction of any signature in counterpart and by fax or email will be treated as though such reproduction was an executed original signature.

DATED as of the _____ day of _____, 20__.

CAA SPORTS CANADA ULC d/b/a CAA ICON

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

APPROVAL OF THE [PROJECT COMMITTEE][STEERING COMMITTEE]:

CITY OF CALGARY

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

**CSE REAL ESTATE LIMITED PARTNERSHIP, by
its general partner CSE REAL ESTATE
CORPORATION**

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

SCHEDULE F
RECOMMENDATION FOR PAYMENT FORM

To: The City of Calgary

This Request for Payment is delivered pursuant to the Development Management Agreement dated October 5, 2023 (the “**Agreement**”) between The City of Calgary, CSE Real Estate Limited Partnership and CAA Sports Canada ULC d/b/a/ CAA ICON. Unless otherwise defined or the context requires otherwise, capitalized terms used in this notice shall have the respective meanings ascribed to them in the Agreement.

1. The Development Manager has prepared, and the Project Committee has Approved, this Request for Payment.
2. The Development Manager certifies, after due inquiry, that as at the date hereof:
 - (a) all invoices enclosed with this Recommendation for Payment meet the requirements of a Proper Invoice;
 - (b) the earliest deadline to submit a notice of dispute for a Proper Invoice in this Recommendation for Payment is ● and the earliest deadline to issue payment for a Proper Invoice in this Recommendation for Payment is ●;
 - (c) each of the parties to receive payment has complied with all of its covenants and has performed all of its obligations under its agreement with the Contributing Parties in all material respects, excepting only those payments that are set out in the enclosed draft notices of dispute;
 - (d) the information submitted with respect to Project Costs is true and accurate in all material respects;
 - (e) all other conditions of Payment that are required to have been met as of the date of this Request for Payment have been met; and
 - (f) all terms and conditions of this Agreement that are required to be met as of the date of this Request for Payment have been met.
3. Attached hereto as Exhibit 1 is:
 - (a) an updated Project cashflow that outlines (1) the key elements of the construction works, (2) consultancy and contingency line items (3) monthly forecast of cashflow against the Project budget, together with three months of historic data and specifying the estimated total expenditures and estimated Eligible Costs (4) the total amount expended in respect of the Project;
 - (b) if requested by a Contributing Party, a clearance certificate issued under any workers’ compensation or similar workplace safety legislation in force in Alberta in respect of each Contractor and Subcontractor which did work in connection with the Project.

For certainty, this certificate is not in substitution of, and shall not abrogate or diminish, in any way, any of the obligations of the Development Manager under the Agreement or in respect of

the Project in any way. The undersigned gives this notice knowing that the Contributing Parties are relying upon its contents for the purpose of making or continuing to make Payments to the Contractors and Consultants.

Dated this ____ day of _____, 20__.

CAA SPORTS CANADA ULC d/b/a CAA ICON

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE G
CITY POLICIES

Investing in Partnerships Policy (CP2017-01)
Plaque Policy (CC014)
Calgary Corporate Accessibility Policy (CSP5003)
Public Use Policy (CSPS031)
Sustainable Building Policy (CP2021-02)
Design Guidelines for City of Calgary Funded Buildings
Corporate Public Art Policy (CP2023-03)
Public Value Through Procurement (CP2021-05)

SCHEDULE H
DUTIES OF THE DEVELOPMENT MANAGER

Without limiting the Development Manager's obligations under this Agreement, the Development Manager shall perform the following duties in connection with the management of the design, development, Permitting and construction of the Project, all in accordance with the terms and conditions of this Agreement and subject at all times to the reasonable direction of the Project Committee:

General Duties:

