

TRANSITION AGREEMENT FOR
CANADA GAMES PARK

THIS AGREEMENT is made as of this 30th day of June, 2020

BETWEEN:

2021 CANADA GAMES HOST SOCIETY INC.

(“CGHS”)

- and -

THE REGIONAL MUNICIPALITY OF NIAGARA

(“Niagara”)

WHEREAS:

- A. The Canada Games in 2021 (the “**Games**”) will be held across all municipalities in the Niagara Region of Ontario;
- B. By a memorandum of understanding dated January 26, 2017 (“**MOU**”), between the Niagara 2021 Canada Summer Games Bid Committee, Niagara, and Brock University, it was contemplated, among other things, that Niagara and the Niagara 2021 Canada Summer Games Bid Committee would facilitate the hosting of the Games and that, if the Niagara 2021 Canada Summer Games Bid Committee’s bid was successful a corporation would be created to, *inter alia*, plan, organize, promote, finance and stage the Games as well as to assist in the construction and preparation of facilities as may be required for the Games;
- C. Based on the MOU, it is intended that prior to the Games, there will be upgrades to existing sport facilities and the development of new sport infrastructure and equipment, and much of that new sport infrastructure and equipment is to be located at a new site to be known as “**Canada Games Park**” that will include among other related infrastructure, a new Sport and Ability Centre with a twin pads ice arena, beach volleyball courts, a new athletics facility, and parking areas, and will be located on lands owned by Brock University, south of Sir Isaac Brock Blvd South and west of Merrittville Highway on Brock University’s main campus (the “**CGP Lands**”);
- D. The 2021 Canada Games Host Society Inc. was created, in accordance with the *Corporations Act* (Ontario) to constitute CGHS, and, pursuant to a Hosting Agreement with the Canada Games Council dated December 12, 2018, was charged with planning, organizing, promoting, financing and staging the Games as well as assisting in the construction and preparation of Canada Games Park and to leave a tangible legacy and

funding for amateur sport for future generations in the Region of Niagara and the Province of Ontario;

- E. With input and approval from the Consortium (as hereinafter defined), CGHS undertook the design and commenced construction and development of the Canada Games Park;
- F. CGHS has entered into:
 - a. a Transfer Payment Agreement with Her Majesty the Queen in right of the Province of Ontario (the “**Province of Ontario**”) with respect to the Games dated November 1, 2017 ;
 - b. a Transfer Payment Agreement with Niagara with respect to the Games dated January 1, 2018 (the “**Niagara TPA**”);
 - c. a Contribution Agreement with Canada with respect to the Games dated May 1, 2019;
 - d. a Transfer Payment Agreement with the Province of Ontario, Niagara, the City of St. Catharines, City of Thorold and Brock University with respect to certain funding for the Canada Games Park construction dated August 30, 2019 and executed on or about March 31, 2020 (the “**Provincial TPA**”);
 - e. a construction contract with Aquicon Construction Co. Ltd. to construct the Canada Games Park and the Henley Rowing Centre (as hereinafter defined) dated December 4, 2019;
 - f. an Offer to Lease (the “**Offer to Lease**”) with Brock University in respect of those lands shown in Schedule A of the Offer to Lease to allow for the development, construction and operation of Canada Games Park for the Games dated December 4, 2019;
 - g. a Project Manager Agreement with Urban & Environmental Management Inc. for the construction management of Canada Games Park dated December 13, 2019;
 - h. a site plan agreement with the City of Thorold with respect to the CGP Lands upon which the Canada Games Park is to be constructed dated January 21, 2020;
 - i. a commissioning agreement with CFMS-West Consulting Inc. for the commissioning of the facilities contained within Canada Games Park dated March 1, 2020;
 - j. a Temporary Construction Access Licence Agreement with Ontario Power Generation Inc. (“**OPG**”) made as of March 1, 2020 for temporary access to certain OPG lands in connection with the construction of a spillway serving a newly constructed stormwater holding pond on lands owned by Brock University; and
 - k. three separate architectural agreements with MacLennan Jaunkalns Miller Architects for the design of Canada Games Park and the Henley Rowing Centre

(as hereinafter defined) dated September 28, 2018, December 2, 2019 and March 11, 2020;

- G. CGHS has obtained a building permit for the Canada Games Park dated February 4, 2020 from the City of Thorold;
- H. Following the Games, it is the intention that a new ground lease will be entered into between Brock University, as landlord, and a consortium made up of Niagara, the City of St. Catharines, the City of Thorold, and Brock University (collectively the “**Consortium**”), as tenant, and the Consortium will have possession of the Canada Games Park and the CGP Lands for a term of forty (40) years;
- I. CGHS has advised that it would be preferable to transition responsibility for the balance of the construction of Canada Games Park to Niagara for several reasons including so that CGHS can focus on organizing and delivering the Games and the development of other facilities such as the Henley Rowing Centre;
- J. Niagara is agreeable to assuming responsibility for the balance of the construction of Canada Games Park on the terms and conditions of this Agreement;
- K. Niagara is agreeable to becoming a Recipient party jointly with CGHS pursuant to the Provincial TPA on the terms and conditions of this Agreement; and
- L. This Agreement sets out the framework for the transition of the construction of Canada Games Park from CGHS to Niagara (the “**Transition**”).

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants hereinafter set forth for good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the undersigned) the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.01 Recitals

The foregoing recitals are true and correct in fact and in substance and are incorporated herein and form part of this Agreement.

1.02 Definitions

In this Agreement, in addition to the terms defined above, the following definitions apply:

- a) “**Agreement**” means this transition agreement, including all Schedules, Appendices and Exhibits to this transition agreement, as amended, supplemented, restated and replaced from time to time in accordance with its provisions.

- b) **“Applicable Law”** means:
- i. any domestic (federal, provincial or municipal) or foreign statute, law (including common and civil law), code, ordinance, rule, regulation, order-in-council, restriction or by-law (zoning or otherwise);
 - ii. any judgment, order, writ, injunction, directive, decision, ruling, decree or award;
 - iii. any regulatory policy, practice, standard or guideline;
 - iv. any published administrative position; or
 - v. any Permit;
- of any Governmental Authority, binding on or affecting the person referred to in the context in which the term is used or binding on or affecting the property of that person.
- c) **“Assignment Condition Date”** means 5:00pm (local time) on July 30, 2020.
- d) **“Books and Records”** means all books, records, files and papers of CGHS relating to the Project, including, electronic data, financial working papers, financial books and records, business reports, business plans and projections, records and correspondence, all other documents and data (technical or otherwise) relating to the Project and the Material Agreements, and all copies and recordings of the foregoing.
- e) **“Business Day”** means any day, except Saturdays and Sundays, on which banks are generally open for non-automated business in the City of Thorold.
- f) **“Canada Games Park”** has the meaning ascribed to that term in Recital C.
- g) **“CGP Lands”** has the meaning ascribed to that term in Recital C.
- h) **“Claims”** means any and all actions, causes of action, suits, proceedings, claims, losses, demands, damages, liabilities, penalties, costs and expenses of every nature and kind.
- i) **“Closing”** means the completion of the transactions contemplated in this Agreement on the Closing Date in accordance with this Agreement.
- j) **“Closing Date”** means the date which is one (1) Business Day after all of the conditions in Article 3 are satisfied or waived by Niagara and/or CGHS as applicable, or such other date as agreed to by the Parties in writing.
- k) **“Consortium”** has the meaning ascribed to that term in Recital H.
- l) **“Council Approval Date”** means 5:00pm (local time) on July 30, 2020.

