

PROJECT MANAGEMENT AGREEMENT

THIS AGREEMENT dated the [●] day of October, 2012

BETWEEN:

CITY OF OTTAWA

(hereinafter called the “**Owner**”)

OF THE FIRST PART

AND:

OTTAWA SPORTS AND ENTERTAINMENT GROUP

(hereinafter called the “**Project Manager**”)

OF THE SECOND PART

WHEREAS:

- A. The Owner wishes to engage the Project Manager to assist in the development and completion of the Project; and
- B. The Owner and the Project Manager have agreed to enter into this Agreement for the supply of pre-construction, construction and post construction management services by the Project Manager in respect of the Project.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties covenant and agree as follows:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this Agreement, the following words and phrases shall have the following meanings, unless the context otherwise requires:

- (a) “**Agreement**” means this project management agreement, including any recitals and schedules to this agreement;

- (b) **“CCN”, “Change Directives” and “Change Orders”** have the respective meanings set out in Section 6.1;
- (c) **“City”** means the City of Ottawa in its capacity as a municipal corporation pursuant to Section 12.5;
- (d) **“Construction Contract”** means (i) for the Stadium Improvements, the Parking Structure and the Infrastructure Upgrades, the Comprehensive Construction Contract entered into between the General Contractor and the Project Manager, as the agent of the Owner for the Stadium Improvements and the Infrastructure Upgrades and as the agent of the Owner and the Retail Partnership for the Parking Structure, in a form approved by the Owner in its Discretion, and (ii) for the Designated Park Improvements, the agreement entered into between the General Contractor and the Project Manager, as the agent of the Owner, in a form approved by the Owner in its Discretion;
- (e) **“Consultants”** means, collectively, the consultants (i) agreed by the Owner and the Project Manager and retained by the Project Manager, as the agent of the Owner, for the Stadium Improvements, (ii) retained by the Project Manager, as the agent of the Owner and the Retail Partnership, for the Parking Structure, (iii) designated and retained by the Owner for the Designated Park Improvements, and (iv) retained by the Project Manager, as the agent of the Owner, for the Infrastructure Upgrades, and include the Prime Consultants, structural engineers, mechanical engineers, electrical engineers, interior designers, landscape architects, civil engineers and other similar professionals, but Consultants do not include Sub-consultants;
- (f) **“Contract Documents”** consist of the Construction Contracts and the plans, sketches, drawings, graphic representations, specifications and other documents identified in the Construction Contracts;
- (g) **“Designated Park Improvements”** means that portion of the Urban Park Improvements for which the Project Manager shall provide Services pursuant to this Agreement, as agreed in writing by the Project Manager and the Owner;
- (h) **“Dispute”** has the meaning set out in Section 11.1;
- (i) **“Effective Date”** means the 28th day of June, 2010;
- (j) **“Expenses”** and **“Budgeted Expenses”** have the respective meanings set out in Section 3.3;
- (k) **“General Contractor”** means (i) for the Stadium Improvements, the Parking Structure and the Infrastructure Upgrades, the contractor under

the Comprehensive Construction Contract, and (ii) for the Designated Park Improvements, the contractor pursuant to Construction Contract as agreed by the Owner and the Project Manager;

- (l) “**Lands**” means the lands in the City of Ottawa, Ontario, more particularly described in Schedule “C”;
- (m) “**Option Agreement**” means the Option Respecting the Assignment of Contracts dated July 26, 2011 between the Owner and the Project Manager;
- (n) “**Owner Event of Default**” has the meaning set out in Section 10.2(a);
- (o) “**Party**” means each of the Owner and the Project Manager and “**Parties**” means both of the Owner and the Project Manager;
- (p) “**Place of the Work**” means the Lands;
- (q) “**Plans and Specifications**” means the plans and specifications for the Project prepared in accordance with the Plan Approval Procedure, as the same may be amended, restated, modified or supplemented from time to time;
- (r) “**PM Event of Default**” has the meaning set out in Section 10.1(a);
- (s) “**PM Fee**” has the meaning set out in Part 1 of Schedule “B” to this Agreement;
- (t) “**Prime Consultants**” means, collectively, (i) the licensed architect agreed by the Owner and the Project Manager and retained by the Project Manager, as the agent of the Owner, for the Stadium Improvements, (ii) the licensed structural engineer retained by the Project Manager, as the agent of the Owner and the Retail Partnership, for the Parking Structure, and (iii) the licensed civil engineer designated and retained by the Owner for the Designated Park Improvements;
- (u) “**Project**” means the construction and completion of (i) the Stadium Improvements, (ii) the Parking Structure, (iii) the Designated Park Improvements, and (iv) the Infrastructure Upgrades, in accordance with the applicable Plans and Specifications and changes and extras made in accordance with a Change Order. For greater certainty, the Project does not include any part of the Urban Park Improvements other than the Designated Park Improvements;
- (v) “**Project Agreement**” means the Project Agreement dated October [●], 2012 among the City of Ottawa, Ottawa Sports and Entertainment Group, Lansgreen Investments Inc., Shenkman Lansdowne Ltd., Trinity

Lansdowne Ltd., Keljay Ltd. and Friarmere Holdings Inc.;

- (w) “**Project Construction Budget**” has the meaning set out in Section 2.3.1 of Schedule “A”;
- (x) “**Project Schedule**” means the detailed master time schedule prepared by the Project Manager in accordance with the provisions of Section 2.2 of Schedule “A”, as the same may be amended, restated, modified or supplemented from time to time following the Effective Date in accordance with the provisions of this Agreement;
- (y) “**Project Team**” means, for each part of the Project, (i) the Project Manager, including any third party project manager retained by the Project Manager, and (ii) the applicable Consultants and Sub-consultants;
- (z) “**Reimbursable Amounts**” means amounts paid or payable by the Project Manager to third parties as agent for the Owner;
- (aa) “**Representative**” has the meaning set out in Section 6.1(b);
- (bb) “**Services**” has the meaning set out in Section 3.1;
- (cc) “**Standard of Professional Care**” has the meaning set out in Section 2.1;
- (dd) “**Sub-consultant**” means a consultant, including a structural engineer, mechanical engineer, electrical engineer, interior designer, landscape architect, civil engineer or other similar professional, retained by a Consultant;
- (ee) “**Substantial Performance**” has the meaning attributed to it in the *Construction Lien Act* (Ontario);
- (ff) “**Total Performance of the Work**” means, for each part of the Project, the Work is deemed to be completed pursuant to Section 2(3) of the *Construction Lien Act* (Ontario) and is so certified by the applicable Prime Consultant or by agreement between the Owner and the Project Manager;
- (gg) “**Work**” means the portion of each part of the Project performed by the General Contractors as required by the Contract Documents and coordinated and managed by the Project Manager under this Agreement, including work required pursuant to a Change Order; and
- (hh) “**30 Day Period**” means the thirty (30) day period following receipt by (i) the Project Manager of Notice from the Owner of the occurrence of a PM Event of Default, or (ii) the Owner of a Notice from the Project Manager of the occurrence of an Owner Event of Default, as applicable.

1.2 Definitions in Project Agreement

Capitalized terms used in this Agreement that are not defined in it have the meaning given to them in the Project Agreement.

1.3 Construction and Interpretation

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

- (a) the headings to Sections and Schedules are for convenience only and will not affect the interpretation of this Agreement;
- (b) each reference in this Agreement to “Section”, “Article” or “Schedule” is to a Section or Article of, or a Schedule to, this Agreement;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria having the force of law made under that statute and any successor statute, each as amended or re-enacted from time to time;
- (d) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, office, agency or similar body;
- (e) words importing the singular include the plural and vice versa and words importing gender includes all genders;
- (f) in the event that any date or time period referred to in this Agreement shall fall or expire upon a day which is not a Business Day, such date or time period shall be deemed to fall or expire on the first Business Day thereafter;
- (g) reference to a time of day or date means the local time or date in Ottawa, Ontario;
- (h) all references to amounts of money mean lawful currency of Canada;
- (i) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP;
- (j) the word “written” includes printed, typewritten, faxed, emailed or otherwise capable of being visibly reproduced at the point of reception and “in writing” has a corresponding meaning;
- (k) the words “include” and “including” are to be construed as meaning “including, without limitation”;

- (l) the division of this Agreement into separate Articles, Sections and paragraphs are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (m) all references in this Agreement to any agreement (including this Agreement), document or instrument shall mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

1.4 Severability

Subject to Sections 1.4(a) and 1.4(b) below, each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction, except that if:

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

1.5 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario, which will be deemed to be the proper law of this Agreement.