- (a) in coordination with the appropriate Consultants and the Contributing Parties, supervise, administer and manage Substantial Completion, Turnover and Final Completion of the Project on and in accordance with the terms and conditions set out in this Agreement;
- (b) deliver the Project within the Project Budget, and in coordination with the appropriate Consultants and the Contributing Parties Complete the Project in accordance with the Project Requirements in a diligent and timely manner in conformance with the Design Plans, by the Turnover Date and otherwise in compliance with the Project Schedule; and to forthwith advise the Project Committee whenever the Development Manager is of the view that there is a potential cost overrun or a delay, and to make recommendations as to how to mitigate such potential cost overrun or delay;
- (c) supervise, administer and manage the Project to be developed in accordance with the Standard of Performance and coordinate with the appropriate Consultants and the Contributing Parties that all design, engineering, Servicing, construction and development work is completed in accordance with such standards, subject in all events to the Project Budget and to the availability of funds in the Project Account;
- (d) supervise, administer, manage, and direct the performance of, and coordinate the activities of, all necessary Consultants and Contractors in accordance with the Project Procurement Plan to complete the Project in accordance with the Project Requirements and the Project Plans; and supervise that all such Consultants and Contractors: (i) are qualified, registered and licensed to practice in the Province of Alberta and are in good standing under all Applicable Laws; and (ii) maintain professional liability insurance with policy limits which are in compliance with the Project Procurement Plan or are otherwise satisfactory to the Project Committee;
- (e) promptly notify the Project Committee if the Development Manager becomes aware of any failure of the Project or any part thereof to comply with all Applicable Laws, and municipal, provincial and national (and to the extent applicable, international) codes or any other equivalent guidelines, standards or policies and make recommendations to the Project Committee as to how such non-compliance may be rectified;
- (f) comply with all Applicable Laws, and requirements of Governmental Authorities, including all agreements between such Governmental Authorities, recognizing that to the extent there is overlap between any Applicable Laws and requirements of

Governmental Authorities, the more stringent provision or provisions will apply as it all related to the Development Manager's services herein;

- (g) other than in respect of The City's obligations under Section 2.4 and Section 4.2 of the Project Framework Agreement but without derogation of the Development Manager's obligations under Section 4.4(b), supervise, administer and manage all leases, licences, permits and approvals from any and all Governmental Authorities required in respect of the Project;
- (h) notify the Project Committee forthwith of any material changes or developments affecting the Project;
- (i) maintain the accounting for the Project including monitoring all revenues and proceeds thereof, including preparing, submitting and maintaining reporting, information and the Project Books with respect to the Project, all in accordance with the Standard of Performance;
- (j) promptly notify the Project Committee if, at any time, the Development Manager has reason to believe that there is a shortfall in funding for the Project, including if the aggregate amount of the Eligible Costs exceed or are anticipated to exceed the Overall Budget Limit; and, if applicable, make recommendation to the Project Committee in respect of Eligible Cost Overruns pursuant to Section 8.1;
- (k) promptly report to the Project Committee all material notifications, advice or other contact, whether verbal or written, received from governmental officials (whether federal, provincial or municipal) relating to its responsibilities pursuant to this Agreement or the Project;
- (l) take any immediate action as may be required to preserve the environment, public health, or safety, and promptly advise the Project Committee of such situation and all action taken; and
- (m) at project start-up, complete a project chartering exercise to develop a project charter report.

Reporting:

- (a) On or before the 15th day of each month prior to Final Completion, the Development Manager shall cause a monthly report to be provided concurrently to the Project Committee and the Steering Committee containing the Minimum Reporting Requirements, and any such other information as may be requested by the Project Committee and the Steering Committee from time to time.
- (b) If and to the extent that a monthly report is to be presented by City Administration to Council and/or a committee of Council and the Development Manager has been notified at least 10 Business Days in advance thereof, the Development Manager shall ensure representation from its senior management is in attendance at such presentation(s), such persons in attendance being prepared to present and/or answer questions, as and when reasonably required.

