

**SCHEDULE "D"**  
**PARKLAND REQUIREMENTS**  
**SECTION 1: DEFINITIONS and SCHEDULES**

**SECTION 1 DEFINITIONS**

***Definitions***

For the purposes of this Agreement, the following words and terms shall have the following meanings:

- 1.1 **"Above Base Park Improvements"** shall have the meaning ascribed to that term in **Section 2.17** of this Agreement;
- 1.2 **"Above Base Park Improvements Security"** shall have the meaning ascribed to that term in **Section 2.2** of this Agreement;
- 1.3 **"Approved Park Submission"** shall have the meaning set out in **Section 2.28** of this Agreement.
- 1.4 **"Base Park Improvements"** shall have the meaning ascribed to that term in **Section 2.11** of this Agreement;
- 1.5 **"Base Park Improvements Security"** shall have the meaning ascribed to that term in **Section 2.22** of this Agreement;
- 1.6 **"Building"** shall mean a building for which a Building Permit is required;
- 1.7 **"Building Code"** shall mean *O. Reg. 332/12*;
- 1.8 **"Certificate of Authorization"** shall mean a certificate of authorization as defined in *O. Reg. 941/90*;
- 1.9 **"Condominium Act"** means the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended, superseded or replaced from time to time.
- 1.10 **"Condominium Registration"** means registration of a declaration and a description of a condominium in accordance with the Condominium Act.
- 1.11 **"Construction Act"** means the *Construction Act*, R.S.O. 1990, c. C.29;
- 1.12 **Development Review Process** means the Site Plan Application and Site Plan Approval process contemplated by Section 41 of the *Planning Act*, or Section 114 of the *City of Toronto Act, 2006*;
- 1.13 **"Environmental Protection Act"** means the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- 1.14 **"Executive Director, CREM"** means the Executive Director, Corporate Real Estate Management for the City and shall include his or her designate(s);
- 1.15 **"Final Park Acceptance Certificate"** shall have the meaning ascribed to that term in **Section 2.57** of this Agreement;
- 1.16 **"Financial Security"** shall mean a Letter of Credit in a form and from an institution acceptable to the Chief Financial Officer and Treasurer or a certified cheque payable to the Chief Financial Officer and Treasurer and shall be sufficient to guarantee the terms and obligations set out in this Agreement;

- 1.17 **“General Manager, PFR”** shall mean the General Manager of Parks, Forestry and Recreation for the City and shall include his or her designate(s);
- 1.18 **“Landscape Architect”** means a professional landscape architect or firm of landscape architects retained by the Owner and skilled and experienced in design, planning and management of the land and registered with the Ontario Association of Landscape Architects, possessing a current certificate of authorization to practice landscape architecture as required by the Ontario Association of Landscape Architects.
- 1.19 **“Letter of Credit”** means an irrevocable unconditional standby letter of credit from a Canadian Charter Bank acceptable to the Chief Financial Officer and Treasurer, with such alterations, if any, in language (not affecting the substance thereof) as are acceptable to the Chief Financial Officer and Treasurer, with the necessary particulars entered thereon;
- 1.20 **“O. Reg 153/04”** means the *Ontario Regulation 153/04: Records of Site Condition – Part XV.1 of the Act made pursuant to the Environmental Protection Act*;
- 1.21 **“O. Reg 941/90”** means the *Ontario Regulation 941: General, R.R.O. 1990 made pursuant to the Professional Engineers Act*;
- 1.22 **“Park Acceptance”** shall have the meaning ascribed to [Section 2.47](#) of this Agreement;
- 1.23 **“Park Access Agreement”** or **“PAA”** shall have the meaning ascribed to that term in [Section 2.15](#) of this Agreement;
- 1.24 **“Park Completion Certificate”** shall have the meaning set out in Section 2.48 of this Agreement;
- 1.25 **“Park Guarantee Period”** shall have meaning set out in [Section 2.55](#) of this Agreement;
- 1.26 **“Park Improvements”** means the Base Park Improvements and the Above Base Park Improvements;
- 1.27 **“Parkland”** refers to the 392.5 square metres block to be conveyed to the City for parkland purposes, referred to in [Section 2.1](#) of this Agreement;
- 1.28 **“Park List of Deficiencies”** shall have the meaning ascribed to that term in Section 2.49 of this Agreement;
- 1.29 **“Park Notice of Acceptance”** shall have the meaning ascribed to that term in Section 2.51 of this Agreement;
- 1.30 **“Park Submission”** shall have the meaning set out in [Section 2.27](#) of this Agreement.
- 1.31 **“Practitioner”** has the meaning set out in *O. Reg. 941/90* and shall be the holder of, or employed by a holder of, a Certificate of Authorization;
- 1.32 **“Professional Engineer”** has the meaning set out in the *Professional Engineers Act*;
- 1.33 **“Professional Engineers Act”** means the *Professional Engineers Act*, R.S.O. 1990, c. P.28, as amended, superseded or replaced from time to time;
- 1.34 **“Qualified Person”** means a person retained by the Owner who meets the qualification requirements set out in the *Environmental Protection Act* and

more particularly in O. Reg. 153/04, which defines four different types of qualified persons and sets out the qualifications for each type of environmental site assessment work;