1.6 Review, Approval, Inspection or Audit by the City

No review, approval, inspection, examination, audit, determination or acceptance provided, performed or made by or on behalf of the Owner under, pursuant to or in respect of this Agreement shall constitute an approval by the City as a municipality under the ***Planning Act*** (Ontario) or the ***Municipal Act, 2001*** (Ontario), except when

the Owner is expressly performing its functions as a municipality under the **Planning Act** (Ontario) or the **Municipal Act, 2001** (Ontario), and any review, approval, inspection, examination, audit, determination or acceptance of any Plans and Specifications provided, performed or made by or on behalf of the Owner under, pursuant to or in respect of this Agreement will be for general compliance only and the Owner shall not be liable or responsible for the contents of any Plans and Specifications.

1.7 Time of Essence

Time shall be of the essence of this Agreement.

1.8 Entire Agreement

This Agreement, the Project Agreement, the Material Agreements and any other agreements herein contemplated to be entered into among, by or with the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties hereto and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof, other than in this Agreement, the Project Agreement, the Material Agreements and any other agreements herein contemplated to be entered into among, by or with the Parties hereto.

1.9 Schedules

The following schedules are attached to this Agreement and form an integral part hereof:

Schedule "A"	Project Manager's Services
Schedule "B"	Fees, Expenses and Reimbursable Amounts Payable to the Project Manager
Schedule "C"	Legal Description
Schedule "D"	Budgeted Expenses
Schedule "E"	Dispute Resolution Procedure

**ARTICLE 2
RETAINER AND APPOINTMENT**

2.1 Retainer-Standard of Professional Care

As of and from the Effective Date, the Owner retains the services of the Project Manager as its project manager to perform the Services and the Project Manager accepts that retainer. The Project Manager shall:

- (a) furnish its skill and judgment and co-operate with the Prime Consultants, the other Consultants and Sub-consultants in furthering the interests of the Owner in connection with the Project; and
- (b) furnish business administration and supervision and manage and administer the completion of the Project in a manner consistent with the interests of the Owner with the view to achieving a high level of (i) cost controls, savings and efficiencies, (ii) Project monitoring, reporting, communication and accountability, and (iii) timeliness and effectiveness in the prosecution of the Work and the completion of the Project,

all in compliance with the Standard of Professional Care.

In the performance of its obligations under this Agreement, the Project Manager shall, and shall use commercially reasonable efforts to require the General Contractors to, carry out its and their duties as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work in accordance with the Project Schedule, shall comply with and observe applicable Law in the performance of the Services and shall exercise such skill and care as is consistent with the standard of care required and exercised by Project Managers of projects similar in scope and complexity to that of the Project in the Province of Ontario (collectively, the "**Standard of Professional Care**"). The Owner acknowledges and agrees that (i) the obligation of the Project Manager is limited to the exercise of the Standard of Professional Care in the performance of its duties and obligations under this Agreement, (ii) the Project Manager shall not be responsible for the failure of any General Contractor to carry out its Work, unless that failure results from an act or omission of the Project Manager, and (iii) the Project Manager assumes no responsibility for, nor offers any advice or expertise with respect to, the architectural or engineering aspects of the Project, which shall be the responsibility of the Consultants and Sub-consultants.

2.2 Appointment of Project Manager as Agent

- (a) The Owner confirms the appointment of the Project Manager as of and from the Effective Date as its agent to act in its name, in accordance with the terms of this Agreement, and for the purpose of management of the construction of the Project, to:
 - (i) participate in the award of contracts for the Owner's account to the General Contractors on terms mutually agreed by the Owner and the Project Manager covering the furnishing of materials and/or labour by the General Contractors for the various parts of the Project as contemplated in Schedule "A";
 - (ii) process Change Orders in accordance with Section 6.1; and

- (iii) perform any other services required to be carried out by the Project Manager in the Construction Contracts which have been approved by the Owner and the Project Manager.
- (b) All day-to-day decisions to be made in connection with the Construction Contracts shall be made by the Project Manager, except as provided in paragraph (c), below.
- (c) Any material decisions to be made in connection with the City's Portion of the Construction Components and the Designated Park Improvements shall be made by the Owner at its Discretion, including in respect of the following matters, provided that if any such decision affects the Retail Component's Portion of the Parking Structure (including the cost of the Retail Component's Portion of the Parking Structure), the Project Manager must also agree to the decision, in its Discretion, failing which agreement, the matter shall be submitted to the dispute resolution procedure relating to construction matters set out in Construction Procedures Agreement:
 - (i) the making of any City Change Orders or of any Change Orders with respect to the Designated Park Improvements, which shall be at the Owner's cost;
 - (ii) the amendment of the Construction Contracts, the Final Plans and Specifications for the Stadium Improvements, the Plans and Specifications for the Designated Park Improvements or other matters within the City's Portion of the Construction Components;
 - (iii) the waiver, termination, surrender or alteration in any material respect of the Project Manager's rights or obligations under the Construction Contracts;
 - (iv) any decision which materially affects the Owner's interest in the City's Portion of the Construction Components or the Designated Park Improvements;
 - (v) any other matter deemed material by the Owner, at its Discretion, in respect of the Owner's requirements for or costs of the City's Portion of the Construction Components or the Designated Park Improvements of which the Owner notifies the Project Manager in writing; and
 - (vi) any material change to the Parking Structure affecting the Office Component or the Residential Component.

2.3 The Project Team

The Project Team shall work together from the beginning of the contract document stage through to completion of construction, including any post-construction commissioning that may be required. The Project Manager, or a third party project manager retained by the Project Manager, shall provide leadership to the Project Team on all matters relating to construction.

ARTICLE 3 PROJECT MANAGER'S SERVICES

3.1 Duties and Services of Project Manager

The Project Manager shall have the duties and perform the services set out in Schedule "A" (the "**Services**"). The Project Manager, in addition to providing general executive leadership, shall provide or retain all the necessary personnel to the Project in order to coordinate and administer the prosecution of the Work and to determine in general with the Consultants and Sub-consultants that the Work is being carried out in accordance with the Contract Documents, the Project Schedule and the requirements of this Agreement.

3.2 Fee Payable to Project Manager

For the Services, the Owner shall pay the PM Fee to the Project Manager. The PM Fee shall be calculated and payable as set out in Part 1 of Schedule "B".

3.3 Expenses and Reimbursable Amounts

- (a) For the Stadium Improvements only, but subject to the provisions of Part 3 of Schedule "B", the Owner shall pay the Expenses and the Reimbursable Amounts in the manner described in Part 2 of Schedule "B". For the Parking Structure, the Designated Park Improvements and the Infrastructure Upgrades, but subject to the provisions of Part 3 of Schedule "B", the Owner shall pay the Reimbursable Amounts in the manner described in Part 2 of Schedule "B", but shall not pay any Expenses.
- (b) For the purpose of this Agreement, "**Expenses**" means the following actual and direct costs and expenses of the Project Manager in connection with the performance of the Services, without duplication:
 - (i) wages and salaries, the cost of benefits and government assessments for personnel employed directly by the Project Manager while engaged in the performance of the Services and the fees of any third party project manager retained by the Project Manager in connection with the performance of the Services;

- (ii) expenditures for products, supplies, equipment and material used in or required in performing the Services, including the cost of transportation and storage;
 - (iii) the cost of utilities consumed in performing the Services;
 - (iv) site office set-up expenses and site office telephone, fax and internet expenses; and
 - (v) such other expenses in connection with the Services as the Owner and the Project Manager may agree in writing from time to time.
- (c) For the purpose of this Agreement, Reimbursable Amounts include, without duplication:
 - (i) amounts payable by the Project Manager to Consultants and under the Construction Contracts;
 - (ii) any amount described elsewhere in this Agreement as being a Reimbursable Amount; and
 - (iii) such other amounts in connection with the Project or the Work as the Owner and the Project Manager may agree in writing from time to time.
- (d) The agreed budget for Expenses is attached to this Agreement as Schedule "D" (the "**Budgeted Expenses**"). Notwithstanding anything else contained in this Agreement other than Part 3 of Schedule "B", the total of the Budgeted Expenses shall not exceed the total budgeted amounts set out in Schedule "D", except: (i) in the event of a material delay in the completion of the Project caused by an event other than a breach of this Agreement by the Project Manager; (ii) subject to the terms and conditions of this Agreement, including Sections 2.2(c) and 6.1, in the event of a material change in the size and scope of the Project or the scope of the Services to be performed by the Project Manager, in either event resulting in an increase in the Project Manager's costs for the Project, or (iii) with the prior written approval of the Owner.
- (e) The Expenses and Reimbursable Amounts shall not include any Internal Costs of or profit fee for the Project Manager.

