

APPENDIX A

SUBLEASE AGREEMENT

THIS AGREEMENT dated for reference the 23 day of January, 2017 is

BETWEEN:

CITY OF KELOWNA, 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "City")

AND:

KELOWNA GLYCOL FACILITIES CORPORATION (Corp. No. 988135-2), 5915
Airport Road, Suite 625, Mississauga, ON L4V 1T1

(the "Subtenant")

WHEREAS:

- A. By a lease dated December 19, 1979 (the "Head Lease") between the City and Her Majesty the Queen in Right of Canada (the "Head Landlord"), as represented by the Minister of Transport (the "Minister"), the Head Landlord leased to the City the following lands, on the terms and conditions set out in the Head Lease:

Parcel Identifier: 009-459-014

Lot 3 District Lots 32 and 120 and of Section 14 Township 23 Osoyoos Division Yale District Plan 11796

Parcel Identifier: 013-949-101

Lot B District Lot 122 Osoyoos Division Yale District Plan 41149

Parcel identifier: 011-518-189

Lot 7 Section 14 Township 23 Osoyoos Division Yale District Plan 1502 Except Plan H16596

(collectively the "Land");

- B. The City and the Head Landlord amended the Head Lease on November 8, 1983, January 14, 1985, October 31, 1986, January 19, 1990, November 29, 1990, May 26, 1994, June 14, 1994, February 16, 1996, and July 24, 2015;
- C. The City has agreed to sublease to the Subtenant for aviation purposes that portion of the Land having an area of approximately 354 square metres (the "Premises"), shown outlined in heavy red on the lease plan prepared by Tetra Tech EBA, and dated April 28, 2016, a reduced copy of which is attached as Schedule A;

- D. The City requires access to the Computrol Unit situated on the Premises (the "Computrol Unit") as set out on the attached Schedule A as the Computrol Unit is used to dispense Glycol and Potassium Acetate;
- E. As required under section 4 of the Head Lease, the written consent of the Head Landlord is required for this Agreement;
- F. In accordance with section 26 of the *Community Charter*, the City has posted and published notice of its intention to sublease the Premises to the Subtenant;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the rents, covenants, and agreements to be paid, observed, and performed by the Subtenant, and other good and valuable consideration (the receipt and sufficiency of which are hereby expressly acknowledged) the City and the Subtenant covenant and agree as follows:

Sublease

- 1. The City subleases the Premises to the Subtenant for the Term, and the Subtenant subleases the Premises from the City for the Term, on and subject to the terms and conditions of this Agreement. The City also grants to the Subtenant a licence to cross over those parts of the Land as the City deems necessary to access the Premises, which licence may be exercised by the Subtenant on a 24 hours per day, 7 days per week basis. The City will designate and give the Subtenant notice of such access points and routes from time to time during the Term, which designation will be at the City's sole discretion, and the Subtenant shall cross over and use only those designated access points and routes.

Condition Precedent

- 2. The City's obligation to lease the Premises to the Subtenant and the Subtenant's obligation to lease the Premises from the City are subject to the following condition precedent:
 - (a) On or before May 1, 2017, the City will have obtained the Head Landlord's written consent to this Agreement, as required pursuant to section 4 of the Head Lease.

The City and the Subtenant agree that the condition precedent in subsection (a) above is for the benefit of both the City and the Subtenant and may not be waived. If that condition is not satisfied by the date specified this Agreement is at an end.

Term

- 3.
 - (a) The term of this Agreement (the "Term") shall commence on the date that is 2 days after the date on which the Head Landlord consents to this Agreement (the "Commencement Date") and shall expire on December 31, 2021 (the "Expiry Date").

(b) Provided that the Subtenant is not in default under this Agreement, the Subtenant shall have 3 options to extend the Term for further periods of 5 years each (each such extension of the Term to be described as an "Extension"), provided that written notice is given to the City at least 3 months before the expiry of the Term or any Extension. Each Extension will be on the same terms and conditions as contained in this Agreement, except that there will be no further right to extend the Term after the last Extension. Any Extension is subject to the following conditions:

- (i) the Subtenant shall continue to pay the Rent as specified in this Agreement (including annual increases pursuant to the Bylaw);
- (ii) no such Extension shall exceed the term of the Head Lease; and
- (iii) all other provisions of this Agreement shall remain unchanged and in full force and effect.

(c) If the Subtenant shall hold over after the expiration of the Term or after the expiration of the last Extension thereof, and the City shall accept Rent, the new tenancy thereby created shall be a tenancy from month to month and not a tenancy from year to year, and the Subtenant shall pay as Rent during the time of such occupancy an amount to be determined at the discretion of the City but not to exceed one hundred and fifty percent (150%) of the Rent, and shall be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month. The overholding month to month tenancy may be terminated by the City by providing thirty (30) days notice in writing.

Rent

4. As required by City of Kelowna Airport Fees Bylaw No. 7982 (the "Bylaw"), the City has obtained an independent appraisal for the Premises, which appraisal has determined the rental rate for the initial year of the Term at \$0.3982 per square foot (\$1,517.59 per annum) (the "Rent"). The Subtenant shall pay the Rent, including annual increases pursuant to the Bylaw, to the City in monthly instalments, payable on the first day of each month of the Term and any Extension. The City shall give the Tenant advance notice of any proposal to increase the Rent and shall give the Tenant an opportunity to meet with staff to discuss such increase before a report is brought before Council. The Rent does not include Goods and Services Tax ("GST") or any similar or replacement tax.