- 1.35 **“RSC”** means Record of Site Condition;
- 1.36 **“Section 118 Restriction”** means a restriction registered on title pursuant to Section 118 of the *Land Titles Act*;
- 1.37 **“Site Plan Agreement”** means an agreement pursuant to Section 114 of the *City of Toronto Act, 2006*;
- 1.38 **“Site Plan Application”** shall mean an application for the approval of plans pursuant to Section 114 of the *City of Toronto Act, 2006*;
- 1.39 **“Site Plan Approval”** means the approval of the Site Plan Application in accordance with the provisions of the *City of Toronto Act, 2006*;
- 1.40 **“Statutory Parkland Dedication”** means the conveyance of land for park or other public recreation purposes being the Public Park pursuant to Section 42 of the *Planning Act*;
- 1.41 **“Tie Back Encumbrances”** shall have meaning ascribed to that term in **Section 2.64** of this Agreement;
- 1.42 **“Toronto Building”** means the Division, headed by the Chief Building Official, within the City of Toronto responsible for: reviewing applications to demolish, alter, or construct buildings; issuing building permit applications; conducting inspections; and ensuring compliance with the *Building Code*;

## SECTION 2: PARKLAND CONVEYANCE AND IMPROVEMENT

### *Parkland – Dedication and Obligations*

- 2.1 Prior to the Condominium Registration or three (3) years after the issuance of the first Above-grade Building Permit, whichever is earlier, the Owner shall:
- (a) convey, in fee simple to the City, a minimum of 392.5 square metres of land, achieving a 4.5 metre setback between the Parkland and any abutting building at grade, and 0.0 metre setback between the Parkland and any abutting building face above the second floor, for public park purposes in the general location identified on the diagram in Appendix A (the “**Parkland**”) to the satisfaction of the General Manager, PFR and where the Parkland shall fully satisfy the Owner’s Statutory Parkland Dedication requirement;
  - (b) convey the Parkland free and clear above-grade and below-grade of all physical obstructions and easements, encumbrances, in an acceptable environmental condition unless otherwise permitted in writing by the General Manager, PFR or as otherwise permitted by this Agreement, and free and clear of all title encumbrances including, but not limited to all easements, rights-of-way, leases, charges, and encroachments, including surface and subsurface easements, save and except for any Tieback Encumbrances as set out in Section 2.64 or as otherwise permitted by this agreement, to the satisfaction of General Manager, PFR and the City Solicitor; and
  - (c) complete the environmental obligations outlined in this Agreement to the satisfaction of General Manager, PFR.
- 2.2 Within sixty (60) days of execution of this Agreement, the Owner shall:
- (a) submit separate plans and cost estimates for the proposed Base Park Improvements and Above Base Park Improvements (where applicable) (the “**Park Improvements**”); and
  - (b) post a separate Financial Security to secure the Park Improvements in the amount of 120% of the value of each of the Base Park Improvements (“**Base Park Improvements Security**”) and post, in accordance with the timeline set out in Section 2.17 herein, a Financial Security in the amount of 120% of the value of the Parks and Recreation component of the Development Charges for the Above Base Park Improvements (“**Above Base Park Improvements Security**”) to the satisfaction of General Manager, PFR. This Financial Security shall be held for the installation and warranty of the Park Improvements. No credit shall be given toward the Parks and Recreation component of the Development Charges for costs associated with the Base Park Improvements.
- 2.3 The Owner shall pay for the costs of the preparation and registration of all relevant documents. The Owner shall provide all legal descriptions and applicable reference plans of survey for the Parkland to the satisfaction of the City Solicitor.
- 2.4 The Owner shall construct the Base Park Improvements on the Parkland (the “**Parkland**”) to the satisfaction of the General Manager, PFR.
- 2.5 Prior to the issuance of the first Above-grade Building Permit, the appropriate officials shall enter into a limiting distance agreement between the Owner and the City, to the satisfaction of the General Manager, Parks Forestry and Recreation and the City Solicitor.

- 2.6 Prior to the conveyance of the Parkland to the City, the Public Park shall be deemed to be parkland in respect of the limiting distance requirements of the Building Code Act.

***Parkland Conveyance – Environmental Obligations***

- 2.7 Prior to conveying the Parkland to the City, the Owner shall:

- (a) submit a Qualified Person Preliminary Statement Letter, which is dated and signed by the Owner's Qualified Person describing the lands to be conveyed to the City, and identifying what environmental documentation shall be provided to the City's peer reviewer to support the Parkland conveyance;
  - (i) all environmental documentation consistent with O. Reg. 153/04 requirements shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with O. Reg. 153/04 insurance requirements or such greater amount specified by the Chief Engineer and copy to the General Manager, PFR;
- (b) pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City (approximately 14%), and submit an initial deposit of \$10,000.00 toward the cost of the peer review in the form of a certified cheque, to the Chief Engineer and submit further deposits when requested to cover all costs of retaining a third-party peer reviewer;
- (c) submit, to the satisfaction of the City's peer reviewer, all environmental site assessment reports prepared in accordance with O. Reg. 153/04 that describe the current conditions of the land to be conveyed to the City and the proposed remedial action plan based on the site condition standards approach, to the Chief Engineer;
- (d) at the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Chief Engineer for peer review and concurrence, which states:
  - (i) In the opinion of the Qualified Person:
    - (A) it is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and
    - (B) to the extent that the opinion in **Section 2.7(d)(i)(A)** of this Agreement is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.
  - (ii) Land to be conveyed to the City meets either:
    - (A) the applicable Ministry of the Environment, Conservation and Parks, or any such successors, Generic Site Condition Standards (Tables 1, 2, 3, 6, 7, 8 and 9; subject to applicable exemptions as stated in O. Reg. 153/04) for the most environmentally sensitive adjacent land use; or