- m) **“Due Diligence Condition Date”** means 5:00pm (local time) on July 30, 2020.
- n) **“Financial Statements”** means the financial statements in respect of the Project, consisting of the budgets, reports, balance sheet, income statement, cash flow statement and all notes, schedules and exhibits thereto.
- o) **“Funds Reconciliation”** shall have the meaning given to it in Section 9.01a).
- p) **“Games”** means the 2021 Canada Summer Games, as further defined in Recital A.
- q) **“Games Equipment”** means the “Games Equipment” identified in Schedule C.
- r) **“Governmental Authority”** means any domestic or foreign government, whether federal, provincial, state, territorial, local, regional, municipal, or other political jurisdiction, and any agency, authority, instrumentality, court, tribunal, board, commission, bureau, arbitrator, arbitration tribunal or other tribunal, or any quasi-governmental or other entity, body, organization or agency, insofar as it exercises a legislative, judicial, regulatory, administrative, expropriation or taxing power or function of or pertaining to government.
- s) **“Hazardous Substance”** means any substance that is, or is likely to be, hazardous or harmful to the environment or likely to cause an adverse effect, damage or impairment to persons or property and includes, without limiting the generality of the foregoing, the following: (A) any substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by humans or by any animal, fish or plant; (B) any solid, liquid, gas or odour or combination of any of them that, if emitted into air, soil or water, would create or contribute to the creation of a condition that does or would endanger the health, safety or welfare of persons or the health of animal life, interfere with normal enjoyment of life or property, or cause damage to plant life or to property; and (C) any material or substance declared or deemed to be hazardous, toxic, deleterious, caustic, radioactive, explosive, dangerous, a contaminant, a waste, a source of contaminant, a pollutant or a dangerous good under any environmental law, including, without limitation, petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylene, urea formaldehyde, asbestos, lead, polychlorinated biphenyls and dioxins;
- t) **“Henley Rowing Centre”** means the Games legacy project consisting of certain rowing infrastructure improvements to be constructed by CGHS for and on behalf of the Canadian Henley Rowing Corporation.
- u) **“Holdback”** or **“Holdbacks”** means, as applicable, the holdback(s) required to be retained under Part IV of the *Construction Act*.
- v) **“Insurance Policies”** all insurance policies maintained in respect of the Project.

- w) “**Key Personnel**” shall mean the key individual(s) for CGHS set out in Section 8.01.
- x) “**Labour & Material Payment Bond**” means, collectively, the labour and material payment bond and the Multiple Obligee Rider to the labour and material payment bond issued in respect of the construction contract in respect of the Project, by Travelers Insurance Company of Canada number 90040455 dated December 6, 2019.
- y) “**Legacy Plan**” means the plan, insofar as it relates to the Canada Games Park, prepared in relation to legacy from the Games pursuant to the Hosting Agreement referred to in Recital D.
- z) “**Material Agreements**” means all of the following agreements:
- i. a Construction Contract with Aquicon Construction Co. Ltd. to construct Canada Games Park dated December 4, 2019;
 - ii. Project Manager Agreement with Urban & Environmental Management Inc. (“**UEM**”) for the construction management of the construction of Canada Games Park dated December 13, 2019;
 - iii. a Commissioning Agreement with CFMS-West Consulting Inc. for the commissioning of the facilities contained within Canada Games Park dated March 1, 2020;
 - iv. three separate architectural agreements with MacLennan Jaunkalns Miller Architects for the design of Canada Games Park dated September 28, 2018, December 2, 2019 and March 11, 2020;
 - v. a Temporary Construction Access Licence Agreement with Ontario Power Generation Inc. made as of March 1, 2020 for temporary access to certain OPG lands in connection with the construction of a spillway serving a newly constructed stormwater holding pond on lands owned by Brock University; and
 - vi. a Site Plan Agreement with the City of Thorold with respect to the CGP Lands upon which the Canada Games Park is to be constructed dated January 21, 2020.
- aa) “**MOU**” has the meaning ascribed to that term in Recital B.
- bb) “**Niagara TPA**” has the meaning ascribed to that term in Recital F.
- cc) “**Notice**” means any notice, request, direction, or other document that a Party can or must make or give under this Agreement, which, in each case, shall be given in accordance with Section 13.10.

- dd) **“Offer to Lease”** has the meaning ascribed to that term in Recital F.
- ee) **“Offsite Works”** means the replacement and upsizing of the sanitary sewer along Schmon Parkway to service the CGP Lands and other lands owned by Brock University comprising the installation of approximately 380 metres of 375mm diameter sanitary sewer and related appurtenances in accordance with the Niagara Peninsula Standard Contract Documents and as outlined in the proposal from Upper Canada Planning & Engineering Ltd., dated March 9, 2020 (as amended).
- ff) **“Participant”** has the meaning set out in the Provincial TPA;
- gg) **“Parties”** means collectively, Niagara and CGHS, and **“Party”** means any of them.
- hh) **“Performance Bond”** means collectively, the performance bond and the Multiple Oblige Rider to the performance bond issued in respect of the construction contract in respect of the Project, by Travelers Insurance Company of Canada number 90040455 dated December 6, 2019.
- ii) **“Permits”** means licences, qualifications, approvals, authorizations, consents, certificates, certificates of authorization, decrees, orders-in-council, registrations, exemptions, consents, variances, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, permits and other approvals, obtained from, issued by or required by a Governmental Authority.
- jj) **“Project”** means the construction and development of Canada Games Park on the CGP Lands.
- kk) **“Project Account”** means a segregated bank account held at a Canadian chartered bank in the name of and held by Niagara which has a maximum of three authorized signatories, two of which shall be designated by Niagara and one of which shall be designated by CGHS and such account shall stipulate that any two of the three authorized signatories may sign and access the account.
- ll) **“Province of Ontario”** means Her Majesty the Queen in right of the Province of Ontario.
- mm) **“Provincial Acknowledgement and Consent”** has the meaning ascribed to that term in Section 3.03.
- nn) **“Provincial TPA”** a Transfer Payment Agreement made between CGHS as the Recipient and the Province of Ontario, (with Niagara, the City of St. Catharines, the City of Thorold and Brock University as Participants only), with respect to certain funding for the Canada Games Park construction dated August 30, 2019 and executed on or about March 31, 2020.
- oo) **“Services”** shall mean the services as defined in Section 8.01.

pp) “**Recipient**” has the meaning set out in the Provincial TPA and shall include both CGHS and Niagara from and after the Closing Date.

qq) “**Transition**” has the meaning ascribed to that term in Recital K.

1.03 Interpretation

In this agreement, unless the context requires otherwise, words in the singular include the plural and vice versa.

1.04 Schedules

The following Schedules and Exhibit attached to this Agreement are integral to and form part of this Agreement.