Planning and Design:

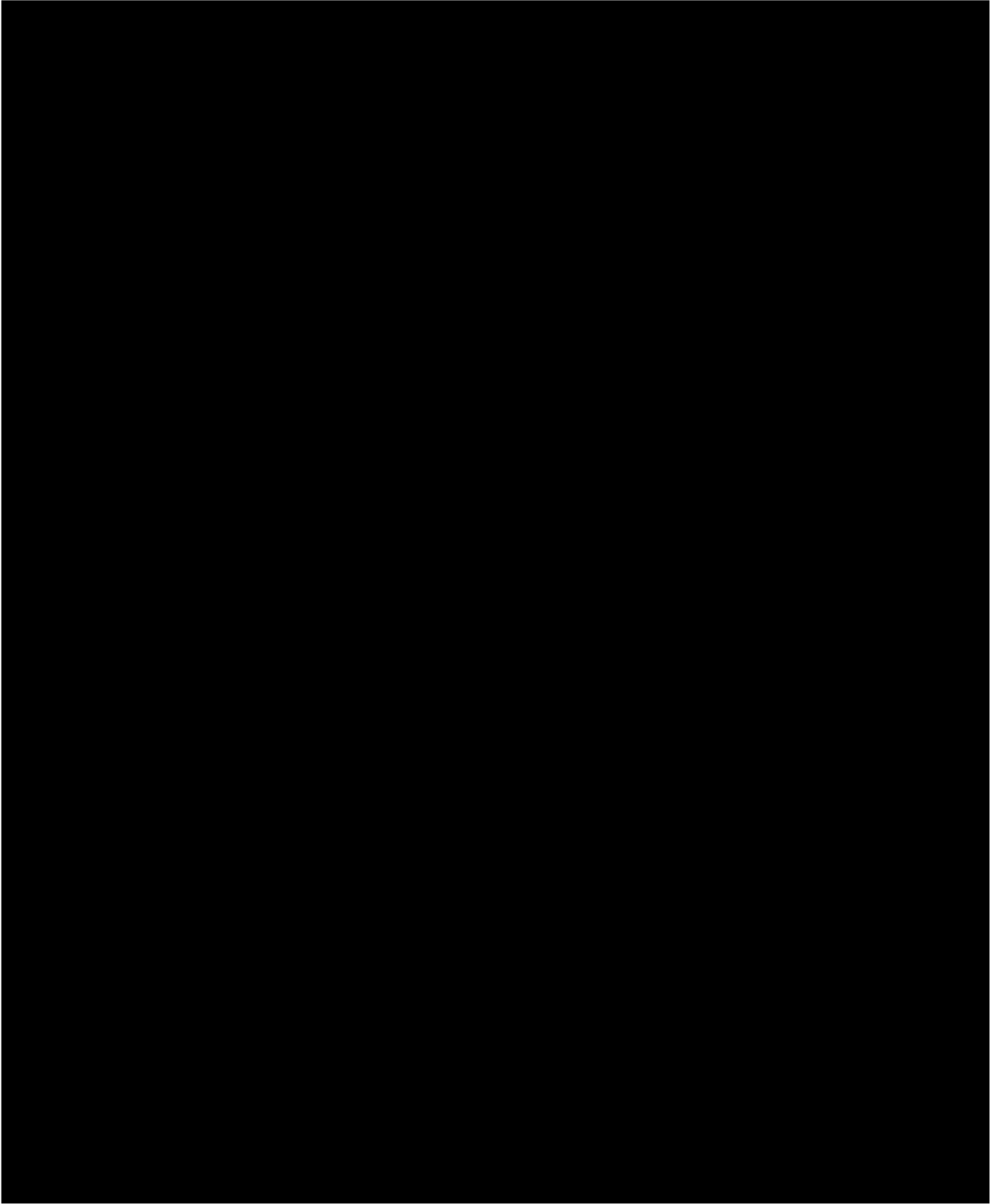
- (a) Implementation - implement all strategies Approved by the Project Committee and report to the Project Committee on all activities as requested by the Project Committee;
- (b) Project Requirements – supervise, administer, and manage that the Project Requirements which have been approved in accordance with this Agreement, are, in coordination with the appropriate Consultants and the Contributing Parties, appropriately translated into the Design Plan for the Project;
- (c) Cost Controls - establish and implement appropriate administrative, financial and cost controls for the design and planning of the Project and make suggestions or requests for specific design improvements, cost savings and efficiencies;
- (d) Planning, Management, Coordination and Supervision - supervise all aspects of the design and planning of the Project and provide planning, scheduling, expediting, technical co-ordination and supervision necessary for the proper execution of the work of the Consultants, Contractor and Subcontractors, and without limiting the generality of the foregoing, the Development Manager shall manage and administer the Consulting Contracts, monitor performance, process change orders and progress payments through the duration of the Consulting Contracts and co-ordinate the work that may be being performed simultaneously under separate Consulting Contracts;
- (e) Consulting Contracts – prepare all tendering documents, administer tendering processes, make bid recommendations, and prepare contract documentation in respect of all Consulting Contracts, except for the Consulting Contract entered into with the Project Architect and any subcontracts capable of being assumed by the Development Manager pursuant to Section 4.17, all in accordance with and subject to the Project Procurement Plan;
- (f) Health, Safety and Environment – in coordination with the appropriate Consultants and the Contributing Parties develop any required operations protocols including fire and evacuation plans, health and safety protocols, security protocols, maintenance and cleaning programs, waste and recycling programs, energy conservation programs, and implement staffing requirements as necessary to properly operate the Project and the Lands; and
- (g) Community Engagement – assist with the appropriate Consultants and the Contributing Parties the engagement of users and the community in accordance with a community engagement program to ensure reasonable consideration of community input in the development and design of the Project.