Purposes

5. The Subtenant shall only use and occupy the Premises as a site for a common-use glycol storage facility (the "Glycol Facility") for aviation purposes and for no other purpose whatsoever.
6. Notwithstanding Section 5, the Glycol Facility includes a Computrol Unit noted on the attached Schedule A (the "Computrol Unit") that is used to dispense Glycol to the Subtenant and Potassium Acetate to the City.

Subtenant's Covenants

7. The Subtenant covenants and agrees with the City:

(a) to promptly pay when due, Rent and any other amounts required to be paid by it under this Agreement;

(b) no to do, suffer, or permit anything in, on, or from the Premises that may be or become a nuisance or annoyance to other occupiers or users of the Land, or to the owners, occupiers, or users of other land or premises adjacent to or near the Premises, or to the public, including the accumulation of rubbish or unused personal property of any kind, provided that the City acknowledges that the use and operation of the Glycol Facility is not a nuisance in the manner it is being operated as at the date of this agreement;

(c) not to do, suffer, or permit any act or neglect that may in any manner directly or indirectly cause injury to the Premises or to the Land, and not to commit or permit waste to the Premises or to the Land;

(d) to keep and maintain the landscaping and paved areas of the Premises, and all improvements constructed thereon, in a safe, tidy, and sanitary condition;

(e) to take all reasonable precautions to ensure the safety of all persons using the Premises;

(f) to keep the Premises free of any rubbish, litter, and debris and keep the areas adjacent to the Premises free of any rubbish, litter, and debris originating from the Premises;

(g) not to construct, erect, place, install, or permit, on the outside of any building or structure or other exterior area of the Premises, any poster, advertising sign or display, electrical or otherwise, without first obtaining the written consent of the City;

(h) to pay to the City all GST (or replacement tax) payable in respect of this Agreement;

(i) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Subtenant's use of the Premises, the Subtenant's improvements and trade fixtures, and all equipment, and other personal property brought onto the Premises by the Subtenant and any business or activity conducted on or from the Premises, including without limitation, all taxes (including property taxes), levies, charges and assessments, permit and license fees, strata fees and levies, repair and maintenance costs, administration and service fees, telephone, electrical, gas, water, sewage disposal and other utility charges and payments for work and materials;

(j) to carry on and conduct its activities in, on, and from the Premises in compliance with any and all laws, statutes, enactments, bylaws, regulations, and orders from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on, or from the Premises in contravention thereof;

(k) to promptly cause to be discharged any builder's lien which may be filed against the title to the Land as a result of the Subtenant's use of the Premises, and to comply at all times with the Builders

Lien Act (British Columbia) in respect of any improvements, work, or other activities undertaken in, on, or to the Premises.

Net Sublease

8. Without limiting any other provisions in this Agreement, the Subtenant agrees that the sublease granted herein is absolutely carefree net to the City, and the Subtenant must promptly pay when due on its own account and without any variation, set-off, or deduction, all amounts, charges, costs, duties, expenses, fees, levies, rates, sums, taxes, and increases in any way relating to the Subtenant's use of the Premises, including all penalties and interest thereon, whether or not referred to in this Agreement and, to the extent that any such amounts remain unpaid after they come due, the City may pay such amounts on behalf of the Subtenant and the amounts so paid by the City shall be immediately due from the Subtenant to the City. Without limiting the foregoing, the City shall have no obligations whatsoever to the Subtenant concerning the Premises except for the City's express obligations under this Agreement.

Quiet Possession

9. The City shall permit the Subtenant, so long as the Subtenant is not in default of the Subtenant's obligations under this Agreement, to peaceably possess and enjoy the Premises for the Term and any Extension, without interference or disturbance from the City or those claiming by, from or under the City, except for the City's express rights under this Agreement to enter upon and use the Premises or to permit others to do so.
10. Notwithstanding Section 9, the Subtenant shall permit the City open access to the Computrol Unit as required by the City.

City Consent for New Improvements and Alterations

11. The Subtenant shall not make any improvements or alterations to the Premises without the prior written consent of the City, which consent may be withheld in the sole discretion of the City.

Minimum Work Standards

12. The Subtenant shall ensure that any improvements to or work done with respect to the Premises, including any improvements or alterations approved by the City, done by or on behalf of the Subtenant comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the City of Kelowna.

Repair and Maintenance

13. The Subtenant shall during the Term and any Extension, at its cost, by itself or by the use of agents, put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance

of the Glycol Facility or the foundation or structure of the Glycol Facility), the Premises, and the appurtenances and equipment of them, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, elevators (if any) and similar devices, heating and air-conditioning equipment, sidewalks, landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Premises and the Glycol Facility and machinery and equipment used or required in the operation of them, whether or not enumerated in this Agreement, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacement, alterations, additions, changes, substitutions, and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Glycol Facility and aforesaid fixtures, appurtenances, and equipment fully usable for all of the purposes for which the Glycol Facility was erected and constructed and the specified fixtures, appurtenances, and equipment were supplied and installed. Such repairs will be in all respects to the standard at least substantially equal in quality of material and workmanship to the original work and material in the Glycol Facility and aforesaid fixtures, appurtenances, and equipment.

14. Notwithstanding Section 13, the City shall during the Term and any Extension, at its cost, by itself or by the use of agents, put and keep in good order and condition the Computrol Unit, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and carry out all necessary maintenance ordinary or extraordinary, foreseen or unforeseen, and keep the Computrol Unit in good repair and functional condition for all of the purposes for which the Computrol Unit was constructed and installed. Such repairs will be in all respects to the standard at least substantially equal in quality of material and workmanship of the original Computrol Unit.