Schedule A - Form of Assignment, Consent To Assignment and Counterparty Estoppel

Schedule B - Form of Acknowledgement and Consent for Provincial TPA

Schedule C - Funds Reconciliation

ARTICLE 2 - OVERARCHING PRINCIPLES

The Parties agree to cooperate in good faith in all matters necessary to enable the Parties to meet the goals and objectives of this Agreement. The Parties will take timely action in relation to any matters of disagreement to attempt to minimize them before they become matters of dispute. Without limiting the generality of the foregoing, in respect of the performance of their roles and responsibilities under this agreement, the Parties agree that they shall:

- a) act in a cooperative and collaborative manner in carrying out their respective roles with respect to Canada Games Park and to facilitate the effective and efficient Transition; and
- b) throughout the delivery of the Project, regardless of the nature of a Party's role, the Parties shall make commercially reasonable efforts that are not limited to financial matters to:
 - i. consider any input that a Party receives from the other Party in carrying out its roles and responsibilities under this Agreement;
 - ii. keep the other Party informed with respect to the status of the Project, as reasonably necessary and appropriate;
 - iii. exchange such information and documents related to the Project, the CGP Lands, the Transition, or otherwise, as may be reasonably required by the other Party to efficiently and effectively complete the Project and implement the Transition; and

- iv. deliver Canada Games Park pursuant to the construction contract timeline so that it is ready to host a portion of the Games.

ARTICLE 3 CONDITIONS PRECEDENT

The Closing shall be conditional upon each of the following conditions being satisfied or waived on or before the respective dates noted below:

3.01 Consortium Approvals

On or before the Council Approval Date:

- a) the Council of Niagara shall have approved the terms and conditions of this Agreement in its sole, absolute and unfettered discretion;
- b) the Council of the City of St. Catharines shall have approved the Transition of the Project to Niagara as contemplated by this Agreement;
- c) the Council of the City of Thorold shall have approved the Transition of the Project to Niagara as contemplated by this Agreement; and
- d) the Board of Trustees of Brock University shall have approved the Transition of the Project to Niagara as contemplated by this Agreement.

3.02 CGHS Board Approval Condition

The Closing shall be conditional upon the Board of Directors of CGHS having approved the terms and conditions of this Agreement in its sole, absolute and unfettered discretion on or before July 30, 2020.

3.03 Provincial TPA Condition

On or before July 30, 2020, the Province of Ontario, Niagara and CGHS shall have executed an Acknowledgement and Consent (substantially in the form as Schedule B) (the “**Provincial Acknowledgement and Consent**”) whereby the Province consents to the Transition and Niagara agrees to, in addition to being a Participant, also become a Recipient party to the Provincial TPA jointly with CGHS, such that Niagara and CGHS shall be jointly and severally liable to the Province under the Provincial TPA as Recipients and Niagara shall also have all the benefits and privileges conferred on a Recipient under the Provincial TPA.

3.04 Due Diligence

On or before the Due Diligence Condition Date, Niagara shall have satisfied itself in its sole, absolute and unfettered discretion with respect to each of the following:

- a) all of the representations and warranties of CGHS made in or pursuant to this Agreement are true and correct;
- b) the Material Agreements and all other materials, documents and information delivered to Niagara by CGHS, the status of the Project, the environmental condition of the CGP Lands, the geotechnical condition of the CGP Lands, the Permits, compliance of the Project with Applicable Laws, Niagara's ability to obtain satisfactory funding for the Project, and such other due diligence reviews, tests, inspections, investigations and evaluations as Niagara may choose to undertake or consider;
- c) the Funds Reconciliation; and
- d) Niagara having obtained reliance letters from any third party consultants identified by Niagara who prepared any reports in respect of the Project on terms and conditions satisfactory to Niagara.

3.05 Assignment Condition

On or before the Assignment Condition Date:

- a) CGHS, at its sole cost and expense, shall have entered into legally binding agreements with the relevant counterparties to each of the applicable Material Agreements that contain a scope of work related to the Henley Rowing Centre and/or any other scope of work that is not related to the Canada Games Park to amend those Material Agreements to remove all work associated with the Henley Rowing Centre and any other work that is not part of the Canada Games Park from the scope of the Material Agreements, satisfactory to Niagara in all respects, and has delivered copies of such amending agreements to Niagara;
- b) CGHS shall have caused to be delivered to Niagara written assignments, consents to assignment and counterparty estoppel of all of the Material Agreements to Niagara from each of the counterparties to each of the Material Agreements, substantially in the form attached at Schedule "A" and each on terms and conditions satisfactory to Niagara;
- c) CGHS, Niagara and the Province shall have executed the Provincial Acknowledgement and Consent, with respect to the Provincial TPA consenting to the Transition and confirming that Niagara shall, in addition to being a Participant, become a Recipient party jointly with CGHS as of and from the Closing Date, on terms and conditions satisfactory to CGHS and Niagara, each in its absolute discretion;

- d) CGHS shall have caused to be transferred to Niagara any Permits obtained by CGHS and relating to the construction of the Project that are required to be transferred for the purposes of this Transition;
- e) CGHS shall have caused to be delivered to Niagara written confirmation or certificates from the relevant insurance companies which have issued the Insurance Policies confirming that of all Insurance Policies will be transferred, endorsed and/or reissued to Niagara on the Closing Date with the intent that Niagara shall have the full benefit and entitlements under all of the Insurance Policies and written confirmation that the Insurance Policies are in full force and effect with no change to the insurance premiums, each in a form satisfactory to Niagara; and
- f) CGHS shall have caused to be delivered to Niagara written confirmation or certificates from the relevant bond issuers which have issued the Performance Bond and Labour and Materials Payment Bond that of all such bonds will be transferred to Niagara on the Closing Date and are in full force and effect, each in a form satisfactory to Niagara.

3.06 Consortium Agreement

On or prior to Closing, Niagara shall have entered into:

- a) an agreement with the Consortium in respect of the Canada Games Park, and
- b) a lease, license or other arrangement with Brock University to permit construction of the Project to continue after Closing.

3.07 Waiver and Satisfaction of Conditions

- a) The condition set out in Section 3.02 is inserted solely for the benefit of CGHS and may be waived by CGHS, at any time or times by Notice to Niagara. Any waiver of a condition or conditions by CGHS shall not constitute or be construed as a waiver of any other conditions, and shall not constitute or be construed as a waiver of the obligations of Niagara under this Agreement or the rights of CGHS in respect thereof, which rights are expressly reserved.
- b) The conditions set out in Sections 3.03, 3.05 and 3.06b) are inserted for the mutual benefit of Niagara and CGHS and may not be waived by either Party.
- c) The conditions set out in Sections 3.01, 3.04 and 3.06a) are inserted solely for the benefit of Niagara and may be waived by Niagara, in whole or in part, at any time or times by Notice to CGHS. Any waiver of a condition or conditions, in whole or in part, by Niagara shall not constitute or be construed as a waiver of any other conditions, and shall not constitute or be construed as a waiver of the obligations of CGHS under this Agreement or the rights of Niagara in respect thereof, which rights are expressly reserved.

3.08 CGHS Responsibility

CGHS shall use commercially reasonable efforts to do all things necessary to satisfy the conditions set out in Sections 3.02, 3.03, 3.04 and 3.05.