- (B) the Property Specific Standards as approved by the Ministry of the Environment, Conservation and Parks, or any such successors, for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein;
- (e) the Qualified Person's statement, referenced in **Section 2.7(d)** of this Agreement, shall include a Reliance Letter that is dated and signed by the Owner's Qualified Person confirming that both the City and the City's peer reviewer can rely on the environmental documentation submitted, consistent with O. Reg. 153/04 requirements, and the Qualified Person's opinion as to the conditions of the site; all environmental documentation consistent with O. Reg. 153/04 requirements and opinions shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with O. Reg. 153/04, insurance requirements or such greater amount specified by the Chief Engineer.
- (f) For conveyance of lands requiring a RSC:
  - (i) file the RSC on the Ontario Environmental Site Registry; and
  - (ii) submit the Ministry's Letter of Acknowledgement of Filing of the RSC confirming that the RSC has been prepared and filed in accordance with O. Reg. 153/04, to the Chief Engineer and to General Manager, PFR.

### ***Park Design and Construction***

#### ***Temporary Fencing***

- 2.8 Prior to conveyance of the Public Park, the Owner shall be responsible for the installation and maintenance of temporary fencing around the Public Park and after the conveyance of the Public Park, and until such time as the Public Park is completed to the satisfaction of the General Manager, PFR, the Owner shall continue to maintain the temporary fencing on the Public Park as may be required. This section shall be interpreted so as to provide consent to the Owner to erect, maintain and repair the temporary fencing on the Public Park conveyed to the City.

#### ***Parkland Grading and Drainage***

- 2.9 Prior to conveyance of the Public Park, the Owner shall ensure that the grading and drainage of the adjacent development blocks are consistent with the grades of the Public Park to the satisfaction of the General Manager, PFR and Chief Engineer.
- 2.10 After conveyance of the Public Park, but before the Public Park is accepted by the General Manager, PFR, the Owner shall ensure that the grading and drainage of the Public Park is consistent with the grade of the adjacent lands to the satisfaction of the General Manager, PFR and the Chief Engineer.

### ***Base Park Improvements***

- 2.11 The Owner, at its expense, shall be responsible for the construction and installation of the following improvements to the Parkland (hereinafter referred to as the "**Base Park Improvements**"), and where an item that comprises the Base Park Improvement is deemed not to be required at the discretion of the General Manager, PFR, a set fee equivalent to the unrequired item shall be provided by the Owner and allocated to other



Parks and Recreation improvement components within the Public Park, to the satisfaction of the General Manager, PFR.

- (a) demolition, removal and disposal of all existing materials, buildings, foundations and associated servicing;
- (b) grading inclusive of 300 mm depth topsoil supply and placement. Where lands have been environmentally risk assessed in accordance with the Ministry of the Environment, Conservation and Parks regulations, including its successors and predecessor's regulations, the required depth profile of the environmental soil/soft cap shall be 1.5 metres of engineered fill compacted to 95% SPD and certified by the consulting engineer. With respect to the materials brought on site the following shall apply:
  - (i) in the case where a risk-assessment of the site was required, all materials brought on site shall comply with the site-specific standards outlined in the Certificate of Property Use and in accordance with the *Environmental Protection Act* and O. Reg. 153/04; and
  - (ii) in the case where a risk assessment of the site was **not** required, all materials brought on site shall comply with Table 3 RPI standards, incorporated by reference into O. Reg. 153/04;
- (c) sodding #1 nursery grade;
- (d) fencing, where deemed necessary;
- (e) sanitary and storm service connections with manholes at the streetline;
- (f) water and electrical service connections (minimum water: 50 mm to the streetline including backflow preventers, shut off valves, water metre and chamber; electrical connection to the streetline and electrical panel in a lockable cabinet (100 Amp service));
- (g) street trees along all public road allowances abutting City-owned parkland;
- (h) standard park sign (separate certified cheque required in the amount of \$3,000.00);
- (i) all work is to be completed to the satisfaction of the General Manager, PFR.

(collectively, the “**Base Park Improvements**”)

- 2.12 The Owner agrees that all mechanical elements of the Park Improvements are to be designed and installed so that they function independently and so that the operational controls are accessible other than through private property.
- 2.13 The Owner shall provide documentation from a Qualified Person that any fill or topsoil brought onto the Parkland in accordance with **Section 2.7** of this Agreement meets all applicable laws, regulations and guidelines for use in a Public Park, including O. Reg 153/04, to the satisfaction of the General Manager, PFR.
- 2.14 The construction of the Base Park Improvements on the Parkland shall be completed within twelve (12) months of the conveyance of the Parkland to the City, to the satisfaction of the General Manager, PFR. Unforeseen

delays (e.g. weather) resulting in the late delivery of the Public Park shall be taken into consideration and at the discretion of the General Manager, PFR when determining a revised delivery date for the Public Park. Should the Owner enter into an agreement contemplated by **Section 2.62** of this Agreement, the timing of certain Base Park Improvements may be delayed at the discretion of the General Manager, PFR. The Owner agrees that any approved delayed Base Park Improvements shall be commenced immediately once **Section 2.63** of this Agreement has been completed to the satisfaction of the General Manager, PFR.

