

COVENANT TO PAY AGREEMENT

THIS AGREEMENT is made as of the 5th day of October, 2023.

BETWEEN:

CALGARY SPORTS AND ENTERTAINMENT CORPORATION, as
general partner for and on behalf of **CALGARY FLAMES LIMITED
PARTNERSHIP ("CSEC")**

-and-

THE CITY OF CALGARY, a municipal corporation in the province of
Alberta ("**The City**")

(CSEC and The City are each a "**Party**" and together, the "**Parties**")

WHEREAS Calgary Flames Foundation (the "**Foundation**") and The City have entered into a Community Grant Agreement dated October 5, 2023 and made effective as of the Effective Date (the "**Community Grant Agreement**") whereby the Foundation agreed to provide an annual grant to Initial Recipients and, where applicable, Successor Recipients as determined by the Foundation, in consultation with The City, which annual grant is in the aggregate of \$1,500,000.00;

AND WHEREAS CSEC has agreed with The City that in the event that the Foundation, for whatever reason, does not make the full annual grant payment as required pursuant to the Community Grant Agreement, CSEC will make a payment in the amount of the balance of the grant committed by the Foundation in the applicable Year in order to ensure that in each Year of the term of the Community Grant Agreement, the full amount of the required grant is either paid by the Foundation or by CSEC;

AND WHEREAS at the April 25, 2023 Regular Meeting of Council, the municipal council of The City acknowledged the authority of the person appointed to the position of chief administrative officer of The City pursuant to the *Municipal Government Act* (Alberta), or such person's designate from time to time, under the Execution of Contracts Bylaw 43M99, to negotiate and execute various definitive agreements which are necessary or desirable to deliver the Event Centre Project and related district-wide improvements as generally outlined in Report C2023-0482 including the attachments thereto;

NOW THEREFORE, in consideration of the terms and conditions contained herein (the receipt and sufficiency of which are hereby acknowledged), the Parties confirm as follows:

1. INTERPRETATION

1.1 Definitions

Capitalized words not defined in this Agreement shall have the meaning ascribed to them in the Community Grant Agreement. The following words and phrases shall have the following meanings in this Agreement:

- (a) "**Agreement**" means this agreement as amended or supplemented from time to time;
- (b) "**Confidential Information**" has the meaning ascribed to it in Section 3.2;
- (c) "**Disclosing Party**" has the meaning ascribed to it in Section 3.2;
- (d) "**Effective Date**" of this Agreement means the Event Centre Opening Date;

- (e) **"Receiving Party"** has the meaning ascribed to it in Section 3.2; and
- (f) **"Term"** means the time period between the Effective Date and the date of expiry or termination of the Management and Lease Agreement, including any extension that is currently provided for in the Management and Lease Agreement and any further extension or renewal thereof as may be mutually agreed upon by the parties thereto.

1.2 Headings

The inclusion of headings in this Agreement is for convenience of reference only and will not affect the construction or interpretation hereof.

1.3 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders or the neuter, and words importing the neuter include all genders.

1.4 Currency

All amounts in this Agreement are stated and will be paid in Canadian currency.

2. COVENANT TO PAY

- 2.1** CSEC unconditionally agrees to pay to The City, or directly to the Initial Recipients or Successor Recipients, as the case may be, at the direction of The City (as contemplated in Section 2.2), the aggregate amount, or any portion of the aggregate amount in the case that the Foundation has made a partial payment, of the Initial Contribution or Subsequent Contribution payable by the Foundation pursuant to the Community Grant Agreement if, for any reason whatsoever, the Foundation fails to make such payment in full in any Year during the Term. For clarity, CSEC's payment obligations herein shall only arise in the event of a failure by the Foundation to make the full Initial Contribution or Subsequent Contribution, as the case may be, and The City acknowledges that it is not intended that the Foundation and CSEC be jointly and severally liable to make such annual payments. In the event that an Initial Contribution or Subsequent Contribution is suspended or reduced in any amount in any Year of the Term by mutual agreement of the parties to the Community Grant Agreement, then CSEC's obligations hereunder shall be similarly suspended or reduced, as the case may be.
- 2.2** The payment due pursuant to CSEC's covenant to pay set forth in Section 2.1 shall be made by CSEC to The City, or, in the alternative, The City may, at its option, direct that such payment be made directly to any Initial Recipients or Successor Recipients who are entitled to the Initial Contribution or Subsequent Contribution, as the case may be, in accordance with the terms of the Community Grant Agreement.
- 2.3** Any payment that is due by CSEC in accordance with the terms of this Agreement shall be paid within 30 days of receipt by CSEC of a notice from The City that the Foundation has failed to make the full Initial Contribution or Subsequent Contribution, as the case may be, when due in any Year of the Term. The City shall have no obligation to terminate the Community Grant Agreement or to pursue any remedies against the Foundation prior to sending such notice to CSEC.
- 2.4** The Parties agree that should the Foundation be unable to continue to fulfil its obligations under the Community Grant Agreement on a permanent basis for any reason whatsoever, including, but not limited to: (i) the termination of the Community Grant Agreement (other than as a result of a breach by The City described in 9.1(a) of the Community Grant Agreement); (ii) the dissolution, winding-up, bankruptcy or insolvency of the Foundation; or (iii) any change in law that would prohibit