City Not Obligated to Repair

15. The City is not obliged to furnish any services or facilities or to make any repairs or alterations in or to the Premises or the Glycol Facility, other than repair and maintenance of the Computrol Unit, and the Subtenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Premises and the Glycol Facility.

City May Repair

16. If at any time during the Term, the Subtenant fails to maintain the Premises and Glycol Facility and the fixtures, appurtenances, and equipment of them, both inside and outside, in the condition required by the provisions of Section 13, the City through its agents, servants, contractors, and subcontractors may, but will not be obliged to, enter upon those parts of the Premises and the Glycol Facility required for the purpose of making the repairs required by Section 13. The City may make such repairs only after giving the Subtenant 30 days' written notice of its intention to do so, except in the case of an emergency when no prior notice to the Subtenant is required, provided the City makes a reasonable effort to provide prior notice when possible and subsequently provides to the Subtenant a detailed report of the repairs undertaken. Any amounts paid by the City in making such repairs to the Premises

or to the Glycol Facility or any part or parts thereof, together with all costs and expenses of the City, will be reimbursed to the City by the Subtenant on demand, plus a 15% administration fee together with interest at the rate specified in Section 30.

Damage or Destruction

17. The partial destruction or damage or complete destruction by fire or other casualty of the Glycol Facility will not terminate this Agreement or the sublease granted hereunder, or entitle the Subtenant to surrender possession of the Premises or the Glycol Facility or to demand any abatement or reduction of the Rent or other charges payable under this Agreement, any law or statute now or in the future to the contrary.
18. The Subtenant covenants and agrees with the City that, in the event of damage to or partial destruction of the Glycol Facility, the Subtenant, subject to the regulations and requirements of the City and any other government authority having jurisdiction, will repair, replace, or restore any part of the Glycol Facility so destroyed.
19. The Subtenant covenants and agrees with the City that, in the event of complete or substantially complete destruction of the Glycol Facility, the Subtenant, subject to the regulations, requirements and approval of the City and any other government authority having jurisdiction, will reconstruct or replace the Glycol Facility with a structure comparable to that being replaced.
20. Any replacement, repair, or reconstruction of the Glycol Facility or any part of the Glycol Facility pursuant to the provisions of Sections 18 or 19 will be made or done in compliance with Sections 11, 12 and 13 of this Agreement.

Unavoidable Delays

21. If, by reason of strike, lock-out, or other labour dispute, material or labour shortage not within the control of the Subtenant, stop-work order issued by any court or tribunal of competent jurisdiction (providing that such order was not issued as the result of any act or fault of the Subtenant or of anyone employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, act of God, or other similar circumstances beyond the reasonable control of the Subtenant and not avoidable by the exercise of reasonable efforts or foresight by the Subtenant, the Subtenant is, in good faith and without default or neglect on its part, prevented or delayed in the commencement or substantial completion of the repair of the Glycol Facility or any part of it which under the terms of this Agreement the Subtenant is required to do by a specified date or within a specified time or, if not specified, within a reasonable time, the date or period of time within which the work was to have been completed will be extended by the City by a reasonable period of time at least equal to that of such delay or prevention; and the Subtenant will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Agreement within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the City and the Subtenant. For the purposes of this Section 21, the inability of the Subtenant to meet its financial obligations under this

Agreement or otherwise will not be a circumstance beyond the reasonable control of the Subtenant and not avoidable by the exercise of reasonable effort or foresight by the Subtenant. The Subtenant will act diligently and take all reasonable steps of a prudent owner to remove the cause or causes of delay in the commencement or completion of the repair of the Glycol Facility.

Acknowledgment and Agreements of the Subtenant

22. The Subtenant acknowledges and agrees that:

(a) the City has given no representations or warranties with respect to the Premises or the Land, including with respect to the suitability of the Premises for the Subtenant's intended use;

(b) the Subtenant subleases the Premises on an "as-is" basis and the City has not made any representations, warranties or agreements as to the condition of the Premises (including the subsurface nature or condition of any part of the Premises, or the environmental condition of the Premises);

(c) it is the sole responsibility of the Subtenant to satisfy itself with respect to the condition of the Premises (including the subsurface nature or condition of the Premises and the environmental condition of the Premises), including by conducting any reports, tests, investigations, studies, audits and other inquiries as the Subtenant, in its sole discretion, considers necessary in order to satisfy itself as to the condition of the Premises;

(d) this Agreement is subject to the Head Lease and all of its terms, restrictions, and limitations, and the Subtenant has no greater interest in the Premises than the City under the Head Lease and, to the extent that any right or benefit conferred by this Agreement contravenes or is incompatible with the Head Lease, such right or benefit will be amended or modified so as not to contravene or be incompatible with the Head Lease. The Head Lease is available to the Subtenant upon request and the City hereby represents and warrants that:

(i) the term of the Head Lease exceeds the Term; and

(ii) subject to obtaining the Head Landlord's consent, it is authorized to enter into this Agreement and to perform its duties and obligations under this Agreement;

(e) the City may register a *Builders Lien Act* "notice of interest" against title to the Land in the land title office.

Insurance Requirements

23. The Subtenant shall obtain and maintain during the Term insurance in accordance with the requirements of Schedule B. For clarity, the insurance requirements set out in Schedule B are minimum requirements and are not to be interpreted in a manner that limits the Subtenant's obligations under this Agreement and the Subtenant shall be responsible for obtaining and maintaining such additional insurance as would a prudent tenant having

similar obligations and interests to those of the Subtenant under the terms of this Agreement.

Insurance Certificates

24. The Subtenant shall promptly, upon the City's request from time to time during the Term, provide the City with certificates of insurance confirming the placement and maintenance of the required insurance.