- 2.15 Should the Owner undertake Base Park Improvements on the Parkland following conveyance of the Parkland to the City, the Owner shall apply for and obtain the written permission from the General Manager, PFR, prior to conveyance of the Parkland to the City and should the General Manager, PFR grant such permission, the Owner must obtain a Park Access Agreement (“**PAA**”) from the General Manager, PFR. The PAA shall outline in detail the insurance requirements, extent of area permitted, permitted use, tree removal and replacement, and duration to the satisfaction of the General Manager, PFR. The Owner shall indemnify the City against any claim during any interim use of or work carried out by the Owner, or their agent, on the Parkland.

#### *Escalation of Base Park Improvements Security*

- 2.16 After a period of one (1) year from the date of conveyance of the parkland dedication to the City:
- (a) if the Base Park Improvements are not yet commenced as a result of delays by the Owner, the Owner shall increase the amount of the Base Park Improvements Security held by the City, at the discretion of the General Manager, PFR, by an amount equal to the Construction Price Index for the year previous, and
  - (b) on each succeeding anniversary date beyond the said one (1) year, the Owner shall increase all of the Base Park Improvements Security held by the City, at the discretion of the General Manager, PFR, by the amount of the Construction Price Index for the previous year.

#### ***Above Base Park Improvements***

- 2.17 In addition to the Base Park Improvements, the Owner shall be responsible to design and construct Above Base Park Improvements for the Public Park beyond the Base Park Improvements (the “**Above Base Park Improvements**”), to the satisfaction of the General Manager, PFR. The Owner shall submit separate plans and cost estimates for the proposed Above Base Park Improvements within six (6) months of the Public Consultation set out in Section 2.25, and post a Financial Security in the amount of 120% of the value of the Parks and Recreation component of the Development Charges for the Above Base Park Improvements (“**Above Base Park Improvements Security**”) within six (6) months of the execution of this Agreement to the satisfaction of General Manager, PFR. This Financial Security shall be held for the installation and warranty of the Park Improvements. No credit shall be given toward the Parks and Recreation component of the Development Charges for costs associated with the Base Park Improvements.
- 2.18 Areas to be addressed in the design of the Public Park are: park programming, sustainable design and plantings, community and public safety, ground surface treatments, seating, vandalism etc. Final design and programming of the Public Park shall be at the discretion of the General Manager, PFR.



- 2.19 The Above Base Park Improvements shall be completed to the satisfaction of the General Manager, PFR within one (1) year of conveyance of the Parkland to the City, unless other timing is otherwise agreed to in writing by the General Manager, PFR. Unforeseen delays (e.g. weather) resulting in the late delivery of the Public Park shall be taken into consideration and at the discretion of the General Manager, PFR when determining a revised delivery date for the Public Park.

*Credit against DC's For Above Base Park Improvements*

- 2.20 The Owner agrees to design and construct the Above Base Park Improvements to the Public Park, for a Development Charge credit against the Parks and Recreation component of the Development Charges to the satisfaction of the General Manager, PFR. The Development Charge credit shall be in an amount that is the lesser of the cost to the Owner of installing the Above Base Park Improvements, as approved by the General Manager, PFR, and the Parks and Recreation component of Development Charges payable for the development in accordance with the City's Development Charges By-law, as may be amended from time to time. In the event the Owner has already paid Development Charges described herein, the City shall refund same to the Owner, and commence the refund process within thirty (30) days of the date of the execution of this Agreement. The City anticipates that the refund process may take up to 120 days. The City shall be required to refund the Parks and Recreation component of the Development Charges to the Owner within ninety (90) days from the date in which the Owner provides the Above Base Park Improvements Security in accordance with Section 2.17 (which is security is to be paid within 6 months from the execution of this Agreement)
- 2.21 The Owner agrees that should the cost to construct the Above Base Park Improvements as approved by the General Manager, PFR be less than the development charge credit described in **Section 2.20** of this Agreement, the difference shall be paid to the City by certified cheque prior to a reduction of the Above Base Park Improvements Security as set out in **Section 2.54** of this Agreement.

*Calculation of Cost of Above Base Park Improvements – Inclusions and Exclusions*

- 2.22 The calculation of the cost of the Above Base Park Improvements shall include all the costs of design, consulting, working drawings & specifications, construction labour and materials, **[TBD- Above Base Park Improvements Security in accordance with this Agreement]**, general supervision during construction, contract administration, inspection and testing and certification of completions to the satisfaction of the General Manager, PFR.
- 2.23 The calculation of the cost of the Above Base Park Improvements shall not include the costs below of the Owner:
- (a) all head office, administration and overhead costs;
  - (b) the costs of financing the park improvements, save and except for **[TBD- Above Base Park Improvements Security in accordance with this Agreement]**,
  - (c) the costs associated with the provision of any insurance;
  - (d) any costs incurred by the Owner or damages paid by the Owner resulting from actions or claims made against the Owner arising in any way from the provision by the Owner of the Park Improvements, including the Owner's control and occupation of the Public Park; and

- (e) the costs of settling the terms of this Agreement.

#### *Escalation of Financial Security for Delay in Commencing Work*

- 2.24 After a period of two (2) years from the date of issuance of the Approved Park Submission for any Development on the Lands,
- (a) if the Above Base Park Improvements are not yet commenced as a result of delays by the Owner, the Owner shall increase the amount of the Above Base Park Improvements Security held by the City by an amount equal to the Building Construction Price Index for the year previous, and
  - (b) on each succeeding anniversary date beyond the said two (2) years, the Owner shall increase all of the Above Base Park Improvements Security held by the City by the amount of the Building Construction Price Index for the previous year.