the Foundation from making the Initial Contribution or Subsequent Contribution in accordance with the provisions of the Community Grant Agreement, CSEC shall promptly assume all of the rights, benefits and obligations of the Foundation set out in Articles 2, 3, 5, 6, and 7 of the Community Grant Agreement as if CSEC were the Foundation in respect of the application of such Articles. To ensure the rights, benefits and obligations of both Parties are clear following CSEC's assumption of these rights, benefits and obligations, the Parties may by mutual agreement enter into a new agreement on substantially similar terms to the Community Grant Agreement.

- 2.5** Subject to any assumption of rights, benefits and obligations as set out in Section 2.4, the Parties acknowledge that upon payment by CSEC to The City or to the Initial Recipients or Successor Recipients, if so directed by The City, to satisfy the full amount of the Initial Contribution or Subsequent Contribution payable by the Foundation pursuant to the Community Grant Agreement in a given Year and upon providing The City with written confirmation evidencing such payment, CSEC shall have fully satisfied its commitments under this Agreement with respect to such Year. For further certainty, the Parties acknowledge that CSEC shall have no further payment obligations under this Agreement following the date the Term ends provided that the Initial Contribution and all Subsequent Contributions due on or before June 30th of the Year in which the Term ends have been fully paid.

3. CONFIDENTIAL INFORMATION

- 3.1** The Parties acknowledge that The City is subject to the *Freedom of Information and Protection of Privacy Act* (Alberta), R.S.A. 2000, Chapter F-25 ("**FOIP**"), as amended, revised or substituted from time to time and, notwithstanding anything contained in this Agreement, that information submitted to it and in the possession of The City is governed by FOIP and may be eligible for disclosure in accordance with the requirements of same. In each case, if The City at any time receives a request for access to any CSEC information pursuant to FOIP, The City shall, unless prohibited by applicable law, withhold any CSEC information as required by FOIP. For clarity, the Parties acknowledge that this Agreement shall be made public.

- 3.2** As used herein, "**Confidential Information**" means any and all information that is or may in any way be related to the assets, business or affairs of one Party (in each case, a "**Disclosing Party**"), and includes personal information (as defined in FOIP) that may be furnished by a Disclosing Party to, or otherwise obtained by, another Party or any of its representatives pursuant to this Agreement (in each case, a "**Receiving Party**"). Notwithstanding the foregoing, however, the term Confidential Information does not include:

- (a) information that was already known to the Receiving Party at the time such information is received from the Disclosing Party provided such information is not known to the Receiving Party to be subject to any confidentiality obligation in respect of such information;
- (b) information that is developed by the Receiving Party without reference to any Confidential Information disclosed by or relating to the Disclosing Party;
- (c) information that is or has become or hereafter becomes publicly known or available, provided that such public disclosure was not due to: (i) the fault of or a breach of confidence by the Receiving Party, or (ii) a breach of confidentiality obligations, including those of a third person;
- (d) information that is approved for release in writing by the Disclosing Party; and
- (e) this Agreement.

- 3.3** Each of the Parties hereby agrees to maintain the confidentiality of any Confidential Information of the other Party, and will not make use of any such Confidential Information or release it to its

employees, officials, officers, representatives or advisors or consultants; or release or disclose the Confidential Information to any unauthorized third party.

Notwithstanding the foregoing, the Parties may use, release and disclose Confidential Information:

- (a) to the extent required for the performance of this Agreement;
- (b) to the extent required by applicable law or court order;
- (c) to the Party's directors, professional advisors, consultants and employees, to the extent necessary to enable the Party to perform its obligations or enforce its rights under this Agreement; and
- (d) to the extent necessary to address questions or issues relating to this Agreement and/or the Grants.

provided in each case that, if and to the extent required by FOIP or the *Personal Information Protection Act* (Alberta), any relevant notice or consent has been provided and/or obtained.

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

4. LIMITATIONS

No Party will be liable to any other Party for indirect, incidental, consequential, special or exemplary damages (even if that Party has been advised of the possibility of such damages), arising from any provision of this Agreement, including loss of revenue or anticipated profits or lost business. In no event will either Party be liable to the other Party in relation to this Agreement for any amount exceeding the amounts payable under this Agreement.

5. TERMINATION

5.1 Termination for Cause

CSEC may terminate this Agreement upon notice to The City if, at any time during the Term, the Community Grant Agreement is terminated pursuant to Section 9.1(a) of that Agreement.

5.2 Termination by Mutual Agreement

The Parties may mutually agree in writing to terminate this Agreement at any time during the Term.

6. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other Party, in respect of itself that:

- (a) it has the requisite capacity to enter into and be bound by this Agreement and to fulfill its obligations on the terms and conditions of this Agreement;
- (b) the carrying out of this Agreement will not breach or interfere with any other agreement by which it is bound; and
- (c) it will not enter into another agreement or do or fail to do any act that would interfere with its ability to fulfill its obligations on the terms and conditions of this Agreement.

7. ENTIRE AGREEMENT

The Parties agree that this Agreement contains the entire agreement between the Parties with respect to CSEC's covenant to pay any full or partial amounts outstanding and payable by the Foundation to the Initial Recipients or Subsequent Recipients, as the case may be, pursuant to the Community Grant Agreement and the other matters addressed herein and that the terms of this Agreement are contractual and not a mere recital.

8. GOVERNING LAW

This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. The Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Alberta.

9. SEVERABILITY

In the event that any particular provision or provisions of this Agreement is deemed to be unenforceable or void by a court of competent jurisdiction, such provision or provisions will be deemed to be severable and such determination will solely affect the severed provision or provisions and will not impair, or render void or unenforceable, the remaining provisions of this Agreement.

10. EXECUTION IN COUNTERPART

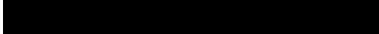
This Agreement may be executed in counterparts each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the date first above written. An executed copy of this Agreement may be delivered by either Party hereto by facsimile or other electronic means. In such event, such Party shall forthwith deliver to the other Party hereto a copy of the Agreement executed by such Party.

11. NOTICES

All notices, requests, approvals, consents and other communications required or permitted under this Agreement will be in writing and addressed as follows:

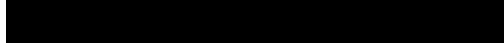
(a) if to CSEC:

Calgary Sports and Entertainment Corporation
555 Saddledome Rise SE
Calgary, AB T2G 2W1

Attention: John Bean
Facsimile: 
Email: 

with a copy to:

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

Attention: Brad Hayden
Facsimile: 
Email: 

(b) if to The City:

The City of Calgary
8^h Floor, 800 Macleod Trail SE
Calgary, AB T2G 2M3

Attention: City Treasurer
Facsimile: 403-268-2578
Email: treasury@calgary.ca

with a copy to:

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

Attention: City Solicitor
Facsimile: 403-268-4634
Email: law.reception@calgary.ca

A copy of any notice delivered by electronic transmission will also be sent on the date of such electronic transmission by registered express mail or courier with the capacity to verify receipt of delivery. Any Party may change its contact information for notification purposes by giving the other Party notice of the new contact information and the date upon which it will become effective in accordance with the terms of this Section 11. A notice will be deemed to have been received as of the next business day following receipt of delivery. If the Party sending a notice is or becomes aware, that the address and/or contact information of a Party is incorrect, including by reason of it being out of date, any notice sent to such address and/or contact information will nonetheless be effective as of the next business day following receipt of delivery; provided, however, that the Party sending such notice has used reasonable commercial efforts to determine the correct address and/or contact information of the Party to whom the notice is being sent and, if an updated address and/or contact information is determined, such notice has concurrently been sent to the updated address.

12. ASSIGNMENT AND AMENDMENT

Neither Party may assign or transfer this Agreement or any of its rights under this Agreement without the prior written consent of the other Party and any attempted assignment without such prior written consent will be void. No amendment to, or change, waiver or discharge of, any provision of this Agreement will be valid unless in writing and signed by authorized representatives of each party.

13. ENFORCEMENT

In the event an action is brought to enforce performance of this Agreement, the prevailing Party shall be entitled to solicitor client costs on a full-indemnity basis.

14. GENERAL

- 14.1** The payment obligations of CSEC hereunder are unconditional and absolute during the Term and not subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full of the Initial Contribution and Subsequent Contributions as required by the terms of this Agreement or termination of this Agreement under Section 5), including, but not limited to: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of CSEC's obligations herein, by operation of law or otherwise; (ii) any change in the

corporate or partnership existence, structure or ownership of CSEC; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting CSEC or its assets or any resulting release or discharge of any obligation of CSEC in relation thereto; or (iv) the existence of any claim, setoff or other rights which CSEC may have at any time against the City or any other person.

- 14.2** Nothing in the Agreement makes any Party the partner, joint venture, agent, trustee, employee or legal representative of the other Party.
- 14.3** A waiver of any term or breach of the Agreement is effective only if it is in writing and signed by the Parties and is not a waiver of any other terms or any other breach.
- 14.4** The Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 14.5** Each Party will comply with all applicable laws, regulations and orders in performing its obligations and exercising its rights under this Agreement.
- 14.6** Time is of the essence in this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first written above.

**CALGARY SPORTS AND ENTERTAINMENT
CORPORATION, as general partner for and on behalf
of CALGARY FLAMES LIMITED PARTNERSHIP**

Per: _____

Name: John Bean
Title: President and CEO

Per: _____

Name: Cameron Olson
Title: Executive Vice-President & CFO

THE CITY OF CALGARY

Per: _____

Name: David Duckworth
Title: City Manager

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