3.09 Niagara Responsibility

Niagara shall use commercially reasonable efforts to do all things necessary to (i) satisfy the conditions set out in Section 3.06, (ii) assist CGHS to satisfy the conditions set out in Section 3.03 and 3.05c), and (iii) ensure that Brock University permits construction of the Project to continue without delay pending the satisfaction of the conditions precedent in Article 3 of this Agreement.

ARTICLE 4 DUE DILIGENCE

4.01 Deliveries by CGHS

Niagara acknowledges that CGHS has, prior to the date of this Agreement, delivered to Niagara for Niagara's review certain information and documentation in order to conduct due diligence with respect to the Transition. Within three (3) Business Days following a written request from Niagara, CGHS shall deliver to Niagara such further documentation and information relating to the Project which is reasonably requested by Niagara prior to the Due Diligence Condition Date which requests may include, but not be limited to:

- a) copies of all Material Agreements and any documents that are supplementary or collateral thereto;
- b) the Books and Records;
- c) the Project budgets and Financial Statements;
- d) copies of all Permits;
- e) evidence of all invoices and receipts for payments under the Material Agreements;
- f) copies of all bonds and insurance policies and certificates in respect of the Project and any material correspondence with any bond holder and insurer in respect of the Project; and
- g) copies of any surveys, plans, specifications, drawings, soil test reports, environmental reports and engineering reports relating to the Project.

4.02 Authorizations

Within three (3) Business Days of receipt of a request from Niagara, CGHS shall execute and deliver to Niagara authorizations permitting any counterparty to a Material

Agreements, the bond holders and insurers in respect of the Project, and Governmental Authorities to release information respecting the Project to Niagara.

4.03 Access to the Project

CGHS shall permit Niagara and its employees, agents, representatives, consultants and contractors to have access to the Project and CGP Lands, from time to time, at reasonable times and subject to permission from Aquicon, which permission CGHS shall use commercially reasonable efforts to promptly obtain, for the purpose of conducting such enquiries, tests, inspections and investigations as Niagara may reasonably consider necessary or desirable.

ARTICLE 5 ASSIGNMENT

5.01 Material Agreements

On the Closing Date:

- a) CGHS does hereby assign, transfer and set over unto Niagara, as of and from the Closing Date:
 - i. all of the right, title and interest of CGHS under, in and to the Material Agreements;
 - ii. the benefit of all covenants by the other contracting party or parties under each of the Material Agreements;
 - iii. the benefit of all guarantees and indemnities in respect of the obligations of the other contracting party or parties under each of the Material Agreements and any security relating to the obligations of such party or parties under each of the Material Agreements (if any); and
 - iv. all other rights, benefits and advantages whatsoever contained in each of the Material Agreements;

with full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for all monies payable thereunder and to enforce performance of the covenants thereunder, each on the terms and conditions of the form of Assignment, Consent to Assignment and Counterparty Estoppel agreement attached at Schedule "A".

- b) Niagara hereby accepts the assignment and assumes all of the CGHS's obligations and liabilities with respect to the Material Agreements as of and from the Closing Date each on the terms and conditions of the form of Assignment, Consent to Assignment and Counterparty Estoppel agreement attached at Schedule "A".

- c) CGHS hereby acknowledges that, notwithstanding the assignment herein contained, CGHS shall not be released from any of its obligations under the Material Agreements prior to the date of the assignment.

5.02 Indemnities

- a) CGHS covenants and agrees to indemnify and save harmless Niagara from and against Claims arising pursuant to or in connection with the Material Agreements with respect to any matter that has occurred prior to the Closing Date.
- b) Niagara covenants and agrees to indemnify and save harmless CGHS from and against any and all Claims arising pursuant to or in connection with the Material Agreements with respect to any matter that occurs on or after the Closing Date.
- c) CGHS covenants and agrees to indemnify and save harmless Niagara from and against Claims arising pursuant to or in connection with CGHS's obligations under the Provincial TPA, except to the extent that any such Claim was caused or contributed to as a result of any action or omission by Niagara.
- d) Niagara covenants and agrees to indemnify and save harmless CGHS from and against any and all Claims arising pursuant to or in connection with Niagara's obligations under the Provincial TPA, except to the extent that any such Claim was caused or contributed to as a result of any action of omission by CGHS,

5.03 Provincial TPA

The Parties hereby agree and declare that the following shall apply with respect to the Provincial TPA:

- a) CGHS and Niagara hereby acknowledge and agree that as of the Closing Date and upon the execution of the Provincial Acknowledgement and Consent by the Province of Ontario, Niagara and CGHS, both Niagara and CGHS shall be jointly and severally liable as Recipients under the Provincial TPA and Niagara shall also be entitled to all of the benefits, rights and privileges as a Recipient thereunder.
- b) Niagara, and CGHS agree that they will:
 - i. take or cause to be taken such action in its name as may be required to provide each other with the benefits thereof, at the direction of each other, provided that such actions or directions are consistent with the terms and conditions of this Agreement;
 - ii. update the designation of the account identified in Section A.4.1(c) of the Provincial TPA as the Project Account and irrevocably direct and ensure that all funds payable under the Provincial TPA shall be paid directly to the Project Account;
 - iii. observe and perform all of its obligations under the Provincial TPA;

- iv. keep each other fully informed of all matters related to the Provincial TPA and promptly forward to each other all documents, correspondence, notices and other information received by them in relation to the Provincial TPA;
- v. coordinate all matters with respect to the funding of the Project under the Provincial TPA with each other; and

otherwise promptly do all things and acts necessary to comply with and administer the Provincial TPA.

ARTICLE 6 RELEASE FROM PART OF NIAGARA TPA

6.01 Release

The Parties acknowledge that the capital funding requirements under sections 7.1(b) and 7.1(d) of the Niagara TPA have been met via Niagara's commitments and obligations under Article A.34.0 of the Provincial TPA. CGHS hereby releases Niagara and its successors and assigns effective as of the Closing Date from any Claims that CGHS may have now or in the future or may have had against Niagara with respect to the capital funding requirements under sections 7.1(b) and 7.1(d) of the Niagara TPA provided that Niagara complies with all of its commitments and obligations under Article A.34.0 of the Provincial TPA.

ARTICLE 7 - OTHER MATTERS

7.01 Offsite Works

CGHS shall be responsible, at its sole cost and expense, for the development of the Offsite Works. CGHS shall ensure that the Offsite Works are completed in accordance with all Permits and Applicable Law and so as to ensure that the Project does not incur any delays, disruption or interference as a result of any failure or delay in completing the Offsite Works and so as to ensure that the Canada Games Park is fully serviced by the Offsite Works prior to the commencement of the Games.

7.02 Termination of Offer to Lease and Venue Use Agreement

CGHS shall be solely responsible for the termination of, and all liability and Claims under, the Offer to Lease, at CGHS's sole cost and expense. CGHS shall be responsible for making the arrangements with the Consortium for CGHS's preparation and use of the CGP Lands and/or Canada Games Park before and during the Games.