### **Contract Implementation**

#### *Design Consultation*

- 2.25 The Owner agrees that the park design process will include a minimum of one (1) public consultation meeting within six (6) months of the execution of this Agreement, and that the consulting Landscape Architect shall actively participate in the public consultation process and other meetings with City Staff, stakeholders, and other agencies as may be required.

#### *Approved Park Submission*

- 2.26 All design and tender drawings as well as construction documents shall be submitted for review and approved by the General Manager, PFR before any agreement is entered into for the construction of the Park Improvements. The process shall include the submission of interim design and cost estimates for review by the General Manager, PFR at approximately 30%, 60%, 90% and 100% design stages.
- 2.27 Within six (6) months of the public consultation set out in Section 2.25, the Owner is required to submit concept design drawings, specification and landscape plans showing the scope and detail of the work for the Above Base Park Improvements including a context map, site preparation plan, tree preservation or removal plan, landscaping plan, electrical plan, servicing plan, irrigation plan, together with supporting materials and documentation as may be required, for review and approval by the General Manager, PFR (the “**Park Submission**”).
- 2.28 After the submission of the Park Submission, the Owner and the City shall work cooperatively to finalize the Park Submission, and make any amendments thereto, as required (the “**Approved Park Submission**”). At the discretion of the General Manager, PFR, the Approved Park Submission may be less than 100% complete, with complete Construction drawings accepted no later than six (6) months after the Approved Park Submission.

#### *Landscape Architect*

- 2.29 The Park Improvements shall be designed and their construction and installation shall be supervised by a firm of consulting landscape architects, which is acceptable to the General Manager, PFR, at the Owner’s expense. The consulting Landscape Architect and the Owner shall be the primary contacts with the General Manager, PFR regarding the design and construction of the Park Improvements.

- 2.30 The Landscape Architect fee shall be a maximum of a standard amount as determined by the General Manager, PFR based on the Ontario Association of Landscape Architects (OALA) Fee Guide for Landscape Architectural Services 2016.
- 2.31 All design drawings shall carry the stamp of a Landscape Architect who is responsible for the designs and shall be signed by said person.

#### *Tender Process*

- 2.32 The construction for the Above Base Park Improvements is to be tendered as a discrete package, separate from all other work.
- (a) The Owner shall, prior to issuance of a tender, provide the General Manager, PFR with:
    - (i) copies of all relevant project documentation including documentation released to proposed contractors or subcontractors in respect of the Park Improvements and the results of responses received;
    - (ii) all plans and drawings, to be submitted to any contractor retained by the Owner; and
    - (iii) a description of the proposed products and materials.
  - (b) Copies of completed and returned tender bids are to be reviewed by the General Manager, PFR prior to contractor selection, and final contractor selection is to have approval by the General Manager, PFR.

#### *Hiring Agreement*

- 2.33 The Owner shall file a copy of the hiring agreement or contract between the Owner and the Landscape Architect consulting firm with the General Manager, PFR before any design drawings are approved.
- 2.34 The hiring agreement or contract shall include, but not be limited to, design, consultation, preparation of all working drawings and specifications, contract administration, general supervision during construction and certification of all completed work to the satisfaction of the General Manager, PFR.
- 2.35 The Parties acknowledge that they shall cooperate to ensure that within sixty-days of the execution of this Agreement, the City will have provided the framework to the Owner for hiring a qualified Landscape Architect consulting firm or team, which framework may include, but not be limited to,
- (a) the skills, qualifications and experience of the qualified consulting firm or consulting team,
  - (b) a work program including phases, deliverables, and project meetings,
  - (c) the ability to work with a local working group comprised of representatives from the community, the Business Improvement Area (BIA), the Ward Councillor's Office, the Owner, City staff, and any other groups whose participation is required,
  - (d) the ratio of design fees to the overall budget for the design and construction of the park, and

- (e) design and park planning guidelines and a draft park program.
- 2.36 The Owner agrees that upon receiving the framework described above, the Owner shall retain a Landscape Architect consulting firm or team that meets the framework to the satisfaction of the General Manager, PFR.

*Adjusting Scope of Improvements in Response to Tender Bids*

- 2.37 If, during the tender/pricing process and prior to entering into a construction contract, based on bids received, the Owner determines that the anticipated cost of the Above Base Park Improvements is expected to be significantly less than what is estimated in the Approved Park Submission, the Owner shall advise the City and, in consultation with the General Manager, PFR, may be required to adjust the scope of work for the Above Base Park Improvements and modify the construction drawings, as necessary, to the satisfaction of the General Manager, PFR such that anticipated costs more closely reflect the original estimated amount.
- 2.38 If, during the tender/pricing process and prior to entering into a construction contract, based on bids received the Owner determines that anticipated costs of the Above Base Park Improvements are expected to be greater than the Parks and Recreation component of the Development Charges, for which the Owner will receive a credit as contemplated in **Section 2.20** of this Agreement, the Owner shall so advise the City, and:
  - (a) the City may, entirely at its own election, agree to accept responsibility for any additional costs exceeding the Parks and Recreation component of the Development Charges in order to facilitate completion of the Above Base Park Improvements based on the Approved Park Submission;
  - (b) the Owner may, entirely at its own election, agree to accept responsibility for any additional costs exceeding the Parks and Recreation component of the Development Charges in order to facilitate completion of the Above-Base Park Improvements based on the Approved Park Submission;
  - (c) the City and the Owner may agree to any combination of **Sections 2.38(a) and 2.38(b)** of this Agreement; or
  - (d) if neither the City nor the Owner elect to accept responsibility for additional costs, the Owner shall adjust the scope of work for the Above Base Park Improvements, modify the construction drawings and re-tender the project as applicable, to the satisfaction of the General Manager, PFR so that the anticipated costs will more closely reflect an amount less than the original estimated amount so that the costs to be incurred by the Owner are approximately equal to the credit received by the Owner from the City in relation to the Parks and Recreation component of the Development Charges.