3.4 Representations and Warranties of Project Manager

The Project Manager represents and warrants to the Owner as follows:

- (a) it is experienced, competent and qualified to perform the Services either directly or through the third party project manager retained by it following a public procurement process approved by the Owner;
- (b) it or the third party project manager retained by it has and shall maintain at all time sufficient staff, expertise and resources to perform the Services in a timely manner;
- (c) it and the third party project manager retained by it possess the legal right and capacity to enter into and fully perform all of the Services;
- (d) the Services will be performed in accordance with applicable Law and the Standard of Professional Care;
- (e) it has all necessary partnership power, authority and capacity to enter into this Agreement, to carry out its obligations under this Agreement, to own its assets and to carry on its business as presently conducted;
- (f) the execution and delivery of this Agreement by it and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary partnership action. This Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by Law of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;
- (g) it is not bound or affected by or subject to any agreement, obligation, instrument or Law that would be violated, breached by, or under which default would occur as a result of the execution and delivery of, and performance of obligations under, this Agreement; and
- (h) it is not aware of any claims, actions, suits, proceedings pending, or contractual or other disputes to its knowledge threatened, against or adversely affecting it which might materially affect its financial condition or its ability to perform and meet any and all duties, liabilities and obligations as may be required of it under this Agreement.

**ARTICLE 4
OWNER'S RESPONSIBILITIES**

4.1 Owner's Responsibilities

The Owner shall at its own expense comply with and perform its obligations under this Agreement and, without limiting the generality of the foregoing, shall:

- (a) provide full information regarding its requirements for the Project;
- (b) designate a Representative or Representatives who shall be fully acquainted with the Project and has or have authority to:
 - (i) act on the Owner's behalf with respect to the Project and on whom the Project Manager shall in all respects be entitled to rely as having full and complete authority to bind the Owner in all matters, and who can examine documents submitted by the Project Manager and render decisions pertaining to them within two (2) Business Days after receiving the documents and such other information as is reasonably required by the Representative to make the decision (or such longer period as the Project Manager may allow, acting reasonably, upon written notice to the Representative, given the exigencies of the Project Schedule) to avoid delay in the Project or the delivery of the Services, including the authority to approve the Project Construction Budget;
 - (ii) consider and approve Change Orders and Change Directives, other than City Change Orders; and
 - (iii) initiate any City Change Orders;
- (c) furnish any existing surveys describing physical characteristics, legal limitations and utility locations, furnish any existing soil reports and subsurface investigations, and furnish any existing structural, mechanical, chemical and other laboratory tests, inspections and reports, all only to the extent that they are in the Owner's possession or under its control;
- (d) make payment to the Project Manager of the PM Fee and pay the Expenses and Reimbursable Amounts in accordance with the provisions of Schedule "B" of this Agreement;
- (e) provide for the payment of the General Contractor under the Comprehensive Construction Contract in accordance with the terms of section 10.5 of the Project Agreement and provide for the payment of the General Contractor for the Designated Park Improvements in accordance with its Construction Contract and in conformity with payment certificates issued by the Consultants; and

- (f) provide for the payment of Consultants in accordance with their respective contracts.

4.2 Cost and Time of Delivery

All services, information, surveys and reports required to be furnished by the Consultants or Sub-consultants shall be furnished at the Owner's expense and the Project Manager shall be entitled to rely on the accuracy and completeness of them. The Owner shall furnish required information and render approvals as expeditiously as necessary for the orderly progress of the Work and the Project.

4.3 Errors in Drawings and Specifications

If the Owner becomes aware of any fault or defect in the Project or non-conformance with any drawings and specifications, it shall promptly notify the Project Manager. Similarly, if the Project Manager becomes aware of any fault or defect in the Project or non-conformance with any drawings and specifications, it shall promptly notify the Owner.

ARTICLE 5 TRADE AND SUPPLIER CONTRACTS AND CONSULTANTS' AGREEMENTS

5.1 Construction Contracts and Consultants' Agreements

All portions of the Work shall be performed under the Construction Contracts. The Project Manager shall not amend any Construction Contract in any material respect without the consent of the Owner.

Consultants shall be retained by the Project Manager or the Owner, as more particularly set out in the definition of the term "Consultant", to design and prepare construction documents for the Project and to conduct periodic inspections of the Work in conjunction their Sub-consultants. The Party retaining a Consultant shall not amend its contract with the Consultant in any material respect without the consent of the other Party.

The Parties confirm that (i) the Project Manager has agreed to enter into the Construction Contracts and the agreements with the Consultants for the Stadium Improvements, the Parking Structure and the Infrastructure Upgrades as agent of the Owner (and, in the case of the Parking Structure, also as the agent of the Retail Partnership) to facilitate and expedite the administration of the Project and the Work, but on the understanding that it will have no additional risk or liability to the Owner, the General Contractors or the Consultants merely by being a signatory to the Construction Contracts and such agreements with the Consultants, and (ii) subject to the Project Manager's Completion Guarantee described in the Project Agreement, the obligation of the Project Manager is limited to performing the Services in accordance with the terms of this Agreement and to acting at all times in accordance with the Standard of

Professional Care. The parties acknowledge and agree that the Project Manager shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the General Contractors in the performance of the Construction Contracts, for the work of Consultants (including the contents of any of the Plans and Specifications) or for the failure of any General Contractor or any Consultant to carry out its work, except to the extent required by the Standard of Professional Care. In the event of a default by a General Contractor under a Construction Contract or by a Consultant under an agreement with the Consultant to which the Project Manager is the counterparty, the Project Manager shall (i) enforce the provisions of the Construction Contract with the defaulting General Contractor against the defaulting General Contractor or the provisions of the agreement with the defaulting Consultant against the defaulting Consultant, in each case to mitigate the consequences of the default, or (iii) if required by the Owner, assign the Construction Contract with the defaulting General Contractor or the agreement with the defaulting Consultant, as applicable, to the Owner pursuant to and subject to the terms of the Option Agreement. A default by a General Contractor under a Construction Contract and a default by a Consultant under an agreement with a Consultant does not constitute a default by the Project Manager under this Agreement and in the event of a default by a General Contractor under a Construction Contract or of a default by a Consultant under an agreement with a Consultant, the Owner covenants and agrees to look to the defaulting General Contractor or the defaulting Consultant, as applicable, for relief and releases the Project Manager from all costs, damages and liabilities arising from the General Contractor's and the Consultant's default, provided that nothing in this sentence derogates from or limits the Project Manager's (i) obligation to perform the Services and to act in accordance with the Standard of Professional Care, and (ii) liability under the terms of this Agreement in the event it fails to perform that obligation.

5.2 Assignment to Owner

At the option of the Owner, the Project Manager shall assign the Contracts to the Owner pursuant to and subject to the terms of the Option Agreement (as the term "Contracts" is defined in the Option Agreement).

ARTICLE 6 CHANGES IN THE PROJECT

6.1 Change Procedure

- (a) Except for field modifications which are determined by or on behalf of the Project Manager, acting reasonably, to be immaterial in nature and have a cost of \$25,000 or less for any one modification and \$50,000 or less for a series of related modifications, changes and extras to or affecting the Project (including, for greater certainty, all City Change Orders) must be approved in writing and signed or initialled by the Owner through its authorized Representative. The provisions of this Section 6.1 do not alter,

limit or derogate from the provisions of Section 2.2(c).

- (b) As of this date of this Agreement, the Owner's authorized representative is the Owner's General Manager - Infrastructure Services, Infrastructure Services & Community Sustainability Portfolio, or his/her designee in writing (the "**Representative**"). The Owner shall give written notice to the Project Manager of any change of its Representative.
- (c) Upon receipt of a request for a change or extra to or affecting the Project, the Project Manager will issue a contemplated change notice (a "**CCN**") to the applicable General Contractor for pricing and to the Representative. All CCN pricing will be reviewed by both the applicable Consultant and, if applicable, Sub-consultant and the Project Manager to confirm that it is fair and reasonable. Following receipt and confirmation of the CCN pricing, the Project Manager will then process a draft Change Order. A draft Change Order will become a "**Change Order**" deemed to be issued by or on behalf of the Owner (i) where the Representative's approval is required under Section 6.1(a), upon approval by the Representative or if no response is received from the Representative within two (2) Business Days after the draft Change Order, and such other information as is reasonably required by the Representative to review the Change Order, is submitted by the Project Manager (or such longer period as the Project Manager may allow, acting reasonably, upon written notice to the Representative given the exigencies of the Project Schedule), or (ii) where the Representative's approval is not required under Section 6.1(a), upon processing of the draft Change Order by the Project Manager.
- (d) If the Project Manager deems the CCN to be critical to the Project Schedule, the Project Manager will request that the Owner authorize the CCN to proceed prior to finalizing the pricing on the understanding that the Project Manager will make all commercially reasonable efforts to negotiate fair and reasonable pricing for the Work contemplated in the CCN. In such a case, the Project Manager may recommend the issuance by the Owner of a change directive ("**Change Directive**") stating that the Work set out in the Change Directive is to proceed and that the final cost for such work will be agreed upon using the mechanism identified in the applicable Construction Contract(s).
- (e) The cost of Change Orders and Change Directives shall be payable in accordance with the terms of the Project Agreement.

ARTICLE 7 EMERGENCIES

7.1 Emergency Work

In any emergency affecting the safety of persons or property at the Place of the Work, the Project Manager shall, at the cost of (subject to the provisions of Project Agreement relating to Maximum City Cost) and with such cooperation of the Owner as may be required, immediately take all necessary action to attempt to prevent or mitigate the consequences of any threatened damage, injury or loss.