7.03 Value in Kind Arrangements

CGHS shall be solely responsible, at its sole cost and expense, for observing, performing and satisfying all arrangements and agreements made by CGHS with the counterparties to the Material Agreements and any other third parties prior to the Closing Date, for any value in kind arrangements or agreements relating to the Canada Games Park and/or Project. Niagara agrees to abide by all such arrangements and agreements provided for in the Material Agreements, from and after the Closing Date.

ARTICLE 8 SUPPORT SERVICES

8.01 Key Personnel

- a) CGHS shall use reasonable efforts to ensure that the following CGHS personnel (the “**Key Personnel**”) are the primary contacts for Niagara and will be available to support and provide assistance, information and documentation in relation to the Project and the Canada Games Park (the “**Services**”):
 - i. Doug Hamilton;
 - ii. Matt Hill; and
 - iii. Mario D’Uva.
- b) Notwithstanding the foregoing, CGHS shall be entitled to add or remove any of the Key Personnel in its reasonable discretion; provided that any replacement Key Personnel shall be competent in carrying out the Services in accordance with this Agreement; and in doing so, the duties and obligations of CGHS under this Agreement shall not be diminished. CGHS shall give Niagara not less than five (5) Business Days advance written notice of any additions or removals of the Key Personnel.
- c) CGHS shall ensure that the Key Personnel are familiar with the specific terms and conditions of this Agreement which apply to the provision of the Services in which they are involved.

8.02 Share Documents

CGHS shall promptly provide true and accurate copies of all information, documentation, and materials relating to the Project requested by Niagara.

8.03 Games Equipment

Prior to the commencement of the Games, CGHS shall supply and install the Games Equipment in accordance with the venue use agreement to be entered into pursuant to Section 7.02 of this Agreement. CGHS shall not be entitled to remove the Games

Equipment from Canada Games Park after the Games unless such removal is in accordance with the Legacy Plan.

8.04 Cooperation

Each Party shall cooperate with the other Party in relation to the Project, the Canada Games Park and their readiness for the Games. Each Party shall not do anything that delays the construction of the Project or its readiness for use at the Games. UEM shall continue to report jointly to Niagara, the other Consortium members and CGHS, pursuant to the Project Manager Agreement.

8.05 Conduct until Closing

Without in any way limiting any other obligations of CGHS hereunder CGHS shall, until the Closing continue to perform the Project in a manner consistent with that of a prudent owner of a similar project, and shall not, without the prior written consent of Niagara, enter into any transaction or action or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of CGHS in this Agreement.

ARTICLE 9 FUNDS & FUNDING

9.01 Funding Matters

- a) By no later than July 15, 2020, CGHS shall prepare a schedule, to be attached hereto as Schedule “C”, containing a ledger or ledgers detailing revenue and expenses in respect of the Project and the allocation of such revenue and expenses as between the Parties (the “**Funds Reconciliation**”). The Funds Reconciliation shall include details:
 - i. breaking down expenses by supplier, and identifying whether each expense has been accrued, invoiced, and/or paid, and all forecasted expenses with respect to the Project;
 - ii. breaking down revenues by source of revenues, and whether each revenue has been committed, invoiced and/or received; and
 - iii. construction holdbacks, cash or investments held as working capital for the Project.
- b) With respect to the allocation of the revenue and expenses in respect of the Project, the Parties agree that as part of the Funds Reconciliation:
 - i. CGHS shall be reimbursed from the committed revenue, without duplication, for all expenses which it has incurred in respect of the Project

as at the Closing Date, including all non-recoverable HST in respect of such expenses;

- ii. CGHS shall be provided funds from the committed revenue for all expenses budgeted for the Games Equipment and Offsite Works, including all non-recoverable HST budgeted in respect of the Games Equipment and Offsite Works; and
 - iii. The remaining revenue shall be allocated to Niagara.
- c) The Funds Reconciliation shall be prospective to the Closing Date and shall be updated, if necessary, on the Closing Date.
 - d) On the Closing Date, all cash or investments held by CGHS as working capital for the Project other than that reimbursed or provided to CGHS pursuant to Sections 9.01b)i and ii , shall be deposited into the Project Account.

9.02 Surplus in funds

- a) Any surplus in funds in relation to hosting the Games will first be paid by CGHS to Niagara to fund any deficit arising in relation to the costs of constructing the Project.
- b) Any surplus in funds received by Niagara in relation to constructing the Project will be applied to, firstly, fund any financial deficit associated with hosting the Games in accordance with Niagara’s responsibility under section 7.1(a) of the Niagara TPA and, secondly, to fund the legacy fund established pursuant to the Legacy Plan.

ARTICLE 10 NAMING RIGHTS, SPONSORSHIP & LEGACY

10.01 Sponsorship Committee

- a) CGHS will use commercially reasonable efforts to assist Niagara to secure sponsorship revenue from the sale of long term naming rights in respect of Canada Games Park (which the Consortium is responsible for) to fund the uncommitted elements of the budget established for Canada Games Park in the amount of five million, four hundred thousand dollars (\$5,400,000.00) (the “**Sponsorship Revenue**”).
- b) Niagara will use commercially reasonable efforts to assist CGHS to secure other sponsorship revenue to fund the CGHS budget to host the Games.
- c) CGHS shall establish and administer a committee (the “**Sponsorship Committee**”) for the purpose of, *inter alia*, securing the Sponsorship Revenue.

- d) The membership of the Sponsorship Committee shall include appropriate community leaders from the Niagara Region and representatives of each of the Consortium.
- e) CGHS shall prepare reasonable terms of reference for the Sponsorship Committee, which shall include:
 - i. The number of members;
 - ii. The identity of the members;
 - iii. The protocols and schedule for meetings;
 - iv. The need for the Committee to develop a plan for securing the Sponsorship Revenue;
 - v. Such other matters of governance of the Sponsorship Committee that CGHS and Niagara deem appropriate;

by no later than July 15, 2020.

10.02 Legacy Matters

- a) Subject to Section 10.02b), CGHS acknowledges that it has no interest, right or title in Canada Games Park or the CGP Lands, save and except as may be set out in the venue use agreement to be made pursuant to Section 7.02 of this Agreement, and accordingly, shall not have the right to make any commitments, bind or act as the agent of Niagara or any member of the Consortium, in respect of the Canada Games Park for any period following the Games.
- b) CGHS acknowledges that Niagara has or will be entering into certain arrangements, including, without limitation the Legacy Lease and a consortium agreement with the Consortium in respect of the Canada Games Park and Legacy Period. Niagara will use commercially reasonable efforts to ensure that the Legacy Lease and consortium agreement includes, as applicable, provision for implementation of the Legacy Plan.
- c) Niagara shall be responsible for satisfying the requirements of the Canada Games Council, Province of Ontario and Her Majesty in right of Canada in relation to naming, signage and the acknowledgement of the sources of financial support in relation to Canada Games Park.
- d) Niagara shall be responsible for the long term naming rights in respect of Canada Games Park.