*Finalizing and Filing the Contract Documents*

- 2.39 Prior to finalizing the hiring agreement or contract documents following the bid and tender process, the Owner shall ensure that the hiring agreement or contract documents are satisfactory to the General Manager, PFR and that the General Manager, PFR has approved the successful contractors.
- 2.40 Prior to the commencement of the construction of the Above Base Park Improvements, the Owner shall file with the General Manager, PFR true copies of all contracts respecting such construction (including all schedules and drawings) and a list identifying the subcontractors proposed to be engaged and the Owner agrees, all plans and drawings, as submitted to

any contractor or sub-contractor retained by the Owner, shall carry the seal of and be signed by the Landscape Architect as being the Approved Park Submission.

- 2.41 If the Owner terminates or permits the termination of any agreement pursuant to which a contractor is obliged to carry out and complete the construction of any of the Park Improvements, or amends or alters such agreement or permits it to be amended or altered in such a way that the obligations of such a contractor are reduced or otherwise altered substantially, or engages or permits the engagement of any contractor other than the contractor or contractors named in the agreement or agreements delivered to the General Manager, PFR or any subcontractor other than the subcontractors identified on the approved list, the Owner shall give written notice thereof to the City and the Owner shall obtain the consent of the General Manager, PFR to any such termination, amendment, alteration or hiring, provided nothing herein shall be contrary to the requirements of this Agreement.

*Owner shall provide Notice Prior to Commencement*

- 2.42 The Owner shall not commence the construction of the Park Improvements without first having given reasonable prior written notice that it intends to do so to the General Manager, PFR and shall proceed in accordance with the construction schedule included in the Approved Park Submission.

*Meetings and Inspections during Construction*

- 2.43 The General Manager, PFR will be given access to and opportunity to participate in all construction meetings and the Owner will notify the General Manager, PFR of all meetings and any critical or emergency meetings (with a minimum two (2) business days' notice, where feasible, so the City can arrange to attend).
- 2.44 The General Manager, PFR shall be entitled, at any reasonable time, from time to time, without giving prior notice, to enter upon the Lands to inspect the construction of the Park Improvements, including progress and quality of work, and all contracts for the construction of the Park Improvements shall make appropriate provision for the same.

*Process to Change Contract Terms*

- 2.45 The Owner and the City acknowledge and agree that:
- (a) all proposed changes to the construction contract(s), including change orders, are required to be submitted for prior approval to the General Manager, PFR for review in a reasonable prompt and timely manner; and
  - (b) the General Manager, PFR reserves the right to have changes removed at the Owner's cost, in the event they are made without the prior approval of General Manager, PFR.

***Public Park – Completion and Acceptance***

- 2.46 Should the Owner undertake Park Improvements on the Public Park following conveyance of the Public Park to the City, the Owner must obtain a PAA from the General Manager, PFR. The PAA shall outline in detail the insurance requirements, extent of area permitted, permitted use, tree removal and replacement, and duration to the satisfaction of the General Manager, PFR. The Owner shall indemnify the City against any claim during any interim use of or work carried out by the Owner on the Public Park.

- 2.47 The Owner shall complete the Park Improvements in accordance with the Approved Park Submission and terms of this Agreement to the satisfaction of the General Manager, PFR. Following completion of the Park Improvements, the Owner shall contact the General Manager, PFR to initiate inspections by City staff and consideration by the General Manager, PFR of acceptance of the Public Park by the City prior to its conveyance pursuant to this Agreement (“**Park Acceptance**”).
- 2.48 Prior to Park Acceptance by the City, the Owner shall, to the satisfaction of the General Manager, PFR:
- (a) complete all Park Improvements to the satisfaction of the General Manager, PFR as confirmed through City inspections;
  - (b) ensure that all construction work is certified to substantial performance in accordance with the Construction Act and the Owner shall forward all documentation for substantial performance and release of holdbacks to the City for review and approval;
  - (c) hold back all amounts required to be held back by the Construction Act and the Owner shall be responsible for any vacating liens placed on the Public Park as a result of the design, construction and provision of the Park Improvements to the City by the Owner as required by this Agreement;
  - (d) cause the Landscape Architect to provide the General Manager, PFR with certification as to park completion verifying that the Park Improvements have been completed in accordance with the Approved Park Submission and the date of such completion;
  - (e) provide documentation from a qualified environmental engineer certifying that any fill or topsoil brought onto the lands comprising the Public Park met all applicable laws, regulations and guidelines for use in a public park;
  - (f) ensure that contractors or suppliers as appropriate, have provided appropriate training to City Staff or have demonstrated the operation and maintenance of any equipment or systems requiring special procedures;
  - (g) have satisfied the environmental obligations set out in this Agreement; and
  - (h) provide any other materials or documents as may be deemed relevant and necessary by the General Manager, PFR.
- 2.49 The Landscape Architect shall append the following to a park completion certificate to the satisfaction of the General Manager, PFR:
- (a) a description of the Park Improvements and statement as to the date of completion;
  - (b) confirmation that the final payment has been issued with respect to the Park Improvements;
  - (c) all documentation and certificates relating to the *Construction Act* confirming that there are no liens registered against the Lands, including the lands comprising the Public Park;
  - (d) all requisite compliance letters, certificates, inspection and test results, including environmental compliance contemplated herein;
  - (e) all licenses or permits for equipment or systems;