ARTICLE 8 INDEMNITY

8.1 Indemnification by Project Manager

The Project Manager shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, demands, losses, costs, expenses (including legal fees, professional fees and disbursements), damages, actions, suits or proceedings by third parties that arise out of or result from or are attributable to:

- (a) the failure to perform or breach of the Project Manager's obligations under this Agreement; or
- (b) any negligent or wilful act or omission by the Project Manager in the performance of the Services.

8.2 Indemnification by Owner

The Owner shall indemnify and hold harmless the Project Manager and its agents and employees from and against all claims, demands, losses, costs, expenses (including legal fees, professional fees and disbursements), damages, actions, suits or proceedings by third parties that arise out of or are attributable to the negligent performance, failure to perform or breach of the Owner's obligations under this Agreement or the wilful act or omission of the Owner.

8.3 Limitations on Liability

- (a) Subject to the provisions of Section 8.3(b), the total aggregate amount of liability of the City of Ottawa, including in its capacity under this Agreement as Owner, to Ottawa Sports and Entertainment Group, including in its capacity under this Agreement as Project Manager, shall not exceed in aggregate \$50 Million, Adjusted for Inflation, during the entire period of time that the Project Agreement and/or the Retail Lease and/or the Stadium Lease shall be in existence. The aggregate of liabilities referred to in this Section 8.3(a) shall be applicable with respect to the aggregate of all liability contained in or resulting from this Agreement, the Project Agreement and all Material Agreements.

- (b) The limitation on liability provided in Section 8.3(a) shall exclude payments and/or liabilities in respect of the matters referred in section 19.1(b) of the Project Agreement.

8.4 No Indirect Losses

The indemnities under this Agreement will not apply and there will be no right to claim damages for breach of this Agreement, in contract, in tort or on any other basis whatsoever, to the extent that any loss claimed by a Party is for Indirect Losses, howsoever caused, suffered or allegedly suffered by that Party.

8.5 Project Manager's Remedies Against Owner

All of the Project Manager's remedies under or in relation to this Agreement, whether in contract, tort or otherwise, shall only be against the Owner and the Project Manager will not have any rights, causes of action or remedies against the City Indemnified Parties (other than the Owner) with respect to their role or responsibilities relating to the Project or this Agreement. Notwithstanding any other provision of this Agreement, nothing in this Agreement will give rise to any contract between the Project Manager and any of the City Indemnified Parties (other than the Owner).

8.6 Owner's Remedies against Project Manager

All of the Owner's remedies under or in relation to this Agreement, whether in contract, tort or otherwise, shall only be against the Project Manager and the Owner will not have any rights, causes of action or remedies against the OSEG Indemnified Parties (other than the Project Manager), with respect to this Agreement. Notwithstanding any other provision of this Agreement, nothing in this Agreement will give rise to any contract between the Owner and any of the OSEG Indemnified Parties (other than the Project Manager).

ARTICLE 9 INSURANCE

9.1 The Project Manager covenants and agrees that it shall, at the Owner's cost and expense, take out and keep in full force and effect the following insurance coverages from the date of the commencement of the Work until the date of Substantial Performance, unless otherwise stipulated:

- (a) builders "all-risk" insurance coverage including earthquake and flood for the full replacement cost of the construction project, including the existing structure of the Stadium. Such insurance shall include hard costs; soft costs; expediting expenses; transit; unnamed storage locations; debris removal; professional fees; fire fighting expenses; blanket by-laws; delayed opening and testing and commissioning. The policy shall be issued in the name of the Owner, the Project Manager and the General

Contractor. The deductible shall be no greater than \$25,000 for direct damage and shall be the sole responsibility of the General Contractor; \$100,000 for flood; and 3% of the property insured or \$100,000, whichever is greater, for earthquake (or 5% of the property insured or \$250,000, whichever is greater if the foregoing deductible option is not commercially available) for earthquake;

- (b) boiler and machinery coverage issued on a comprehensive form for all objects, including production machinery (if applicable), for the full replacement cost of the Project, including the existing structure, as applicable. Such insurance shall include soft costs; expediting expenses; water damage; hazardous substances; delayed opening; professional fees; and testing and commissioning. The policy shall be issued in the name of the Owner, the Project Manager and the General Contractor. The deductible shall be no greater than \$25,000 for direct damage, and shall be the sole responsibility of the General Contractor;
- (c) project specific or general wrap-up liability insurance issued on an occurrence basis, for an amount of not less than \$10,000,000 per occurrence and \$10,000,000 annual aggregate for all sums which the Owner, the Project Manager or the General Contractor shall become obligated to pay by reason of liability imposed by law for damages arising out of or in connection with the operations of the Owner, the Project Manager or the General Contractor, its elected officials (in the case of the Owner), agents, officers, employees or other Persons for whom the Owner, the Project Manager or the General Contractor is legally responsible relating to their obligations with respect to the Project. Such insurance shall include bodily injury and property damage, including loss of use; products, broad form completed operations; premises, property and operations; personal injury; blanket contractual liability; non-owned automobile; broad form property damage; owners and contractors protective; occurrence property damage; medical payments; employees as additional insured(s); contingent employer's liability and voluntary compensation for employees not covered by the **Workplace Safety and Insurance Act, 1997** (Ontario); and cross liability and severability of interest clauses. Such insurance:
 - (i) shall include 24 month completed operations;
 - (ii) shall not contain any exclusions or limitations in respect of shoring, underpinning, raising or demolition of any building or structure, pile driving, caisson work or collapse of any structure or land from any cause;

- (iii) shall cover the use of explosives, if applicable, and the General Contractor shall be solely responsible for all damage, loss or costs resulting directly or indirectly from such use;
 - (iv) shall have a deductible not exceeding \$25,000, which shall be the sole responsibility of the General Contractor;
 - (v) shall add the Project Manager, its agents, officers and employees and the Owner, its elected officials, agents, officers and employees as additional insured with respect to the operations of the General Contractor; and
 - (vi) shall be non-contributing and apply as primary and not as excess of any insurance available to the Owner and the Project Manager and shall contain a waiver of subrogation in favour of the Owner and the Project Manager;
- (d) automobile liability insurance with respect to owned or leased vehicles used directly or indirectly in the performance of the Project covering liability for bodily injury, death and damage to property with a limit of not less than \$5,000,000 inclusive for each and every loss;
- (e) where applicable, professional liability (errors and omissions) insurance coverage to a limit of not less than \$5,000,000. If such insurance is written on a claims made basis, the coverage shall be maintained for a period of two years subsequent to the Substantial Performance of the Work. The deductible shall be no greater than \$50,000;
- (f) environmental impairment liability insurance with a limit of not less than \$5,000,000 per incident and annual aggregate, including third party bodily injury and property damage, including on-site and off-site clean-up and including new conditions only. If such insurance is issued on a claims made basis, such insurance shall be maintained for a period of two years subsequent to the Substantial Performance of the Work. The deductible shall be no greater than \$50,000. Such insurance shall add the Project Manager, its agents, officers and employees and the Owner, its elected officials, agents, officers and employees as additional insureds with respect to the operations of the General Contractor. Such insurance shall be non-contributing and apply as primary and not as excess of any insurance available to the Owner and the Project Manager and shall contain a waiver of subrogation in favour of the Owner and the Project Manager. This policy shall be maintained by the General Contractor and at the General Contractor's sole expense;
- (g) such additional insurance as the Owner reasonably requires to insure against any added risks attendant during the construction of the Project.

The Owner and the Project Manager shall be an insured, additional insured or beneficiary in any such coverage, as appropriate and as their interests may appear; and

- (h) the insurance policies prescribed in this Article 9 shall not be cancelled unless the insurer notifies the Owner and the Project Manager in writing at least thirty (30) days prior to the effective date of the cancellation.