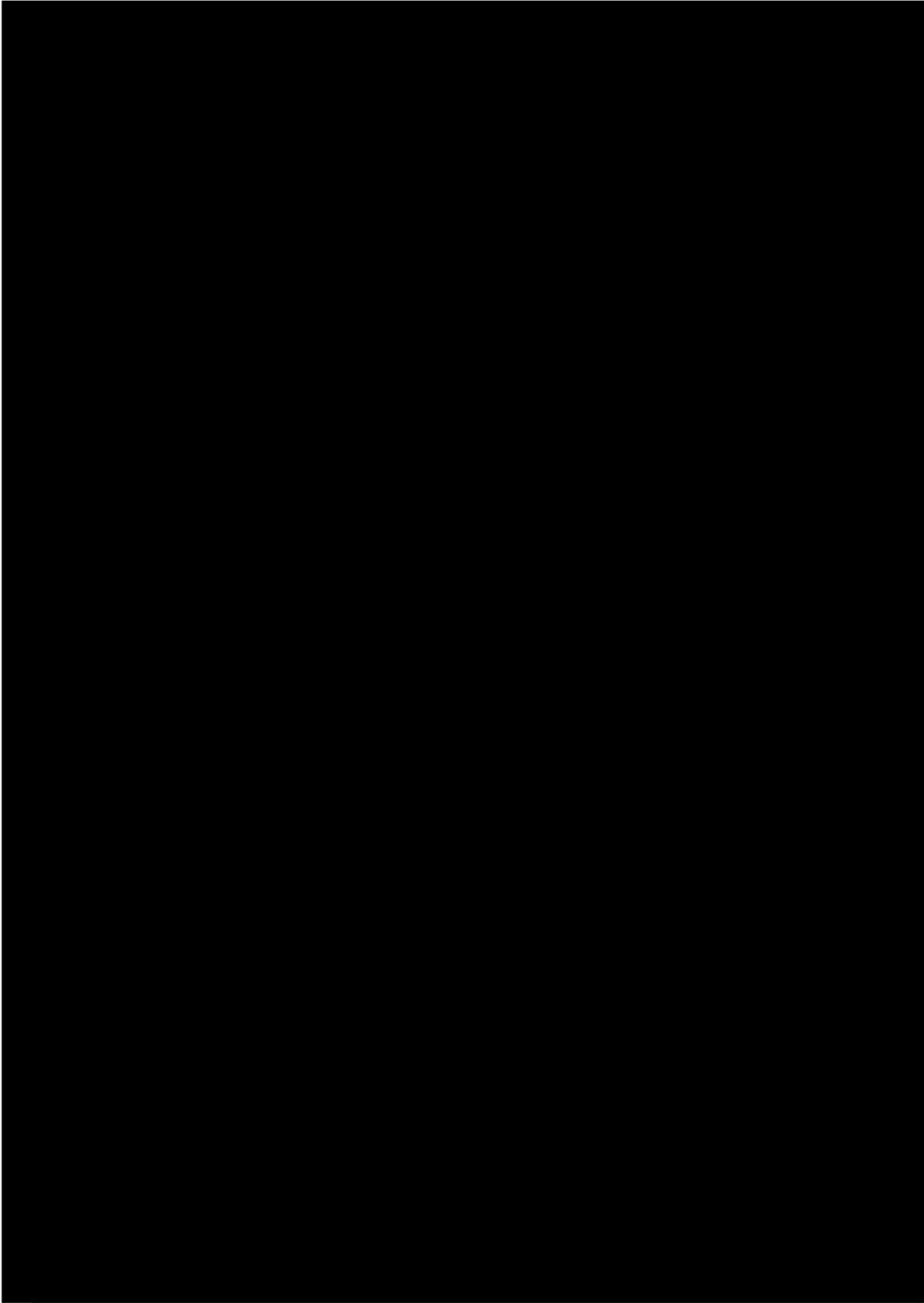
Construction Phase:

- (a) Implementation – assist with the appropriate Consultants and the Contributing Parties its efforts to cause the Project to proceed and be constructed in accordance and compliance with all applicable Permits, all Applicable Laws, this Agreement, all registered title contracts and the Design Plans; complete Servicing, including

- engaging and working with the relevant utility companies or adjacent land owners to relocate utilities if required;
- (b) Surveys – cause a real property report of the structures within the Project to be prepared and delivered to the Project Committee by an Alberta Land Surveyor upon the completion of the foundation thereof and upon the completion of the exterior thereof, all such real property reports to be endorsed with certificates of compliance from the municipality;
 - (c) Cost Controls - establish and implement appropriate administrative, financial and cost controls for the construction of the Project, and, make suggestions or requests for specific design improvements, cost savings and efficiencies;
 - (d) Planning, Management, Coordination and Supervision - supervise all aspects of the construction of the Project and provide planning, scheduling, expediting, technical co-ordination and supervision necessary for the proper execution of the work of the Project Architect, Contractor, Consultants and Subcontractors, and without limiting the generality of the foregoing the Development Manager shall manage and administer the Construction Contracts, monitor performance, process change orders and progress payments through the duration of the Construction Contracts, co-ordinate the work that may be being performed simultaneously under separate Construction Contracts, co-ordinate the contract wrap-up and occupancy and administer the work through the warranty period after Completion;
 - (e) Adhering to Project Schedule – finalize and cause adherence to the Project Schedule, including resource allocation breakdown, scheduling activities into individual tasks and resources showing the sequence and timing of the main construction activities and the desired completion date of the Project;
 - (f) Construction Contracts - prepare all tendering documents, administer tendering processes, make bid recommendations, and prepare contract documentation in respect of all Construction Contracts, other than the General Construction Contract entered into with the General Contractor, on terms and conditions required by the Project Committee, all in accordance with and subject to the Project Procurement Plan;
 - (g) Financial Administration - provide technical and financial administration with respect to progress payments, updating cash flow requirements and holdbacks and retain all required documentation to meet applicable audit requirements;
 - (h) Reviewable Design Data – supervise, administer, and manage the receipt of all Reviewable Design Data, and coordinate with the appropriate Consultants and the Contributing Parties that they comply with the specified requirements in general terms before submitting them to the Project Architect for approval;
 - (i) Monitoring Reviewable Design Date - monitor the Reviewable Design Data approval process to ensure timely delivery of the material and Community Rink Equipment and Event Centre Equipment incorporated into the Project;