- (f) all owner's and maintenance manuals for any and all equipment, machinery, devices and appurtenances;
- (g) a complete set of as-built drawings in hard copy (two (2) full size bond and one (1) set 11x17 format) and digital format (CD or USB, in the latest version of AutoCAD, and as PDFs) which include but are not limited to specifications, locations of all hidden services, and all deviations from the design drawings, shop drawings, inspection reports, minutes of meetings, site instructions, change orders, invoices, certificates, progress images, warranties, close out documentation, compliance letters (for any play structures and safety surfaces), manuals, etc. The files are to be organised in folders, including a file index and submitted;
- (h) certified grading plans;
- (i) all warranties, certificates or documents for all equipment, machinery, devices and systems as transferred to the City;
- (j) spare or replacements parts, special tools and other such items as may be provided by the manufacturer;
- (k) a statement as to the actual total cost of the Park Improvements as constructed; and
- (l) such other similar types of information or materials relating to the Park Improvements.

(the "**Park Completion Certificate**").

2.50 Within a reasonable time of receipt of the Park Completion Certificate from the Landscape Architect, the General Manager, PFR shall forward to the Owner and the Landscape Architect either:

- (a) a notice of acceptance of the Park Completion Certificate; or
- (b) a list of deficiencies (the "**Park List of Deficiencies**").

2.51 Upon receipt of a Park List of Deficiencies, the Owner:

- (a) shall promptly remedy any defects or deficiencies contained therein; and
- (b) upon completion, cause the Landscape Architect to issue a replacement Park Completion Certificate and accompanying materials as applicable.

2.52 Upon receipt of a replacement Park Completion Certificate from the Landscape Architect pursuant to **Section 2.51 b)** of this Agreement, the General Manager, PFR shall, if satisfied, issue a notice of acceptance (the "**Park Notice of Acceptance**") and the replacement Park Completion Certificate shall be deemed to be the approved Park Completion Certificate.

### *Construction Act Matters*

2.53 If any lien is claimed pursuant to the *Construction Act* for the supply of services or material in connection with the said work, the Owner shall be considered to be in default unless all such liens are discharged or vacated within twenty (20) days of the Owner becoming aware of such lien, including, without limitation, service of a statement of claim or notification by the City of any claim, and if the Owner does not discharge or vacate such liens, the City may, in its absolute discretion, use the Financial Security deposited by the Owner for the Park Improvements to pay into

court any amounts required to vacate all liens plus costs of such lien or liens, if not paid forthwith after a written demand by the City to the Owner. Further, the Owner shall indemnify the City against any claims, actions or demands in connection with the said work and all costs reasonably incurred by the City as a result of such claims, actions or demands.

*20% for two years*

- 2.54 On receipt of the Park Completion Certificate acceptable to the General Manager, PFR, the City shall reduce both the Base Park Improvements Security and the Above Base Improvements Security held pursuant to this Section, retaining an amount equivalent to twenty percent (20%) of the original amount of the Base Park Improvements Security and Above Base Park Improvements Security to guarantee quality of work and materials for two (2) years.

*Two-Year Park Improvements Warranty*

- 2.55 The Owner shall correct or cause to be corrected at its own expense and to the satisfaction of the General Manager, PFR any defects or deficiencies in any portion of the Park Improvements appearing within a period of two (2) years after the Park Completion Certificate has been accepted together with any damage that may occur to any other portions of the Park Improvements resulting from any such corrections arising from this Section (**“Park Guarantee Period”**).

*City may Correct Work*

- 2.56 If the General Manager, PFR deems at any time during such Park Guarantee Period that any of the Park Improvements are defective or unsuitable, the General Manager, PFR may, following thirty (30) days' notice having been provided to the Owner in writing giving the Owner an opportunity to remedy, draw on the Financial Security, and apply such monies to pay for part or all of the costs to correct such deficiencies or to do such maintenance, including the City's management fee equal to twenty percent (20%) of the total cost of the required work. It is understood that the cost of workers employed to do such work, whether or not such workers are normally employed by the City, may be paid for by drawing on the Base Park Improvements Security.

*Final Public Park Acceptance Certificate*

- 2.57 Not later than thirty (30) days prior to expiry of the Park Guarantee Period for the Park Improvements, the Owner shall arrange with the General Manager, PFR for a final inspection of that portion of the Park Improvements and shall deliver a final acceptance certificate from the Landscape Architect in a form satisfactory to the General Manager, PFR certifying there are no defects or deficiencies in such Park Improvements referred to therein (the **“Final Park Acceptance Certificate”**).
- 2.58 Upon receipt of the Final Park Acceptance Certificate and provided that the General Manager, PFR is satisfied that there are no outstanding defects or deficiencies, the General Manager, PFR shall so advise the Owner in writing and the Park Guarantee Period shall expire for such Park Improvements upon the expiry of the Park Guarantee Period at which time the Public Park is fully assumed by the City and the outstanding Base Park Improvements Security shall be fully refunded to the Owner.