ARTICLE 10 DEFAULT AND TERMINATION

10.1 Default by Project Manager

- (a) For the purposes of this Agreement, “**PM Event of Default**” means any of the following events or circumstances:
 - (i) any default by the Project Manager in the performance or observance of any of its obligations under this Agreement; or
 - (ii) an OSEG Event of Default as defined by and pursuant to the Project Agreement.
- (b) On the occurrence of a PM Event of Default or any time thereafter while it is subsisting, the Owner may:
 - (i) serve Notice of default on the Project Manager requiring the Project Manager, at the Project Manager’s option:
 - (A) in the case of a PM Event of Default other than other than an OSEG Event of Default pursuant to section 20.1(f) of the Project Agreement, to remedy or cause to be remedied the PM Event of Default referred to in the Notice of default (if it is continuing) within the 30 Day Period, provided that with respect to a non-monetary PM Event of Default, the 30 Day Period to remedy a PM Event of Default shall be extended to such greater period than 30 days as shall be reasonable in the circumstances, such greater period to be as approved by the Owner;
 - (B) in the case of a non-monetary PM Event of Default other than an OSEG Event of Default pursuant to section 20.1(f) of the Project Agreement, to put forward within 10 days of the Notice of default, a reasonable program (set out, if appropriate, in stages) for remedying the PM Event of Default, which program shall be subject to the approval of the Owner, in its Discretion. The program will specify in

reasonable detail the manner in, and the latest date by, which such PM Event of Default is proposed to be remedied.; or

- (C) in the case of an OSEG Event of Default pursuant to section 20.1(f) of the Project Agreement, to remedy or cause to be remedied the OSEG Event of Default within the period provided therefor in the Stadium Lease or Retail Lease, as applicable; and
 - (ii) exercise any rights contained in this Agreement and/or any of the Material Agreements as contained therein.
- (c) If:
- (i) a PM Event of Default notified in a Notice of default served under Section 10.1(b) is not remedied before the expiry of the applicable period referred to in Section 10.1(b);
 - (ii) the Project Manager puts forward a program pursuant to Section 10.1(b) which has been accepted by the Owner and the Project Manager fails to achieve any material element of the program or the end date for the program (as the case may be); or
 - (iii) any program put forward by the Project Manager pursuant to Section 10.1(b) is rejected by the Owner, in its Discretion, and no alternate program has been approved by the Owner, in its Discretion, within 10 days of the rejection of the original program (provided that any alternate program that is so approved by the Owner shall be deemed to be a program made pursuant to Section 10.1(b) for the purposes of this Agreement),

then at any time thereafter while a PM Event of Default is in existence, the Owner may upon 10 Business Days further Notice to the Project Manager terminate this Agreement in its entirety by Notice to the Project Manager with immediate effect in the event such PM Event of Default is not cured within such further 10 Business Day period. For the purposes of this Section 10.1(c), if the Project Manager's performance of a program pursuant to Section 10.1(b) is adversely affected by the occurrence of a Relief Event, then, subject to the Project Manager complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay permitted by Section 12.2.

- (d) All of the rights and remedies of the Owner under this Agreement and the Material Agreements are cumulative and not alternative. In addition to the right to terminate under Section 10.1(c) and any other rights pursuant to this Agreement, the Owner may exercise, either separately or simultaneously, any of the following remedies with respect to a PM Event of Default for which the Owner then has the right to deliver a Notice terminating this Agreement under the terms of Section 10.1(c):
 - (i) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Parties that damages at law may not be an adequate remedy for a default or breach of this Agreement; and
 - (ii) bring any action at law as may be necessary or advisable in order to recover damages, subject to the limitations contained in this Agreement.
- (e) The Project Manager will reimburse the Owner for all reasonable costs incurred by the Owner in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Section 10.1. In addition, in the event that the Owner exercised any of its rights contained in this Section 10.1, the Project Manager will reimburse the Owner for all reasonable costs incurred by the Owner in connection therewith together with an administrative fee of 15% on costs incurred.
- (f) For clarity, the provisions regarding default and the Owner's rights in the event of a PM Event of Default contained in this Agreement shall be in addition to and without derogation from the rights of the City contained in the Material Agreements.

10.2 Default by City

- (a) On the occurrence of any default by the Owner in the performance or observance of any of its obligations under this Agreement (an “**Owner Event of Default**”) or any time thereafter while it is subsisting, the Project Manager may serve Notice of default on the Owner requiring the Owner to remedy or cause to be remedied the Owner Event of Default referred to in such Notice of default (if it is continuing) within the 30 Day Period, provided that with respect to a non-monetary Owner Event of Default, the 30 Day Period to remedy the Owner Event of Default shall be extended to such greater period than 30 days as shall be reasonable in the circumstances, such greater period to be as approved by the Project Manager.
- (b) In the event that this Agreement is terminated by the Project Manager pursuant to applicable law as a result of an Owner Event of Default, the

Project Manger shall be entitled to payment of it damages calculated in accordance with applicable law.

10.3 Payments to Date of Termination

The termination of this Agreement will discharge any further obligations of each party under this Agreement, provided that (i) the obligations of the parties under Articles 8 and 9 and Section 12.14 of this Agreement, and (ii) the obligation of the Owner to pay the Project Manager's earned PM Fee and Expenses and Reimbursable Amounts with respect to such Services as may have been furnished prior to the effective date of termination shall not be discharged by the termination of this Agreement but shall remain in full force and effect.

10.4 Certain Deliveries on Termination

Subject to the payment by the Owner of the amounts described in subparagraph (ii) of Section 10.3, on the termination of this Agreement, the Project Manager shall deliver to the Owner original copies of all Plans and Specifications, the Construction Contracts and construction tenders, shop drawings, commissioning processes, operating manuals and other similar materials relating to the Project in the possession of the Project Manager.

10.5 Termination Pursuant to Project Agreement

Notwithstanding anything in this Agreement to the contrary, the Owner may terminate this Agreement in accordance with the provisions of Article XX and/or Article XXII of the Project Agreement.

ARTICLE 11 DISPUTE RESOLUTION PROCEDURE

11.1 Dispute Resolution Procedure

Any disagreement, failure to agree or other dispute between the Owner and Project Manager arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination hereof, whether in the law of contract or any other area of law (a "Dispute"), but excluding a Dispute designated by a Party as requiring expeditious settlement so as not to materially delay the course of construction of the Project, will be resolved in accordance with the dispute resolution procedure set out in Schedule "E". A Dispute designated by a Party as requiring expeditious settlement so as not to materially delay the course of construction of the Project shall be resolved in accordance with the dispute resolution procedures set out in the Construction Procedures Agreement and not the dispute resolution procedures set out in Schedule "E".

ARTICLE 12 GENERAL

12.1 Approvals

Where, by a provision of this Agreement, an approval, consent or agreement of a Party (hereinafter in this Section, individually or collectively referred to as an “**approval**”) is required, unless the contrary is expressly provided in this Agreement:

- (a) receipt of a written request for approval shall be required;
- (b) the Party whose approval is required will within three (3) Business Days (or such shorter period of time as is set out in this Agreement or as shall be required pursuant to the Project Schedule) after receipt of a request for approval, accompanied in all cases by reasonable detail if the circumstances require, notify the requesting Party in writing either that it approves or that it withholds its approval, setting forth in reasonable detail its reasons for withholding;
- (c) if the notification referred to in Section 12.1(b) is not given within the applicable period of time, the Party whose approval is requested will be deemed conclusively to have given its approval in writing;
- (d) the determination by a Party of whether to provide an approval shall be made in good faith;
- (e) an approval may not be unreasonably withheld or delayed (whether or not reference is specifically made to such approval not being unreasonably withheld or delayed); and
- (f) a Dispute as to whether or not the approval has been unreasonably withheld or whether or not such approval ought to have been provided in accordance with the requirements of this Agreement shall be resolved by the dispute resolution procedure set out in Schedule “E”.

12.2 Relief Event

In the event that there shall be a Relief Event and a Party claiming the Relief Event uses commercially reasonable efforts to mitigate the consequences of any time delay resulting therefrom (including, where possible, establishing a contingency plan on commercially reasonable terms which will allow such Party’s normal operations to be resumed within a reasonable time thereafter) and shall have provided Notice to either of the Owner or the Project Manager, as the case may be, with respect to the occurrence of the Relief Event within seven (7) days of its occurrence, the Project Manager or the Owner, as the case may be, shall be entitled to an extension of time with respect to the obligations of the Project Manager or the Owner, as the case may be, directly and

adversely affected by the Relief Event equal to the time during which the Relief Event occurred.

12.3 HST Payable

Where goods and services tax, provincial sales tax, harmonized sales tax or similar taxes and charges are payable on any amounts referred to in this Agreement to any party, then such goods and services tax, provincial sales tax, harmonized sales tax or such similar taxes and charges shall be payable in addition to the amounts referred to in this Agreement.

12.4 No Partnership or Agency

It is understood and agreed that nothing contained in this Agreement shall constitute or be deemed to create a legal partnership or joint venture between the parties and no party shall be entitled to act as agent or contract on behalf of, bind or otherwise incur legal obligations in the name of any other party, except as expressly set out and for the limited purposes identified in this Agreement.

12.5 City as Planning Authority

The Project Manager acknowledges that although the Owner is a party to this Agreement, nevertheless, the City is and shall remain an independent planning authority and municipality with all requisite powers and discretion provided under Law, including the **Planning Act** (Ontario) and the **Municipal Act, 2001** (Ontario). Without limiting the generality of the foregoing, the provisions of Section 12.1 have no application to matters relating to the City's rights and powers under the **Planning Act** (Ontario), the **Municipal Act, 2001** (Ontario), the **Ontario Heritage Act** and any other applicable statute respecting the City's rights and obligations.