ARTICLE 11 REPRESENTATIONS & WARRANTIES

11.01 CGHS Representations and Warranties

CGHS represents and warrants to Niagara that:

- a) CGHS is a corporation existing under the laws of Ontario and has the necessary corporate authority, power and capacity to enter into the Material Agreements and the Provincial TPA and to enter into this Agreement and carry out the transaction contemplated by this Agreement on the terms and conditions herein contained;
- b) this Agreement has been duly authorized by all corporate action required to be taken by CGHS and constitutes a legal, valid and binding obligation of CGHS, enforceable in accordance with its terms;
- c) CGHS has the right to assign the Material Agreements and to complete the transaction as contemplated herein on the Closing Date;
- d) CGHS is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof, and no petition for a receiving order has been presented in respect of it. CGHS has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver or interim receiver has been appointed in respect of it or any of its undertakings, property or assets (including any of the Material Agreements and Provincial TPA) and no execution or distress has been levied on any of its undertakings, property or assets (including any of the Material Agreements and Provincial TPA), nor have any proceedings been commenced in connection with any of the foregoing.
- e) The execution, delivery and performance of this Agreement by CGHS and the completion of the transactions contemplated hereunder will not (whether after the passage of time or notice or both) result in:
 - i. the breach or violation of any of the provisions of, or constitute a default under, or give any person the right to seek or cause a termination, cancellation, amendment or renegotiation of any Material Agreement to which it is a party, the Provincial TPA, or by which any of its undertakings, property or assets is bound or affected;
 - ii. the breach or violation of any of the provisions of, or constitute a default under, or conflict with any of its obligations under:
 - A. any provision of its constating documents or resolutions of its board of directors (or any committee thereof) or shareholders;

- B. any judgment, decree, order or award of any Governmental Authority having jurisdiction over it;
 - C. any approval issued to, or held by, CGHS or held, for the benefit of or necessary to the operation of the Project; or
 - D. any Applicable Law;
- iii. the creation or imposition of any encumbrance over any of the Material Agreements and Provincial TPA; or
 - iv. the requirement of any approval from any of its creditors.
- f) CGHS has complied with and has executed the Project, as at the Closing Date, in compliance with all Applicable Laws;
 - g) All accounts for work done, services performed and materials supplied, placed or furnished on or in respect of the Project and/or in respect of the CGP Lands as at the Closing at the request of or on behalf of CGHS have been or will have been fully accounted for and satisfied by Closing;
 - h) Except as disclosed to Niagara prior to the Due Diligence Condition Date, CGHS has not entered into any agreement or other arrangement with the counterparties to the Material Agreements or other third parties for the payment or contribution of in kind value, compensation or consideration in relation to the Project or Canada Games Park.
 - i) CGHS is not aware of any person that claims or may be entitled to claim a lien against the CGP Lands under the *Construction Act* (Ontario) or any similar legislation.
 - j) to the best of CGHS's knowledge and belief, no Hazardous Substance has been stored, treated or disposed of on the CGP Lands except in compliance with Applicable Laws; CGHS has not received notice of and has no knowledge or information of any pending, contemplated or threatened judicial, administrative or other action relating to the existence of a Hazardous Substance on or affecting the CGP Lands and has no reason to believe that any cause of action for such exists.
 - k) CGHS has not received notice and is not aware of any pending or threatened litigation or of any other judicial or administrative proceeding affecting the Project or in respect of any of the Material Agreements and Provincial TPA;
 - l) CGHS has not received any notice of and is not aware of any outstanding work orders, deficiency notices, orders to comply or directives against the Project or any part thereof;
 - m) CGHS has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not in default or alleged to be in default in respect of, any Material Agreement and the Provincial TPA, to which it is a party

or by which it is bound or affected. All Material Agreements and the Provincial TPA are in good standing and in full force and effect, and no event, condition or occurrence exists that, after notice or lapse of time or both, would constitute a default under any Material Agreement and the Provincial TPA. Each of the Material Agreements constitutes the entire agreement with the counterparty(ies) thereunder in respect of the Project (other than the City of Thorold's participation in the Provincial TPA) and there is no dispute between CGHS and any other party under any Material Agreement and the Provincial TPA. None of the Material Agreements contain terms under which the execution or performance of this Agreement would give any other contracting party the right to terminate or adversely change the terms of that Material Agreement. None of those Material Agreements and the Provincial TPA have been assigned, in whole or in part;

- n) CGHS has obtained all Permits necessary for the construction of the Project. Each such Permit is valid, subsisting and in good standing. CGHS is not in default or in breach of the terms of any Permit and, to the knowledge of CGHS, there exists no grounds nor is any action or proceeding pending or, to the knowledge of CGHS, threatened to revoke, suspend, amend or limit any Permit. True, accurate and complete copies of all Permits relating to the Project have been provided to Niagara.
- o) The Financial Statements:
 - i. have been prepared in accordance with GAAP, applied on a basis consistent with that of the preceding periods;
 - ii. are complete and accurate in all respects;
 - iii. accurately disclose the assets, liabilities (whether accrued, absolute, contingent or otherwise) and financial condition of the Project, as at the dates thereof and for the periods covered thereby;
 - iv. reflect, all proper accruals as at the dates thereof and for the periods covered thereby of all amounts which, though not payable until a time after the end of the relevant period, are attributable to activities undertaken in respect of the Project during or prior to that period; and
 - v. contain or reflect, adequate provision for all liabilities and obligations of CGHS of any nature, whether absolute, contingent or otherwise, matured or unmatured, in respect of the Project, as at the date thereof.
 - vi. No information has become available to CGHS that would render the Financial Statements incomplete or inaccurate.
 - vii. All projections, including forecasts, budgets, pro formas and business plans provided to Niagara were prepared in good faith based on assumptions which were believed to be reasonable and are believed to be reasonable estimates of the Project.

- viii. CGHS has disclosed the existence of and made available for review by Niagara all Books and Records. The system of internal accounting controls is sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization and that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets. The Books and Records:
- A. accurately reflect the basis for the financial condition and expenses of the Project in the Financial Statements;
 - B. together with all disclosures made as part of this Agreement and during Niagara's due diligence review, present fairly the financial condition and the expenses of the Project as of and to the date of this Agreement and Closing; and
 - C. are not recorded, stored, maintained, operated or otherwise dependent on or held by any means (including any electronic, mechanical or photographic process, whether computerized or not), which are not or will not be available to Niagara after Closing.
- p) Niagara acknowledges that the aforesaid Financial Statements and projections may change or be impacted or affected by force majeure, including the current pandemic. CGHS has no liabilities, obligations, indebtedness or commitments, whether accrued, absolute, contingent or otherwise, and is not a party to or bound by any agreement of guarantee, support, indemnification, assumption or endorsement of, or any other similar commitment with respect to the Project, that have not been disclosed in the Financial Statements or in the disclosures made as part of this Agreement and during Niagara's due diligence review;
- q) CGHS has not made any binding commitments in respect of the naming rights of Canada Games Park or in respect of any legacy matter in relation to Canada Games Park save and except as set out in the Provincial TPA, the Niagara TPA, the Hosting Agreement with the Canada Games Council, the Contribution Agreement with Canada, and the Transfer Payment Agreement with the Province of Ontario dated November 1, 2017; and
- r) the materials and documents delivered or which will be delivered by CGHS to Niagara pursuant to Section **Error! Reference source not found.** hereof are true and complete copies of all of the materials of the nature described therein as are in the possession or control of CGHS.