City May Insure

25. If the Subtenant fails to insure as required, the City may, after 30 days' notice to the Subtenant, effect the insurance in the name and at the expense of the Subtenant and the Subtenant shall repay the City all costs (including a 15% administration fee) reasonably incurred by the City within 21 days of receipt of an invoice. For clarity, the City has no obligation to obtain any insurance required to be maintained by the Subtenant under this Agreement.

Subtenant Indemnity

26. The Subtenant shall indemnify and save harmless the City and the Head Landlord and their respective officers, employees, contractors, and agents, from and against all claims, actions, damages, liabilities, costs, and expenses in connection with loss of life, personal injury or damage to property arising from any occurrence on the Premises, or the Subtenant's occupancy or use of the Premises, or caused by or arising from any act or omission of the Subtenant, its officers, employees, agents, customers, contractors, or other invitees. This indemnity shall survive the expiry or earlier termination of this Agreement, but does not extend to any claims, actions, damages, liabilities, costs, and expenses caused by or arising from the City's use of the Computrol Unit or in respect of any wrongful or negligent acts by the City, the Head Landlord or those for whom the City or the Head Landlord is responsible for at law.

City Right to Grant Further Interests

27. The City may, from time to time, grant licences, rights of way, easements and other rights and privileges to third parties on, over, under, through, above and across the Lands, provided that such privileges do not materially impair the Subtenant's rights under this Agreement, and the Subtenant agrees to execute such further instruments as may be necessary to give such rights and privileges priority over this Agreement.

Permission to Enter

28. The City, by its authorized representative, may enter the Premises and the Glycol Facility at all reasonable times for the purpose of inspecting the Premises and the Glycol Facility and the Subtenant's compliance with this Agreement and for the purpose of exercising its other rights under this Agreement.

Payments Generally

29. All payments, including interest, required to be made by the Subtenant to the City under the terms of this Agreement shall be:

- (a) payable in lawful money of Canada;
- (b) paid to the City at the office of the City or at such other place as the City may designate from time to time in writing;
- (c) made when due hereunder, without the need for prior demand and without any set-off, abatement or deduction;
- (d) applied towards amounts outstanding in such a manner as the City sees fit; and
- (e) deemed to be rent (if not Rent), in partial consideration for which this Agreement is entered into, and shall be payable and recoverable as rent, and the City shall have all of the rights and remedies against the Subtenant for default in making any such payment which may not be expressly designated as rent, as the City has for a default in payment of Rent.

Interest

30. All payments due by the Subtenant to the City under this Agreement shall bear interest at the rate of 1.5% per month (equal to 18.00% per annum) calculated monthly not in advance from the date due until paid.

Worker Safety and Compensation

- 31. The Subtenant shall, in its use of and activities on the Premises, comply with all statutes, regulations, and orders from time to time in force respecting worker safety and compensation, and, upon request from the City, provide evidence of any required registration under any statute, regulation or order respecting worker safety and compensation.
- 32. The Subtenant shall, for the purposes of the Workers Compensation Act, and for the duration of the Term:
 - a) be the "prime contractor" for the Premises;
 - b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Act and its regulations, as required to ensure the health and safety of all persons at the Premises; and
 - c) enter into and comply with all terms and conditions of the Prime Contractor Agreement attached as Schedule C.

33. The Subtenant shall direct all employers, employees and any other persons on the Premises on safety related matters, to the extent required to fulfill its "prime contractor" responsibilities pursuant to the Workers Compensation Act [RSBC 1996] Part 3, Division 3, Section 118(1-3).

MATERIAL DISCLOSURES

34. The material disclosures that apply to this Agreement, if any, are set out below.

Potential Hazards

- a) Underground power, gas, fiber-optic, telephone, etc.
- b) Shoring and excavations (cave in, engulfment, entrapment)
- c) Biological hazards (sewage, needles)
- d) Gases (H₂S, natural gas, methane, carbon monoxide, LEL)
- e) Traffic
- f) Overhead hazards (power, trees, falling materials)
- g) Backing up equipment and vehicles
- h) Utilities (gas, power, water)
- i) Hazardous materials (asbestos, lead, silica, VOC's)
- j) Working at heights
- k) Entering confined spaces
- l) Slips and trips
- m) Power tools
- n) Hand tools
- o) Lifting and carrying
- p) Poor lighting
- q) Limited access and egress
- r) Fire
- s) Fumes (diesel gas, paints, oils, solvents)
- t) Noise
- u) Fecal matter (bird, mouse droppings)
- v) Workplace violence and/or bullying
- w) Thermal stress (cold and heat)
- x) First aid situation
- y) Working with or around mobile equipment or vehicles
- z) Ladders, scaffolds and work platforms
- aa) Insects (ticks, bees, flies, mosquitoes, etc.)
- bb) Working near water (streams, creeks)
- cc) Overhead trees (large branches – potential to break and fall)
- dd) Uneven terrain (hills, paths, brush)
- ee) Small ride on engine – equipment

- ff) Small engine equipment – hand held
- gg) Lifting and carrying
- hh) Working alone
- ii) Serious inclement weather events (tornado, earthquake, lightning, thunderstorms, hail)
- jj) Inclement weather events (fog, dust storms, wind, rain)
- kk) Aggressive animals (dogs, raccoons, marmots, badgers, bears, cougars, snakes)
- ll) Engine exhaust
- mm) Welding fumes
- nn) Grinding (airborne material)
- oo) Welding flash
- pp) Tripping hazards
- qq) Moving heavy equipment
- rr) Open floor pit
- ss) Overhead obstruction
- tt) High pressure air/liquid
- uu) Personnel issues

Environmental Matters

35. In Section 36, the following definitions apply:

(a) “Contaminants” means:

- (i) as defined in the *Environmental Management Act* (British Columbia): any biomedical waste, contamination, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
- (ii) matter of any kind which is or may be harmful to safety or health or to the environment; or
- (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Law;

(b) “Environmental Law” means any past, present or future common law, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health.