12.6 Notices

Any Notice to a Party must be given in writing. A Notice may be given by delivery to an individual or electronically by fax or electronic mail, and will be validly given if delivered to the following address or if transmitted by fax or electronic mail to the following fax number or email address, addressed to the following Party:

If to the Owner: Real Estate Partnership and Development Office
 110 Laurier Avenue West
 Ottawa, ON K1P 1J1

Attention: Gordon MacNair, Director

Fax: (613) 560-6051

Email: gordon.mcnair@ottawa.ca

with a copy to: City Clerk & Solicitor Department
110 Laurier Avenue West
Ottawa, ON K1P 1J1

Attention: M. Rick O'Connor, City Clerk & Solicitor

Fax: (613) 580-2416

Email: rick.oconnor@ottawa.ca

If to the Project
Manager: Ottawa Sports and Entertainment Group
300 – 180 Kent Street
Ottawa, ON K1P 0B6

Attention: Bronwen Heins

Fax: 613-788-2758

Email: bronwenheins@oseg.ca

with a copy to: Soloway Wright LLP
510 – 366 King Street East
Kingston, ON K7K 6Y3

Attention: Beth Gearing

Fax: (613) 544-6689

Email: bgearing@solowaywright.com

or to any other address, fax number, email address or individual that the Party designates. Any Notice:

- (a) if validly delivered or if validly transmitted electronically and received before 5:00 p.m. (Ottawa time) on a Business Day, will be deemed to have been given on that Business Day; and
- (b) if validly delivered or if validly transmitted electronically and received after 5:00 p.m. (Ottawa time) on a Business Day or if validly delivered or if validly transmitted electronically and received on a day that is not a

Business Day, will be deemed to have been given on the first Business Day after the date of delivery or transmission.

12.7 Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the Parties to this Agreement, except that any provision which does not give rights or benefits to a particular Party may be waived in writing, signed only by that Party who has rights under, or holds the benefit of, the provision being waived if that Party sends a copy of the executed waiver to the other Party. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

12.8 Further Assurances

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

12.9 Remedies Cumulative

The rights and remedies under this Agreement are cumulative. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

12.10 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all Parties had signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

12.11 Delivery by Fax or Electronic Mail

Any Party may deliver an executed copy of this Agreement by fax or electronic mail but that Party will immediately dispatch by delivery to the other Party an originally executed copy of this Agreement.

12.12 Amendments

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by a duly authorized representative of each Party to this Agreement.

12.13 Submission to Jurisdiction

Except where the Parties agree to arbitration of a particular matter under the dispute resolution procedure set out in Schedule “E”, the courts of the Province of Ontario and Canada shall have exclusive jurisdiction to entertain and determine all Actions, and each of the Parties does and shall irrevocably submit to the exclusive jurisdiction of such courts and hereby waives, and will not assert by way of motion, as a defence or otherwise in any Action, any claim that: (i) such Party is not subject to the jurisdiction of such courts; (ii) the Action is brought in an inconvenient forum; or (iii) any subject matter of the Action may not be enforced in or by such courts. In any suit, action or proceeding brought to obtain a judgment for the recognition or enforcement of any judgment rendered in any Action, no Party will seek any review with respect to the merits of any Action, whether or not that Party appears in or defends that Action.

12.14 Confidentiality and Access to Information

- (a) Each Party will hold in confidence any Confidential Information, provided that the provisions of this Section will not restrict either Party from passing such information to its Affiliates, professional advisors or, in the case of the Project Manager, to Consultants, Sub-consultants, contractors and sub-contractors to the extent necessary to enable such Party to perform (or to cause to be performed) or to enforce such Party’s rights or obligations under this Agreement, provided such Affiliates, advisors, Consultants, Sub-consultants, contractors and sub-contractors are subject to similar confidentiality obligations.
- (b) The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
 - (i) which the other Party confirms in writing is not required to be treated as Confidential Information;
 - (ii) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - (iii) to the extent any Person is required to disclose such Confidential Information by Law, including the ***Municipal Freedom of Information and Protection of Privacy Act*** (Ontario) or any other applicable Law (provided that such Person shall promptly advise the other Party of such requirement in respect of any particular Confidential Information prior to disclosing same, and, if permitted under applicable Law, provide it with an opportunity to dispute the disclosure of Confidential Information); and
 - (iv) to the extent consistent with any City policy the details of which have been provided to the Project Manager in writing prior to the

disclosure of the Confidential Information to the Owner and subject to the Project Manager's confirmation in writing that the Confidential Information is not required to be treated as such.

- (c) The Project Manager acknowledges that information provided to the Owner is subject to disclosure under the ***Municipal Freedom of Information and Protection of Privacy Act*** (Ontario) and that any confidential, proprietary, commercial, scientific or similar information, the disclosure of which would reasonably cause the Project Manager injury, should be identified as such when provided to the Owner. In respect of such information, the Project Manager shall also provide the Owner with the rationale setting forth reasons why such information should not be released under this legislation or successor legislation.

12.15 Audit Records

The Project Manager shall maintain for a period of seven (7) years after Substantial Completion of the Project, all books, records, invoices and other documents and papers as shall be reasonably necessary to enable the Owner to audit and confirm the accuracy and completeness of any payment, calculation or part thereof made or required to be made for any of the purposes of this Agreement, provided that the Owner shall give the Project Manager ten (10) Business Days' notice of the Owner's intention to exercise its right to examine such books, records, invoices and other documents and papers.

12.16 Enurement

This Agreement may not be assigned by either Party without the consent of the other Party, in its Discretion. Subject to the foregoing, this Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

**[Remainder of this page intentionally left blank.
Signature blocks follow on the next page.]**

IN WITNESS WHEREOF the parties have executed and delivered this Agreement.

CITY OF OTTAWA

Per: _____

NAME: ●

TITLE: ●

Per: _____

NAME: ●

TITLE: ●

**OTTAWA SPORTS AND
ENTERTAINMENT GROUP**

Per: _____

NAME: JOHN RUDDY

TITLE: AUTHORIZED SIGNATORY

Per: _____

NAME: ROGER GREENBERG

TITLE: AUTHORIZED SIGNATORY

SCHEDULE "A"

PROJECT MANAGER'S SERVICES

1.1 Without altering, limiting or impairing any other obligation in this Agreement, the Project Manager shall have the obligation to cause the Construction of the Stadium Improvements to be completed in a good and workmanlike manner pursuant to the Comprehensive Construction Contract in accordance with the Final Plans and Specifications for the Stadium developed in accordance with the Plan Approval Procedure.

1.2 The Project Manager will perform the following Services in respect of the Project, in each of the three phases described below.

2. PRE-CONSTRUCTION PHASE

2.1 Consultation During Project Development

Organize and chair regular meetings with the Project Team (with the Representative also to be invited as an observer) during the development of conceptual and preliminary design and preparation of working drawings, and advise on site use and improvements, selection of materials, building systems and equipment as recommended by Consultants. Provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to cost, including costs of alternative designs or materials, preliminary budgets and possible economies.

2.1.1 Provide liaison and co-ordination among Relevant Authorities (in their capacity as government authorities), utility companies and other authorities having jurisdiction over the Place of the Work; and

2.1.2 Attend weekly progress meetings, identifying action items and following up to ensure action is taken.

2.2 Planning and Scheduling

Prepare a preliminary master time Project Schedule, following consultation with the Project Team, for the Owner's approval incorporating the sequence and timing of the required basic program decisions, including design time, documentation, bid calls, bid evaluations, prime contract awards, long lead items, shop drawings preparation and review, manufactured items and deliveries and on-site construction activities and taking account of the construction activities for other Components that will affect the Project Schedule.

2.2.1 Monitor, revise and update the Project Schedule against the original baseline as the design proceeds.

2.2.2 Finalize the Project Schedule following consultation with the Project Team for the Owner's approval.

2.2.3 Pass on to the General Contractors recommendations from Consultants with respect to any equipment or materials which should be pre-ordered to meet the Project Schedule.

2.3 Project Construction Budget

Prepare a Project budget for the Owner's approval as soon as major Project requirements have been identified and update periodically for the Owner's approval. Prepare regular monthly reports showing the total Project status relative to the Project budget and Project Schedule with particular emphasis on forecasting problem areas.

2.3.1 Prepare an estimate based on a quantity survey of drawings and specifications at the end of the schematic design phase for approval by the Owner as the "**Project Construction Budget**".

2.3.2 Update and refine the Project Construction Budget for approval by the Owner as the development of the drawings and specifications proceeds, and advise the Project Team if it appears that the Project Construction Budget will not be met and make recommendations for corrective action.

2.3.3 Evaluate possible alternatives as the design proceeds in order to permit the selection of the most economical materials and methods that will satisfy the design concept and the Project Schedule.