- (j) Personal Property - procure all necessary Community Rink Equipment and Event Centre Equipment and other personal property to be used in connection with the Project;
- (k) Construction Meetings - schedule and conduct meetings to discuss construction procedures, progress and scheduling with Contractor and the Project Architect;
- (l) Change Orders - evaluate, manage and comply with the process for Change Orders set out in Article 6;
- (m) Utilities and Servicing – supervise, administer, and manage, on behalf of the Contributing Parties, any Consultant obtaining and maintaining any utility and other similar services or facilities and any grants, dedications, easements, agreements, licenses, rights and covenants necessary, appropriate or required for the Project;
- (n) Encumbrances - upon Completion and without derogating from its obligations under Section 4.9, supervise, administer, and manage any Consultant obligated to deliver the Lands and Project to The City free and clear of all encumbrances under the *Builders' Lien Act* (Alberta) which arise in connection with the Services provided by the Development Manager hereunder, including in connection with any of the Construction Contracts or Consulting Contracts;
- (o) Labour Disputes and Issues - provide advice and assistance on labour problems in order to minimise work stoppages and in the settlement of jurisdictional or other labour disputes;
- (p) Contract Disputes – facilitate the settlement of contract disputes with respect to the General Construction Contract, any other Construction Contract or other agreement relating to the Project;
- (q) Calgary Stampede and Key Interested Parties - cooperate with The City, Calgary Municipal Land Corporation, Calgary Exhibition and Stampede Limited, and other key interested parties identified by the Project Committee during the construction of the Project so as to minimize the disruption cause by such construction;
- (r) Construction Data – obtain from the appropriate Consultants a complete physical and electronic copy (in a format acceptable to The City and CSERELP) of all Construction Data as it becomes available in both a physical location and on a website;
- (s) Delivery of “As Built” Drawings - coordinate the delivery by Contractor to the Contributing Parties of the guaranties, warranties, releases, affidavits, bonds, manuals, insurance certificates and other deliverables required under the General Construction Contract and ensure that authenticated record drawings and specifications, “as-built” drawings, maintenance manuals, operating instructions and similar materials are properly completed and handed over to The City; and
- (t) Warranty Administration – supervise, administer, and manage all claims under Warranties.





SCHEDULE J
Closeout Period Services

- Provide support for opening events:
 - Coordinate with on-call mechanical, electrical, plumbing (MEP), and fire protection support; on-call security system technician; on-call elevator and escalator operator support; and on-call A/V system support
- Oversee CM/GC and direct vendors providing Contributing Parties with required training of facility operations personnel including facility manager and building engineer.
- Coordinate with Contributing Parties or CSERELP as facility operator with respect to record document storage and retrieval systems; oversee delivery of record documents and as-builts to Contributing Parties.
- Reconcile final progress reports documenting sustainability efforts with Project sustainability goals and initiatives.
- Working with Contributing Parties and A/E, oversee CM/GC in achieving Final Completion:
 - Monitor A/E's closeout of the final Project punch list
 - Monitor CM/GC's correction and resolution of final punch list items
 - Facilitate resolution of open cost issues
 - Confirm subcontractor settlements and coordinate delivery of final lien waivers to Developer
- Facilitate negotiation, execution and delivery of certificate of Final Completion to Developer facilitate final pay applications and invoices.
- Oversee the General Contractor, Project Architect, Contributing Parties and direct vendors providing Contributing Parties with all warranty provisions and participate in annual warranty walk and inspection prior to the expiration of all one-year warranties.