The representations and warranties that are made herein are true, accurate and complete as at the date of this Agreement and shall be true, accurate and complete as at the Closing Date.

11.02 Niagara Representations and Warranties

Niagara represents and warrants to CGHS that:

- a) Niagara is a municipal corporation and has the necessary corporate authority, power and capacity to enter into the Provincial TPA as a Recipient party, and to enter into this Agreement and carry out the transactions contemplated by this Agreement on the terms and conditions herein contained;
- b) Subject to satisfaction of the conditions set out in Article 3, this Agreement has been duly authorized by Niagara's council and constitutes a legal, valid and binding obligation of Niagara, enforceable in accordance with its terms;
- c) Subject to satisfaction of the conditions set out in Article 3, Niagara has the authority and right to accept an Assignment of the Material Agreements and to complete the transaction as contemplated herein on the Closing Date;
- d) Subject to satisfaction of the conditions set out in Article 3, the execution, delivery and performance of this Agreement by Niagara and the completion of the transactions contemplated hereunder will not (whether after the passage of time or notice or both) result in:
 - i. the breach or violation of any of the provisions of, or constitute a default under, or conflict with any of its obligations under:
 - A. any provision of its constating documents or resolutions of its council or committees thereof;
 - B. any judgment, decree, order or award of any Governmental Authority having jurisdiction over it;
 - C. any approval issued to or held by Niagara, or held for the benefit of or necessary to the operation of the Project; or
 - D. any Applicable Law;
 - ii. the requirement of any approval from any of its creditors.

The representations and warranties that are made herein, are true, accurate and complete as at the date of this Agreement and shall be true, accurate and complete as at the Closing Date.

ARTICLE 12 – TERMINATION

12.01 Termination

The term of this Agreement will expire on the earliest of: (A) the date of the final dissolution of CGHS; (B) March 31, 2030; and (C) the date of the mutual agreement of

both Parties in accordance with Section 13.06 of this Agreement. Niagara may terminate this Agreement at any time prior to the Closing Date by giving written notice to CGHS, which notice shall state the date on which the termination is to become effective.

ARTICLE 13 GENERAL PROVISIONS

13.01 Survival of Obligations

The rights and obligations of the Parties specified in any provision of this Agreement which by their nature would reasonably be interpreted as intended by the Parties to survive the termination of this Agreement shall survive such termination.

13.02 Severability

The invalidity or unenforceability of any particular term of this Agreement will not affect or limit the validity or enforceability of the remaining terms.

13.03 Independence of Parties

Nothing in this Agreement shall be deemed to create any partnership, agency or joint venture relationship between the Parties hereto.

13.04 Entire agreement relating to Transition

This Agreement constitutes the entire agreement between the Parties relating to the Transition of the Project and other matters as contemplated herein; there are no representations, covenants, or other terms other than those set out in this Agreement relating to its subject matter, and this Agreement supersedes any previous discussions, understandings, or agreements, between the Parties relating to its subject matter. Except as specifically set out in Article 6 of this Agreement, this Agreement does not have any effect whatsoever on any of the rights and obligations in the Niagara TPA. Further, except as specifically set out in this Agreement, this Agreement does not have any effect whatsoever on any of the rights and obligations in the Provincial TPA, including the obligations of Niagara in Article A.34.0 of the Provincial TPA. The Niagara TPA and the Provincial TPA shall continue in full force and effect.

13.05 Further assurances

Each Party, upon receipt of Notice by another Party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to this Agreement.

13.06 Amendment

This Agreement may only be amended by a written document signed by each of the Parties.

13.07 Binding effect

This Agreement enures to the benefit of and binds the Parties and their respective heirs, trustees, executors, administrators, and other legally appointed representatives, successors, and permitted assigns.

13.08 Assignment

This Agreement may not be assigned by CGHS. This Agreement may not be assigned by Niagara without the prior written consent of CGHS.

13.09 Niagara as Municipality

The Parties acknowledge that although Niagara is a Party to this Agreement, nevertheless, Niagara is and shall each remain an independent planning authority and municipality with all requisite powers and discretion provided under applicable law, including, without limitation, the *Planning Act* (Ontario) and the *Municipal Act*, 2001 (Ontario).

13.10 Notice

Any notice, request, demand, consent, advice, approval or other communication provided for or permitted under this Agreement shall be in writing and may be given by personal delivery or electronic mail, addressed to the Party for which it is intended at its address as follows:

Niagara:

The Regional Municipality of Niagara
1815 Sir Isaac Brock Way, PO Box 1042
Thorold, Ontario
L2V 4T7
Attention: Ron Tripp
Email: Ron.Tripp@niagararegion.ca

CGHS:

2021 Canada Summer Games Host Society Inc.
20 Corporate Park Drive, Suite 302, Box 10
St. Catharines, Ontario
L2S 3W2
Attention: Matt Hill
Email: mhill@2021canadagames.ca

provided, however, that any Party may change its address for purposes of receipt of any such communication to another address in Canada by giving 10 (ten) days' prior written notice of such change to the other Party in the manner above prescribed. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if

received on or before 5:00 p.m. on any Business Day, or if not, on the next Business Day following the day of delivery.

13.11 Governing law

The laws of Ontario and the laws of Canada applicable in that province, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Agreement.

13.12 Counterparts

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

13.13 Time is of the essence

Time is of the essence of this Agreement and of every part of this Agreement. No extension of time or other variation of this Agreement will operate as a waiver of this provision.

13.14 Effective Date

This Agreement is effective as of the date shown at the top of the first page, even if any signatures are made after that date.

13.15 No Merger

None of the covenants and agreements of the Parties or any of them contained in this Agreement will merge in any certificates or documents signed or delivered at or subsequent to the date hereof and all shall continue in full force and effect.

[The remainder of this page has been intentionally left blank]

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

**THE REGIONAL MUNICIPALITY OF
NIAGARA**

By: _____
Name: James Bradley
Title: Regional Chair

By: _____
Name: Ann-Marie Norio
Title: Regional Clerk

I/We have the authority to bind the Corporation

**2021 CANADA GAMES HOST
SOCIETY INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have the authority to bind Canada Games Host
Society Inc.

SCHEDULE "A"

**FORM OF ASSIGNMENT, CONSENT TO ASSIGNMENT
AND COUNTERPARTY ESTOPPEL**

THIS AGREEMENT is made as of the ____ day of June, 2020.

B E T W E E N:

2021 CANADA GAMES HOST SOCIETY INC.

(hereinafter called the "Assignor")

OF THE FIRST PART

- and -

THE REGIONAL MUNICIPALITY OF NIAGARA

(hereinafter called the "Assignee")

OF THE SECOND PART

- and -

[COUNTERPARTY]

(hereinafter called the "Counterparty")

OF THE THIRD PART

RECITALS:

- A. The Assignor and the Counterparty have entered into a [agreement description] in connection with the development of new sport infrastructure and equipment, and much of that new sport infrastructure and equipment is to be located at a new site to be known as "Canada Games Park", as amended from time to time (the "Assigned Agreement").
- B. The Assignor has requested that the Assignee takes over the construction and development of Canada Games Park and have entered into an agreement in respect of the same dated [] between the Assignor and the Assignee (the "Transition Agreement").