2.3.4 Establish a cost control program and prepare a projected cash flow and required updates for the Project.

2.3.5 For the Construction Components, Hard Cost and Soft Costs shall be allocated among the Construction Components in the manner set out in the Project Agreement,

2.3.6 The Project Manager shall provide the Completion Guarantee contemplated by the Project Agreement.

2.4 Co-ordination of Construction Contract Documents

Review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility, the Project Schedule or the Project Construction Budget.

2.4.1 Make recommendations to the Project Team regarding the division of Work in the drawings and specifications to help facilitate the bidding and awarding of Construction Contracts, allowing for phased construction,

taking into consideration such factors as time of performance, availability of labour, overlapping trade jurisdictions and provisions for temporary facilities.

2.5 Construction Planning

- 2.5.1 Review with the Consultants the drawings and specifications to eliminate areas of conflict, overlapping and gaps in the Work to be performed by the General Contractors.
- 2.5.2 Work with the Project Team to prepare and assemble all bids for Work to be performed by the General Contractors and prepare the necessary pre-qualification criteria.
- 2.5.3 Establish provisions consistent with the Owner's procurement protocols to ensure a competitive and transparent process for the Construction Contracts and the construction of the Project, including tendering, pricing, competence, assurance of competition and other similar matters, analyze the bids received and recommend awards to the Project Team.
- 2.5.4 Assemble the Contract Documents (issued for Construction set) for the successful General Contractors. Arrange for execution thereof by the General Contractors and the Project Manager, as agent of the Owner, on and subject to the terms set out in Article 5 of the Project Management Agreement to which this Schedule "A" is attached. Check where required that all bonds, insurance policies and letters of good standing from the Workplace Safety and Insurance Board are provided, including all bonds and insurance policies required pursuant to applicable Material Agreements.
- 2.5.5 Assist the Project Team in obtaining all approvals, permits and licenses required for the Project, provided that any fees paid by the Project Manager to a permitting/licensing authority to obtain such approvals, permits and licenses are a Reimbursable Amount.
- 2.5.6 Participate with any electronic Project collaboration efforts initiated by the Owner or any of the Consultants.

2.6 Permits and Approvals

- 2.6.1 On behalf of the Owner, make applications for all necessary permits and approvals with the competent authorities in a timely manner. Monitor and expedite as necessary with a view to avoiding delays. Any fees paid by the Project Manager to a permitting/licensing authority to obtain such permits and approvals are a Reimbursable Amount.

2.7 Community Meetings

- 2.7.1 If requested by the Owner, assist with the planning of, and participate in, meetings with project stakeholders including City of Ottawa Council and Councillors, business improvement area groups and other community groups.

3. **CONSTRUCTION PHASE**

3.1 Project Control

Interface with the General Contractors and administer the Construction Contracts, monitor the Work of the General Contractors and co-ordinate the Work with the activities and responsibilities of the Project Team.

- 3.1.1 Carry out and be responsible for all of the duties and obligations on the part of the Project Manager in the Construction Contracts.
- 3.1.2 Establish on-site organization and lines of authority in order to carry out the overall plans of the Project Team.
- 3.1.3 Establish procedures for co-ordination among the Project Team and the General Contractors with respect to all aspects of the Project.
- 3.1.4 Schedule and chair progress meetings at which General Contractors and the Project Team can discuss such matters as procedures, progress, problems and scheduling against the original baselines. Issue minutes and follow up action items. Monitor progress of the Work compared with schedule of activities, report weekly and identify problems and recommend remedial action as necessary.
- 3.1.5 Provide regular monitoring of the Project Schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started or incomplete and recommend to the Project Team adjustments in the Project Schedule to meet the probable completion date. Provide summary reports monthly of such monitoring and document all changes to the Project Schedule. Revise the Project Schedule as required, indicating any changes against the original baselines.
- 3.1.6 Review the adequacy of the General Contractors' personnel and equipment and the availability of materials and supplies to meet the Project Schedule. Recommend courses of action to the Project Team when requirements of a Construction Contract are not being met.
- 3.1.7 Co-ordinate with Consultants the identification of all deficiencies and communicate with the applicable General Contractor to correct them within prescribed periods and pursuant to the provisions of the applicable Construction Contract.

3.2 Physical Construction

Monitor compliance by the General Contractors with the Construction Procedures Agreement.

3.3 Cost Control and Accounting

Develop, implement and maintain an effective system of Project cost control. Revise and refine the initially approved Project Construction Budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed, identify variances between actual and budgeted or estimated costs and advise the Project Team whenever projected costs exceed budgets or estimates.

3.3.1 If requested, assist the Project Team in implementing changes approved by the Owner necessary to bring the projected costs within budget or estimates.

3.4 Changes in the Work

Develop and implement a system for the preparation, review and processing of changes in the Work. Review requests and prepare estimates for the cost of any changes in the Work, submit recommendations to the Project Team, negotiate costs with the applicable General Contractor and process Change Orders with respect to such changes in the Work in accordance with Article 6 of the Project Management Agreement to which this Schedule "A" is attached.

3.5 Payments to General Contractors

Develop and implement a procedure in accordance with the Project Agreement for the review, certification, processing and payment of applications by the General Contractor under the Comprehensive Construction Contract for progress and final payments, incorporating provisions for compliance with the provisions of the **Construction Lien Act** (Ontario) and develop and implement a similar procedure for the review, certification, processing and payment of applications by the General Contractor for the Designated Park Improvements for progress and final payments, again incorporating provisions for compliance with the provisions of the **Construction Lien Act** (Ontario). The Project Manager acknowledges and agrees that such procedure shall include provisions to permit achievement by the Owner of discounts for early payment to the General Contractor under the Comprehensive Construction Contract.

3.6 Inspection

Organize and co-ordinate site supervision and reviews on an ongoing basis. Organize and co-ordinate on a regular basis Consultant site reviews to verify general conformity of the General Contractors' Work with the requirements of the Contract Documents.

Periodically review the Work of the General Contractors for defects and deficiencies in the Work without assuming any of the Consultants' responsibilities for inspection. Record identified deficiencies immediately and pass on to applicable Consultants so that any corrective action that may be required can be taken at once. Inspection by the Project Manager shall not relieve the General Contractors of their responsibility for, nor make the Project Manager responsible for construction means, a review of methods, techniques, sequences and procedures nor for their responsibility to carry out the Work in accordance with the Construction Contracts.

Retain inspection agencies, the cost of which shall be a Reimbursable Amount, to provide the following test reports: bearing surface/subgrade inspections, piling inspection (driving records/static or dynamic testing), mortar testing, concrete testing (for example, compressive strength, air content), compaction testing, structural steel inspection, asphalt testing and submission of material test certificates/mill certificates, including reinforcing steel, structural steel, artificial turf and mechanical equipment.

3.7 Document Interpretation

Refer all questions for interpretation of the documents prepared by the Consultants to the Consultants. Notwithstanding the foregoing sentence, all questions for interpretation of documents prepared by Consultants for shoring and soils shall be referred to the Contractors responsible for such documents.

3.8 Shop Drawings and Samples

Establish with the Consultants the shop drawing requirements for the Project and establish and implement procedures for expediting the receipt, processing and review of shop drawings and samples.

3.9 Reports and Project Documents

Submit written monthly progress reports to the Project Team including budget (detailing both hard and soft costs), scheduling information, CCN's, Change Order and Change Directive summary, purchase order summary and problem areas.

3.9.1 Maintain, on a current basis, records of all necessary contracts, drawings, samples, purchases, materials, equipment, maintenance and operating

manuals and instructions, and other construction related documents, including all revisions relating to the Project. Maintain all records necessary to provide the Consultants the information to produce “as-built” drawings. Obtain data from the General Contractors and maintain a current set of Project record documents and operating manuals. At the completion of the Project, deliver all such records to the Owner.

3.10 Substantial Performance of the Work

Subject to applicable legislation, arrange with the Prime Consultant for the issuance of the necessary certificates respecting Substantial Performance of the Work under the applicable provisions of the **Construction Lien Act** (Ontario) or designated portions thereof and prepare with the Consultants a list (the “**Deficiency List**”) of incomplete or unsatisfactory items and a schedule for their completion.

3.10.1 Distribute certificates issued by the Consultants certifying Substantial Performance of the Work and Total Performance of the Work.

3.10.2 Deliver the Deficiency List to the Owner for consideration and input.

3.10.3 After receiving the Owner’s approval of the Deficiency List, pursue the applicable General Contractor for the completion or correction of all items on the Deficiency List within thirty (30) days or such longer period as may be reasonably necessary to complete or correct the items on the Deficiency List.

3.11 Commissioning and Start-Up

With the Owner’s maintenance personnel and the Consultants, direct the check-out of utilities, operations systems and equipment for readiness and assist in their initial commissioning, start-up and testing by the General Contractor.