36. The Subtenant covenants and agrees with the City to:

(a) carry on and conduct its activities in, on, and from the Premises in compliance with all Environmental Laws;

(b) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on, under or from the Premises, except as may be permitted this Agreement and in compliance with all Environmental Laws;

(c) as soon as it becomes aware of notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:

(i) a release of Contaminants in, on or about the Premises, or any adjacent land;
or

(ii) the receipt of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to any Environmental Law;

(d) promptly provide to the City a copy of any environmental site assessment, audit, report or test results relating to the Premises conducted at any time by or for the Subtenant;

(e) if the City reasonably suspects that the Subtenant has not complied with its obligations under this section, at the City's request, the Subtenant shall obtain from an independent environmental consultant approved by the City an environmental site assessment, audit, report or testing of the Premises and conduct or cause to be conducted any additional investigations that the environmental consultant may recommend, all in order to determine compliance of the Subtenant's use of the Premises with Environmental Laws; and

(f) promptly remove or remediate any Contaminants arising from the Subtenant's use or occupation of the Premises in a manner that conforms to applicable Environmental Laws.

No Assignment or Sublease

37. The Subtenant may not assign this Agreement or the benefit of this Agreement, or sublet the Premises or any part of the Premises, without the prior written consent of the City, nor may the Subtenant charge, mortgage, or encumber, or purport to charge, mortgage, or encumber the Subtenant's interest in the Premises or this Agreement without the prior written consent of the City. The City may withhold such consents at its sole discretion and without reason. The Subtenant shall be responsible for all costs associated with any assignment or sublease of the Premises, including the City's associated legal and administrative costs.

Termination Due to Default

38. If and whenever:

- (a) the Subtenant fails to pay any Rent or other amount owing under this Agreement when due, whether or not demanded by the City;
- (b) the Subtenant fails to observe or perform any of its obligations under this Agreement and the Subtenant has not, within 14 days after notice from the City specifying the default, cured the default, or if the cure reasonably requires a longer period, the Subtenant has not commenced to cure the default within the 14-day period and thereafter does not diligently pursue the cure of such default;
- (c) re-entry is permitted under other terms of this Agreement;
- (d) without the consent of the City, the Premises are vacant or the Subtenant fails to operate its business within the Premises for 10 days or more, provided the City acknowledges that because of the nature of the Glycol Facilities, the use of the Premises by the Subtenant may not be continuous and the Subtenant's operations will be conducted on as needed basis;
- (e) a receiver is appointed to control the conduct of the business of the Subtenant on or from the Premises;
- (f) the Subtenant becomes bankrupt or insolvent or takes the benefit of any legislation in force for bankrupt or insolvent debtors;
- (g) proceedings are instituted for the winding-up or termination of the corporate existence of the Subtenant;
- (h) without the consent of the City, the Subtenant abandons or attempts to abandon the Premises or disposes of the bulk of its goods and chattels on the Premises;
- (i) the Term or any of the goods or chattels on the Premises are at any time seized or taken in execution or attachment by any creditor of the Subtenant or under bill of sale or chattel mortgage; or
- (j) the Subtenant permits a builder's lien to arise in respect of the Land and to remain registered against title to the Land for more than 60 days,

then the City may re-enter and take possession of the Premises as though the Subtenant or other occupant was holding over after the expiration of the Term and this Agreement may, at the City's option, be immediately terminated by notice left at the Premises.

Right to Relet

- 39. If the City re-enters the Premises, it may, at its option and without terminating the Subtenant's rights, make alterations and repairs to facilitate reletting and relet the Premises, or any part, as the Subtenant's agent for such period of time and at such rent and on such other terms as the City wishes. Upon reletting, all rent and monies received by the City shall be applied, first, to the payment of indebtedness other than Rent due from the Subtenant to the City, second to the payment of costs and expenses of the reletting including brokerage, legal and repair expenses, and third to the payment of Rent due and unpaid under

this Agreement. The residue, if any, shall be applied to the payment of future rent as it becomes due and payable. If at any time the rent received from the reletting is less than the Rent, the Subtenant shall pay the deficiency to the City to be calculated and paid monthly.

Re-entry

40. No re-entry or entry shall be construed as an election by the City to terminate this Agreement unless a written notice of intention to terminate is given to the Subtenant (which may be given by way of notice left at the Premises). Despite a reletting without termination, the City may elect at any time to terminate this Agreement for a previous breach.

Distress

41. If and whenever the Subtenant is in default of the payment of any money, including Rent, whether expressly reserved by this Agreement or deemed as Rent, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Subtenant's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Subtenant or any other person may have removed them in the same manner as if they had remained and been distrained on the Premises, notwithstanding any rule of law or equity to the contrary, and the Subtenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

State of Premises at Termination

42. Upon the expiry or earlier termination of this Agreement, the Subtenant shall leave the Premises in a good, neat and tidy condition and otherwise in the condition they are required to be kept by the Subtenant during the Term under the provisions of this Agreement. If the Subtenant does not do so, the City may do so on behalf of the Subtenant and any amounts paid by the City in putting the Premises into the condition required, together with all costs and expenses of the City, will be reimbursed to the City by the Subtenant on demand, plus a 15% administration fee together with interest at the rate specified in Section 30. The City's rights and the Subtenant's obligations under this section shall survive the expiry or earlier termination of this Agreement.