- C. In connection with the consummation of the transactions described in the Transition Agreement, the Assignor desires to assign all of its future rights and obligations pursuant to the Assigned Agreement to the Assignee.
- D. The Counterparty agrees to provide its consent to the assignment of the Assigned Agreement contemplated herein and to acknowledge the status of the Assigned Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) now paid by each party hereto to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

1. Assignment. The Assignor hereby assigns, transfers and sets over to the Assignee absolutely,
 - (a) all of the right, title and interest of the Assignor under, in and to the Assigned Agreement;
 - (b) the benefit of all covenants by the Counterparty under the Assigned Agreement;
 - (c) the benefit of all guarantees and indemnities in respect of the obligations of the Counterparty under te Assigned Agreements and any security relating to the obligations of the Counterparty under the Assigned Agreement (if any); and
 - (d) all other rights, benefits and advantages whatsoever contained in the Assigned Agreement;with full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for all monies payable thereunder and to enforce performance of the covenants thereunder.
2. Assumption. Effective as of the date first written above, the Assignee does hereby assume the Assigned Agreement and covenants and agrees to perform, comply with and discharge each of the duties and obligations of the Assignor under the Assigned Agreement arising from and after Closing.
3. Assignor not Released. The Assignor hereby acknowledges that, notwithstanding the assignment herein contained, the Assignor shall not be released from any of its obligations under the Assigned Agreement prior to the date of assignment.
4. Indemnity from Assignor. The Assignor covenants and agrees to indemnify and save harmless the Assignee from and against any and all claims, costs, expenses and liability the Assignee may suffer or incur in respect of the Assigned Agreement relating to any period prior to the date first written above.

5. Indemnity from Assignee. The Assignee covenants and agrees to indemnify and save harmless the Assignor from and against any and all claims, costs, expenses and liability the Assignor may suffer or incur in respect of the Assigned Agreement relating to any period from and after the date first written above.
6. Full Force and Effect. The Assignor represents and warrants to the Assignee that the Assigned Agreement is presently in full force and effect and has not been cancelled and, except as disclosed in Exhibit A, has not been amended.
7. Further Assurances. Each of the Assignor and Assignee shall execute such documents and other instruments and perform such further acts as may be reasonably required or desirable to effect the provisions hereof and the transactions contemplated hereby.
8. Counterparty Consent, Estoppel and Other Acknowledgments. The Counterparty hereby represents, warrants, agrees and certifies, with the intent that the Assignee (and its successors and assigns) may rely on the following and that the information contained herein shall be binding on the Counterparty:
 - (a) The Assigned Agreement consists entirely of the agreements set out in Exhibit A and is currently in full force and effect and, together with this Agreement, constitutes the entire agreement between the parties thereto.
 - (b) The Assigned Agreement has not been amended, modified or otherwise changed except for such modifications and amendments as are identified in Exhibit A.
 - (c) Neither the Assigned Agreement nor any rights thereunder have been assigned by the Counterparty or the Assignor.
 - (d) Except as set out on Exhibit B, the Assignor has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not in default or alleged to be in default in respect of the Assigned Agreement. The Assigned Agreement is in good standing and in full force and effect, and except as set out in Exhibit B, no event, condition or occurrence exists that, after notice or lapse of time or both, would constitute a default under the Assigned Agreement.
 - (e) Except as set out on Exhibit B, there is no dispute, claim, setoff, defence or counterclaim between the Assignor and the Counterparty pursuant to or in connection with the subject matter of the Assigned Agreement.
 - (f) The Counterparty is not aware of any person that claims or may be entitled to claim a lien against the lands upon which the Canada Games Park is being constructed under the *Construction Act* (Ontario) or any similar legislation.
 - (g) Except as set out in Exhibit B, the Assignor and, to the best of the Counterparty's knowledge, the Counterparty, are not in default or breach of the Assigned Agreement, and no event has occurred which constitutes, or with the lapse of time

or the giving of notice or both would constitute, a default or breach by the Assignor or the Counterparty of the Assigned Agreement.

- (h) The Counterparty hereby acknowledges and irrevocably consents to the assignment of the Assigned Agreement by the Assignor to the Assignee.
 - (i) The Counterparty hereby acknowledges and agrees that the Assignee shall not be responsible for any costs, expenses or liability in respect of the Assigned Agreement relating to any period prior to the date first written above.
 - (j) [Such other certifications as the Assignee may reasonable require upon the conduct of due diligence]
9. Successors and Assigns. This Agreement shall be binding upon, and shall enure to the benefit of, the parties hereto, and their respective successors and assigns.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, without regard to conflict of law principles.
11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic or facsimile signatures shall have the same effect as originals.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

2021 CANADA GAMES HOST SOCIETY INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

**THE REGIONAL MUNICIPALITY OF
NIAGARA**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the municipality.

[COUNTERPARTY]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

EXHIBIT A

Assigned Agreement Documentation

- (i) [■]

EXHIBIT B
Defaults, Claims, Setoffs, etc.

(i) [■]

PROVINCIAL ACKNOWLEDGEMENT AND CONSENT**CONTEXT**

- A. 2021 Canada Games Host Society Inc. (“**CGHS**”), as recipient, and Her Majesty the Queen in Right of Ontario (the “**Province**”), as transferor, and The Regional Municipality of Niagara (“**Niagara**”), The Corporation of the City of St. Catharines, The Corporation of the City of Thorold and Brock University, as participants, have entered into the Transfer Payment Agreement dated August 30, 2019 and executed on or about March 31, 2020 with respect to certain funding for the Canada Games Park construction (the “**Provincial TPA**”);
- B. CGHS has advised that it would be preferable to transition responsibility for the balance of the construction of Canada Games Park to Niagara for several reasons including so that CGHS can focus on organizing and delivering the 2021 Canada Summer Games and the development of other facilities such as the Henley Rowing Centre;
- C. Niagara is agreeable to assuming responsibility for the balance of the construction of Canada Games Park (the “**Transition**”) on terms set out in the Transition Agreement attached hereto as Schedule “A”;
- D. As set out in Schedule “A”, as conditions of the Transition:
- a. Niagara is to become a party to the Provincial TPA, as Recipient; and
 - b. the written consent of the Province to the Transition is required.

NOW THEREFORE THIS ACKNOWLEDGEMENT AND CONSENT WITNESSES that in consideration of the mutual covenants hereinafter set forth for good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the undersigned) the parties agree as follows:

ACKNOWLEDGEMENT

The parties hereto agree that Niagara shall be a party to the Provincial TPA as Recipient, jointly and severally with CGHS.

CONSENT

The Province hereby consents to the Transition.

This Consent given on this ____ day of July, 2020.

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ONTARIO**

Name:
Title:

I have authority to bind the Province.

2021 CANADA GAMES HOST SOCIETY INC.

Name:
Title:

I have authority to bind the Corporation.

**THE REGIONAL MUNICIPALITY OF
NIAGARA**

Name:
Title:

I have authority to bind the Municipality.

SCHEDULE "A"
TRANSITION AGREEMENT

SCHEDULE "C"

FUNDS RECONCILIATION

[NTD: Funds Reconciliation to be attached once complete, as per Section 9.01a)]