*Warranty Extended Until Final Inspection*

- 2.59 If the Owner fails to arrange the final inspection of any Park Improvements with the General Manager, PFR within the time frame provided for in this

Section, the Park Guarantee Period and Owner's warranty respecting such Park Improvements shall be deemed to be extended until the date of such final inspection, certificate delivery and acceptance thereof.

*General Manager, PFR may Implement Park Improvements*

- 2.60 Notwithstanding any other provision of this Agreement, if at any time the General Manager, PFR in their sole discretion is dissatisfied with the progress of the Owner in implementing the Park Improvements, the General Manager, PFR may, following thirty (30) days' notice having been provided to the Owner in writing giving the Owner an opportunity to address the concerns of the General Manager, PFR, in its unfettered discretion draw on the Financial Security and apply such monies to pay for part or all of the costs to complete the implementation of the park improvement process, including the City's management fee equal to twenty percent (20%) of the total cost of the required work. It is understood that the cost of workers employed to do such work, whether or not such workers are normally employed by the City, may be paid for by drawing on the Financial Security.

*Park Improvement Documentation to Belong to the City*

- 2.61 The Owner acknowledges and agrees that all documentation comprising any description of the Park Improvements, along with all drawings, correspondence, documentation and information provided to the City by the Landscape Architect and/or contractor in connection with, or arising out of the construction of the Park Improvements, once received by the City:
- (a) shall become the property of the City; and
  - (b) shall become subject to *MFIPPA*, and may be released.

***Parkland Occupation - Construction Staging***

- 2.62 The stockpiling of any soils or materials or use as an interim construction staging area on the conveyed Public Park is prohibited unless an agreement, other than a PAA, has been obtained from the General Manager, PFR. The City shall work in good faith with the Owner to enter into an agreement permitting the stockpiling of any soils or materials or use of the conveyed Public Park as an interim construction staging area and, if approved, such agreement shall outline in detail the insurance requirements, extent of area permitted, permitted use, tree removal and replacement, duration, restoration plan and costs, and compensation to the satisfaction of the General Manager, PFR. Should there be any permitted staging on the Public Park, the Owner shall provide further confirmation from Practitioner that such permitted staging works shall not adversely impact, in any way, the reliance to be extended to the City for the Public Park from the Practitioner. The Owner shall indemnify the City against any claim during any interim use of or work carried out by the Owner on the Public Park. Any compensation accrued shall be applied to park improvements within the Ward in consultation with the Ward Councillor.
- 2.63 The Owner shall be required to provide an environmental assessment report, prepared by a Qualified Person, at the end of the permitted occupation to verify that the Public Park continues to meet the applicable laws, regulations and guidelines respecting sites to be used for public park purposes. If deemed necessary, the Owner may be required to provide a RSC after the staging period. The Owner shall be responsible for paying all costs associated with the City retaining a third-party peer reviewer for the environmental addendum and for another RSC if required. The construction of the Public Park shall recommence only after the verification that the Public Park continues to meet the applicable laws, regulations and guidelines respecting sites to be used for public park purposes.

### ***Parkland Conveyance - Tiebacks***

- 2.64 The Parkland required to be conveyed to the City in **Section 2.1** of this Agreement may contain encumbrances in the form of de-stressed tiebacks (the "**Tieback Encumbrances**"), where such encumbrances are to the satisfaction of the General Manager, PFR, and are subject to reasonable compensation to be paid by the Owner to the City, with such payment being made at the time the parkland is conveyed, all to the satisfaction of the General Manager, PFR and the Executive Director, CREM.
- 2.65 Within sixty (60) days of execution of this Agreement, the Owner shall provide drawings showing the number and location of the Tieback Encumbrances, and the plane area of such Tieback Encumbrances, all to the satisfaction of the General Manager, PFR.
- 2.66 The Owner acknowledges that, prior to the transfer of any parkland that includes Tieback Encumbrances permitted by the General Manager, PFR, the Tieback Encumbrances must be de-stressed and no longer provide physical support to any element or part of the building or structure located on the Lands. For further clarity, the Owner shall be required to undertake all works to de-stress the permitted Tieback Encumbrances at its sole cost and expense, and shall provide to the General Manager, PFR a letter stamped by a Professional Engineer who is a Practitioner competent in the field of structural engineering certifying that the Tieback Encumbrances have been properly destressed and no longer provide any physical support to any element or part of the building or structure located on the Lands, all to the satisfaction of the General Manager, PFR.
- 2.67 The value of the compensation for any accepted Tieback Encumbrances to be paid by the Owner to the City is to be calculated and determined by the Executive Director, CREM and shall be to the satisfaction of the General Manager, PFR and Executive Director, CREM. [NTD: the compensation is the Base Park Improvements]
- 2.68 The Owner covenants and agrees that Section 2.53 of this Agreement applies to the Tieback Encumbrances and to any of the matters described therein arising from the, or to arise by reasons of the City, de-stressing and removing any and all Tieback Encumbrances that remain on the Parkland after conveyance.