Ownership of Improvements during Term and at Termination

43. The City and the Subtenant agree that the title to and ownership of all buildings, structures, and improvements on the Premises, including the Glycol Facility, and all alterations, additions, changes, substitutions, or improvements thereto will at all times during the Term be vested in the Subtenant, notwithstanding any rule or law as to the immediate vesting of the title to and ownership of them in the owner of the freehold. Upon the expiry or earlier termination of this Agreement, all buildings, structures, and improvements on the Premises, including the Glycol Facility, and all alterations, additions, changes, substitutions, or improvements thereto, shall, without compensation to the Subtenant, become the permanent property of the City, though the City shall have the option of requiring or

compelling the Subtenant to remove the improvements in accordance with Section 44 of this Agreement.

Required Improvement Removal

44. Notwithstanding anything to the contrary in this Agreement, the City may, by providing written notice to the Subtenant within 21 days following termination or expiry of this Agreement, require that the Subtenant remove any improvements done by or on behalf of the Subtenant during the Term. Upon such notice, the specified improvements shall become the property of the Subtenant and the Subtenant shall remove such improvements within 21 days of receipt of such notice, failing which the City may, without notice or compensation to the Subtenant, dispose of such improvements as it sees fit and the Subtenant shall reimburse the City for its costs of doing so (including a 15% administration fee) within 21 days of receipt of an invoice from the City. The City's rights and the Subtenant's obligations under this section shall survive the expiry or earlier termination of this Agreement.

Head Lease Covenant

45. The Subtenant hereby covenants that it will perform and observe all the covenants on the part of the City under the provisions of the Head Lease other than the covenant to pay rent thereunder and other than the covenants relating to the Lands other than these Premises, and will indemnify the City against all actions, expenses, claims and demands in respect of such covenants except as aforesaid.

Head Lease Termination

46. Upon termination of the Head Lease for any reason (including default by the City), this Agreement will immediately terminate without any compensation payable to the Subtenant.
47. Notwithstanding Section 46, if:
- (a) the termination of the Head Lease is not in any manner disputed;
 - (b) the City has yielded up vacant possession of the Premises to the Head Landlord;
 - (c) immediately preceding the termination of the Head Lease, all airport subleases, including this Agreement, are in full force and effect and the sublessees, including the Subtenant, at the termination of the Head Lease, are not in default or breach of their respective subleases;
 - (d) the Head Landlord is not legally prohibited by reason of defect in title, adverse possession, or otherwise from fulfilling the terms of any of the airport subleases, including this Agreement;

then this Agreement shall, at the Head Landlord's option, be deemed to have been assigned to the Head Landlord, thereby creating a new lessor/lessee relationship under the terms and conditions of this Agreement; provided, however, that the Head Landlord reserves the option to amend the new lease therein created from time to time in accordance with policy or policies in effect at that time.

Remedies Cumulative

48. No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Subtenant to collect any Rent not paid when due, without exercising the option to terminate this Agreement.

Holding Over

49. If the Subtenant continues to occupy the Premises after the expiration of the Term, then, without any further written agreement, the Subtenant shall be a monthly lessee paying monthly rent in an amount determined by the City and subject always to the other provisions in this Agreement (including Section 3) insofar as the same are applicable to a month-to-month tenancy and nothing shall preclude the City from taking action for recovery of possession of the Premises.

Sublease Not In Registrable Form

50. The City is under no obligation to at any time deliver this Agreement or any instrument creating this Agreement to the Subtenant in a form registrable under the *Land Title Act* (British Columbia).

Waiver or Non-Action

51. Waiver by the City of any breach by the Subtenant of any of its obligations under this Agreement shall not be considered to be a waiver of any subsequent default or continuing default by the Subtenant. Failure by the City to take any action in respect of any breach of any Subtenant obligation under this Agreement by the Subtenant shall not be considered to be a waiver of such obligation.

Conditions

52. All of the Subtenant's obligations under this Agreement shall be deemed and construed to be both conditions and covenants as though the words specifically expressing covenants or conditions or used in each separate provision respecting each such obligation.
53. Nothing contained in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Subtenant any power or authority to bind the City in any way.

Interpretation

54. In this Agreement:

- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
- (b) a particular numbered Section or lettered Schedule is a reference to the correspondingly numbered Section or lettered Schedule of this Agreement;
- (c) an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) on the day this Agreement is made;
- (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
- (e) section headings are inserted for ease of reference and are not to be used in interpreting this Agreement;
- (f) a "party" is a reference to a party to this Agreement;
- (g) time is of the essence; and
- (h) where the word "including" is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word "including".

Notices

- 55. Where any notice, request, direction or other communication (any of which is a "Notice") is to be given or made by a party under the Agreement, it shall be in writing and is effective if delivered in person or sent by mail to the address above. A Notice is deemed given if delivered in person, when delivered or if by mail, 5 days following deposit with Canada Post. A party may change its address or fax number by giving notice to the other party under this section.

City and Head Landlord Discretion

- 56. Wherever in this Agreement the approval or consent of the City or Head Landlord is required, some act or thing is to be done to the City or Head Landlord's satisfaction, the City or Head Landlord are entitled to form an opinion, or the City or Head Landlord is given the sole discretion:
 - (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the City and the Head Landlord as required, or their authorized representative;
 - (b) the approval, consent, opinion or satisfaction is in the discretion of the City or Head Landlord as required, acting reasonably;
 - (c) sole discretion is deemed to be the sole, absolute and unfettered discretion of the City or Head Landlord as required; and

(d) no public law duty of procedural fairness or principle of natural justice shall have any application to such approval, consent, opinion, satisfaction or discretion.