3.12 Total Performance of the Work

Arrange with the Consultants for the certification of Total Performance of the Work and provide a written notice to the Owner and the Consultants that the Work is ready for final inspection. Pursue the applicable General Contractor employed on the Project to rectify all deficiencies before the certificate of Total Performance of the Work is issued and final payment certified. Make commercially reasonable efforts to ensure that warranties, affidavits, releases, bonds waivers, manuals and record drawings are properly completed and handed over to the Owner. Turn over to the Owner all keys and maintenance stocks. Forthwith upon Total Performance of the Work, make arrangements for the delivery by the Consultants or General Contractors to the Owner of hard and electronic copies of “as-built” drawings including all mechanical, electrical and architectural drawings.

3.13 Require Damage to be Made Good

Make commercially reasonable efforts within in the scope of the Services to require that the General Contractors make good any damage caused by their workers at their own expenses or pay all costs and charges in connection therewith.

3.14 Nuisance

Make commercially reasonable efforts within the scope of the Services to require that the General Contractors carry out the various operations of the Work in such a manner as to avoid any excessive noise, annoyance or nuisance which may be caused to adjoining owners and occupants of adjoining properties. Advise the General Contractors that generators, compressors and other plants which are likely to emit excessive noise are to be muffled by means of silencers, screens and the like.

3.15 Visitors

All necessary signs shall be displayed on site directing all visitors to the site manager's office prior to entering the construction area.

3.16 Community Meetings

3.16.1 If requested by the Owner, assist with the planning of, and participate in, meetings with project stakeholders including City of Ottawa Council and Councillors, business improvement area groups and other community groups.

4. **POST-CONSTRUCTION PHASE**

4.1 Operating and Maintenance Manuals, As-Built Drawings, Guarantees:

Maintain and update a registry of all trade contractors and suppliers, purchase orders, shop drawings, as-built drawings, samples, materials on site, equipment, specifications and standards and co-ordinate the production of a maintenance manual incorporating all the required information for the proper maintenance of the Project. Submit to the Owner in three (3) copies.

4.2 Project Completion

Identify date of Total Performance of the Work and advise Consultants for final inspection. Assist the Owner in the take-over of the Project.

4.3 Deficiencies

Co-ordinate with Consultants the identification of all deficiencies and pursue the

applicable General Contractors to correct them within prescribed periods and under prevailing contract conditions.

4.4 Contracts close-out

Co-ordinate and ensure proper closeout for the Construction Contracts, release of holdback moneys and statutory declarations.

4.5 Project and Systems Start-Up

Co-ordinate and assist the Owner and its personnel with the proper take-over of the Project. Participate in all start-up operations and systems.

4.6 Warranties

Assist the Owner in administering warranties of the General Contractors.

4.7 Inspections

Work with other members of the Project Team in making a complete inspection of the Project at the end of eleven months after Substantial Performance of the Work and assist the Owner in pursuing that all Work requiring repair or replacement is carried out by the General Contractors concerned.

4.8 Community Meetings

4.8.1 If requested by the Owner, assist with the planning of, and participate in, meetings with project stakeholders including City of Ottawa Council and Councillors, business improvement area groups and other community groups.

SCHEDULE "B"

FEES, EXPENSES AND REIMBURSABLE AMOUNTS PAYABLE TO THE PROJECT MANAGER

Part 1 PM Fee

1. The Owner shall pay the Project Manager for the Services performed during the pre-construction phase, construction phase and post-construction phase as set out in Schedule "A" of this Agreement, the following fees (exclusive of Reimbursable Amounts and harmonized sales tax) (the "**PM Fee**"), payable as set out below:
 - (i) for the Stadium Improvements, no PM Fee shall be payable;
 - (ii) for the Parking Structure, a fee equal to three percent (3%) of the Soft Costs and Hard Costs of Construction of the City's Portion of the Parking Structure, the Office Component's Portion of the Parking Structure and the Residential Component's Portion of the Parking Structure, payable at the same time as each payment on account of the Soft Costs and Hard Costs of Construction of the City's Portion of the Parking Structure, the Office Component's Portion of the Parking Structure and the Residential Component's Portion of the Parking Structure, as applicable. The portion of such fee that is included in Maximum City Cost shall be determined in accordance with section 9.3 of the Project Agreement;
 - (iii) for the Infrastructure Upgrades, a fee equal to three percent (3%) of the Soft Costs and Hard Costs of construction of the Infrastructure Upgrades, payable at the same time as each payment on account of the Soft Costs and Hard Costs of construction of the Infrastructure Upgrades; and
 - (iv) for the Designated Park Improvements, a fee equal to three percent (3%) of the Soft Costs, excluding design costs other than design costs of the Designated Park Improvements incurred during construction of the Designated Park Improvements, and Hard Costs of construction of the Designated Park Improvements of the Designated Park Improvements, which Soft Costs and Hard Costs are estimated to be \$13,200,000, payable at the same time as each payment on account of the Soft Costs and Hard Costs of construction of the Designated Park Improvements.

2. The Owner shall pay to the Project Manager on Closing a coordination fee of \$50,000 for the Office Component and a coordination fee of \$100,000 for the Residential Component.

Part 2 Expenses and Reimbursable Amounts

1. For the Stadium Improvements only, the Owner shall pay the Expenses to the

Project Manager, up to a maximum amount of three percent (3%) of the Soft Costs and Hard Costs of the Stadium Improvements. For the Parking Structure, the Designated Park Improvements and the Infrastructure Upgrades, the Owner shall not pay any Expenses. The Owner shall pay Expenses to the Project Manager within 30 days of delivery to the Owner of an invoice by the Project Manager. Expenses that relate to the Stadium Improvements and also relate to one or more of the Parking Structure, the Designated Park Improvements and the Infrastructure Upgrades shall be allocated in accordance with section 5.5 of the Project Agreement.

2. The Owner shall pay the Reimbursable Amounts, either to the Project Manager or directly to the payee, as the case may be. Amounts payable directly to a payee shall be paid in the manner described in the Project Agreement for amounts payable in connection with Work under the Comprehensive Construction Contract and shall be paid in a similar manner for amounts payable in connection with Work for the Designated Park Improvements. In the case of payments to the Project Manager, the Owner shall pay the Project Manager within 30 days of delivery to the Owner of an invoice by the Project Manager.

Part 3 Limitation

1. Notwithstanding anything to the contrary in this Agreement:
 - (i) the obligation of the City to pay Expenses and Reimbursable Amounts for the Stadium Improvements and the obligation of the City to pay Reimbursable Amounts for the City's Portion of the Parking Structure are subject to, and do not amend, the provisions of the Project Agreement with respect to Maximum City Cost (including the provisions relating to the inclusions in and exclusions from Maximum City Cost); and
 - (ii) the obligation of the City to pay Expenses and Reimbursable Amounts for the Stadium Improvements and the obligation of the City to pay Reimbursable Amounts for the Parking Structure is subject to, and does not amend, the Completion Guarantee.

SCHEDULE "C"

LEGAL DESCRIPTION

[To be completed at Closing]

SCHEDULE "D"

BUDGETED EXPENSES

[To be completed at Closing]

SCHEDULE "E"

DISPUTE RESOLUTION PROCEDURE

Except as otherwise provided in this Agreement, any Dispute in respect of this Agreement, other than a Dispute designated by a Party as requiring expeditious settlement so as not to materially delay the course of construction of the Project, shall be resolved as follows:

- (a) the Parties shall attempt to resolve such Dispute by negotiations, which shall be initiated by one Party giving to the other written Notice containing details of the Dispute and the other Party shall provide written reply thereto within ten (10) Business Days;
- (b) if, for any reason, the Dispute remains unresolved after the expiration of the aforesaid ten (10) Business Day period, any affected Party may provide a written request to the other affected Party that the Dispute be resolved by referral to arbitration between the Parties pursuant to the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted by a single arbitrator, the place of arbitration shall be Ottawa, Ontario, and the language of the arbitration shall be English. If the Parties cannot agree upon the appointment of the single arbitrator within ten (10) Business Days of receipt of the request to arbitrate, either Party may apply to a Judge of the Ontario Superior Court of Justice in Ottawa, Ontario, to appoint same. A decision of the arbitrator shall be final and binding on the Parties and there shall be no appeal therefrom; and
- (c) the time limits referred to in this Schedule may be abridged or extended by mutual agreement of the Parties.

Except for any action necessary to enforce the award of the arbitrator, or any actions initiated by the insurer of a Party, and subject to the provision of paragraph (b), the provisions of this Schedule are a complete defence to any dispute, claim, suit, action or other proceeding of any nature or kind arising out of or in connection with this Agreement, whether at law or in equity, including specific performance, injunction, declaration of damages or otherwise instituted in any court or before any administrative tribunal with respect to any Dispute arising under or in connection with this Agreement.

The Parties shall continue to fulfill their respective obligations in respect of this Agreement during the Dispute Resolution Procedure.

A Dispute designated by a Party as requiring expeditious settlement so as not to materially delay the course of construction of the Project shall be resolved in accordance with the dispute resolution procedures set out in the Construction Procedures Agreement and not this Schedule.

This Schedule shall survive any termination of this Agreement.