No Effect on Laws or Powers

57. Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions under the *Community Charter* (British Columbia), the *Local Government Act* (British Columbia), or any other enactment to the extent the same are applicable to the Premises, all of which may be fully and effectively exercised in relation to the Premises as if this Agreement had not been fully executed and delivered.

Severance

58. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.

Binding on Successors

59. This Agreement enures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

Law of British Columbia

60. This Agreement shall be construed according to the laws of the Province of British Columbia.

Bribes

61. The Subtenant hereby confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the City for or with a view to obtaining the sublease granted herein any bribe, gift or other inducement and that it has not, nor has any person on its behalf, employed any person to solicit or secure the sublease granted herein upon any agreement for a commission, percentage, brokerage, or contingent fee.

House of Commons

62. No Member of the House of Commons of Canada shall be admitted to any share or part of the sublease granted herein, or to any benefit to arise therefrom.

Counterparts

63. This Agreement may be executed by the parties in counterpart, and the counterparts may be delivered in facsimile or by PDF copy sent by electronic mail transmission.

Schedules

64. The following are the Schedules to this agreement and form an integral part of this Agreement:

Schedule A – Reduced Copy of Sketch Plan
Schedule B – Insurance Requirements
Schedule C – Prime Contractor Agreement

Entire Agreement

65. The provisions in this Agreement constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of the Agreement.

As evidence of their agreement to be bound by the above terms, the City and the Subtenant have each executed this Agreement below on the respective dates written below:

CITY OF KELOWNA by its authorized signatories:

Mayor:

Clerk:

Date: _____

KELOWNA GLYCOL FACILITIES CORPORATION by its authorized signatories:

Name:

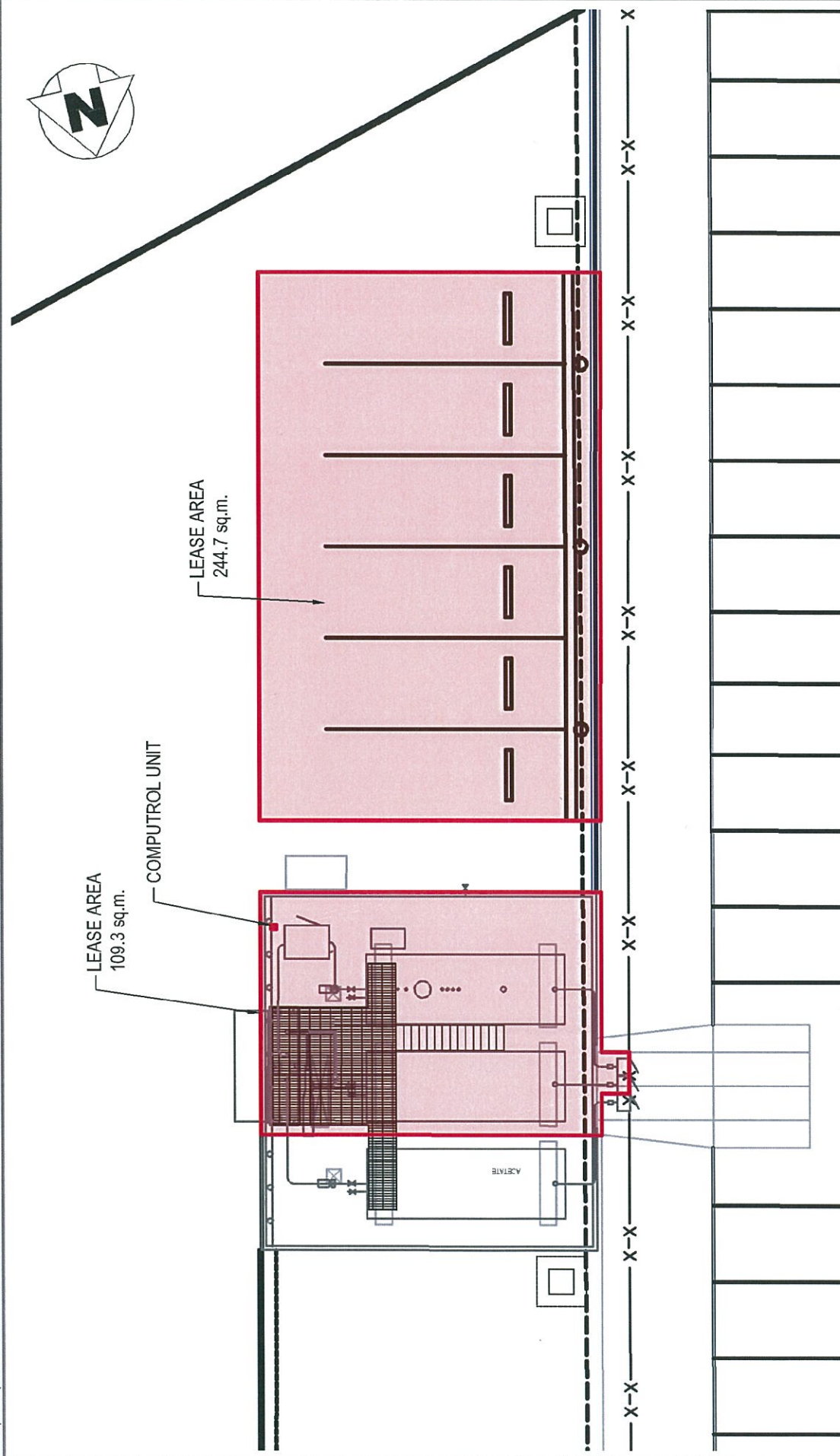

WADE MORRELL


Name:

Date: 23 JAN 2017

SCHEDULE A

Reduced Copy of Lease Plan



<div><div>CLIENT</div><div> YLW Kelowna International Airport</div></div>		<div><div>LEASE PLAN</div></div>				<div><div>PROJECT NO.</div><div>TRN.AIRP03017</div></div>		<div><div>DWN</div><div>GMW</div></div>	<div><div>CKD</div><div>KSA</div></div>	<div><div>REV</div><div>4</div></div>	<div><div>Figure 1</div></div>
		<div><div>TETRA TECH</div></div>		<div><div>OFFICE</div><div>KEL</div></div>	<div><div>DATE</div><div>April 28, 2016</div></div>						

SCHEDULE B**Insurance Requirements****1. Subtenant To Provide**

The Subtenant shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2 below, with limits no less than those shown in the respective items, unless the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously during the Term.

2. Insurance

As a minimum, the Subtenant shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

2.1 Comprehensive General Liability Insurance

- (i) providing for an inclusive limit of not less than \$5,000,000 for each occurrence or accident;
- (ii) providing for all sums which the Subtenant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the operations carried on in connection with this Agreement;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Tenant's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability;
- (iv) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level; and
- (v) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other insured hereunder, in respect to any claim, demand, suit or judgement made against any other insured.

- 2.2 Subtenant's All Risk property insurance, providing for Subtenant's Legal Liability, providing for an inclusive limit of not less than the value of the Premises and all leasehold improvements.
- 2.3 Environmental Impairment Liability Insurance. Such insurance shall provide not less than a two million dollars (\$2,000,000.00) combined single limit per occurrence with respect to environmental impairment liability claims, and shall include coverage for both sudden and accidental pollution and pollution arising from gradual leakage.
- 2.4 Non-owned Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Subtenant directly or indirectly in connection with the operations carried on in connection with this Agreement;

3. **The City Named as Additional Insured**

The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

4. **Subtenant's Contractor and Agents**

The Subtenant shall require each of its contractor's and agent's that make use of the Premises or provide services to the Subtenant at the Premises provide comparable insurance to that set forth under section 2.

5. **Certificates of Insurance**

The Subtenant agrees to submit certificates of insurance, for itself and for all of its subtenants to the Risk Management Department of the City prior to commencing any operations or constructing any improvements on the Premises in connection with this Agreement. Such certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.

6. **Other Insurance**

After reviewing the Subtenant's certificates of insurance, the City may, within reason, require other insurance or alterations to any applicable insurance policies in force during the Term and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Subtenant's expense.

7. **Additional Insurance**

The Subtenant may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.

8. **Insurance Companies**

All insurance, which the Subtenant is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

9. **Failure to Provide**

If the Subtenant fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Subtenant.

10. **Nonpayment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Subtenant shall not be held to waive or release the Subtenant from any of the provisions of the insurance requirements or this Agreement, with respect to the liability of the Subtenant otherwise. Any insurance deductible maintained by the Subtenant under any of the insurance policies is solely for its account and any such amount incurred by the City will be recovered from the Subtenant as stated in section 9 above.

SCHEDULE C

PRIME CONTRACTOR AGREEMENT

1. The Subtenant shall, for the purposes of the Workers Compensation Act, and for the duration of the Work of this Contract:
 - a. be the "prime contractor" for the "Premises", and
 - b. do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Act and its regulations, as required to ensure the health and safety of all persons at the Premises.
2. The Subtenant shall direct all Subcontractors, Sub-subcontractors, Other Contractors, employers, Workers and any other persons at the Premises on safety related matters, to the extent required to fulfill its "prime contractor" responsibilities pursuant to the Act, regardless of:
 - a. whether or not any contractual relationship exists between the Subtenant and any of these entities, and
 - b. whether or not such entities have been specifically identified in this Contract.

As per the requirements of the Workers Compensation Act Part 3, Division 3, Section 118(1-3) which states:

Coordination of multiple-employer Workplaces

118(1) In this section:

"multiple-employer Workplace" means a Workplace where Workers of 2 or more employers are Working at the same time;

"prime contractor" means, in relation to a multiple-employer Workplace,

- (a) the directing contractor, employer or other person who enters into a written agreement with the owner of that Workplace to be the prime contractor for the purposes of this Part, or
- (b) if there is no agreement referred to in paragraph (a), the owner of the Workplace.

(2) The prime contractor of a multiple-employer Workplace must:

- (a) ensure that the activities of employers, Workers and other persons at the Workplace relating to occupational health and safety are coordinated, and
- (b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulation in respect to the Workplace.

(3) Each employer of Workers at a multiple-employer Workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's Workers at that Workplace.

The Subtenant covenants and agrees that when performing any work in connection with the Sublease Agreement, whether directly as a Subtenant or indirectly as a sub-contractor, it will adhere to all of the requirements of the B.C. Employment Standards Act (RSBC 1996), as may be amended from time to time, that are applicable to the work being performed, including but not limited to:

- (a) Section 36 (2); an employer must ensure that each employee has at least 8 consecutive hours free from work between each shift worked.
- (b) Section 39; despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety.

The Subtenant further covenants and agrees that it fully understands and accepts the responsibilities of the prime contractor designation in accordance with the Workers Compensation Act and the B.C. Employment Standards Act while a party to the Sublease Agreement with the City of Kelowna and will abide by all Workers Compensation Board Regulation requirements.