

**THE QUEEN'S BENCH  
Winnipeg Centre**

BETWEEN:

**THE CITY OF WINNIPEG,**

plaintiff,

- and -

**CASPIAN PROJECTS INC., CASPIAN CONSTRUCTION INC., ARMIK BABAKHANIANS, SHAUN ANDRE BABAKHANIANS, JENIK BABAKHANIANS, TRIPLE D CONSULTING SERVICES INC., PAMELA ANDERSON, 4816774 MANITOBA LTD. operating as MOUNTAIN CONSTRUCTION, PAUL R. LAMONTAGNE, FABCA PROJECTS LTD., FABCA-PMG PROJECTS LTD., FABCA WARDLAW LTD., FABCA KING EDWARD LTD., GREGORY CHRISTO FIORENTINO, PETER GIANNUZZI, MARIA ROSA FIORENTINO, DUNMORE CORPORATION, OSSAMA ABOUZEID, ADJELEIAN ALLEN RUBELI LIMITED (also known as A.A.R.), PETER CHANG, GRC ARCHITECTS INC., PATRICK DUBUC, 8165521 CANADA LTD. operating as PHGD CONSULTING, 2316287 ONTARIO LTD. operating as PJC CONSULTING, FSS FINANCIAL SUPPORT SERVICES INC., PHIL SHEEGL, 2686814 MANITOBA LTD., ABC LTD., DEF LTD., GHI LTD., JKL LTD., JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JOHN DOE VI, JOHN DOE VII, and JOHN DOE VIII,**

defendants.

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**STATEMENT OF CLAIM**

**JAN 06 2020**

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**MARR FINLAYSON POLLOCK LLP**  
Barristers and Solicitors  
240 River Avenue  
Winnipeg MB R3L 0B4

**MICHAEL G. FINLAYSON**  
Ph. No.: (204) 925-5363  
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File No. 12538604

**THE QUEEN'S BENCH  
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plaintiff,

- and -

**CASPIAN PROJECTS INC., CASPIAN CONSTRUCTION INC., ARMIK BABAKHANIANS, SHAUN ANDRE BABAKHANIANS, JENIK BABAKHANIANS, TRIPLE D CONSULTING SERVICES INC., PAMELA ANDERSON, 4816774 MANITOBA LTD. operating as MOUNTAIN CONSTRUCTION, PAUL R. LAMONTAGNE, FABCA PROJECTS LTD., FABCA-PMG PROJECTS LTD., FABCA WARDLAW LTD., FABCA KING EDWARD LTD., GREGORY CHRISTO FIORENTINO, PETER GIANNUZZI, MARIA ROSA FIORENTINO, DUNMORE CORPORATION, OSSAMA ABOUZEID, ADJELEIAN ALLEN RUBELI LIMITED (also known as A.A.R.), PETER CHANG, GRC ARCHITECTS INC., PATRICK DUBUC, 8165521 CANADA LTD. operating as PHGD CONSULTING, 2316287 ONTARIO LTD. operating as PJC CONSULTING, FSS FINANCIAL SUPPORT SERVICES INC., PHIL SHEEGL, 2686814 MANITOBA LTD., ABC LTD., DEF LTD., GHI LTD., JKL LTD., JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JOHN DOE VI, JOHN DOE VII, and JOHN DOE VIII,**

defendants.

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

Date: January 6, 2020

Issued by D. CHAMPAGNE  
**DEPUTY REGISTRAR**  
**COURT OF QUEEN'S BENCH**  
**FOR MANITOBA**  
Deputy Registrar  
100C - 408 York Avenue

TO: CASPIAN PROJECTS INC.  
611 Academy Road  
Winnipeg, Manitoba R3N 0C7

AND TO: CASPIAN CONSTRUCTION INC.  
611 Academy Road  
Winnipeg, Manitoba R3N 0E7

AND TO: ARMIK BABAKHANIANS  
33 Hermitage Road  
Headingley, Manitoba R4H 1K3

AND TO: SHAUN ANDRE BABAKHANIANS  
2245 McGillivray Boulevard  
Winnipeg, Manitoba R3Y 1S6

AND TO: JENIK BABAKHANIANS  
33 Hermitage Road  
Headingley, Manitoba R4H 1K3

- AND TO: TRIPLE D CONSULTING SERVICES INC.  
10 Castlebury Court  
Winnipeg, Manitoba R3P 1J7
- AND TO: PAMELA ANDERSON  
10 Castlebury Court  
Winnipeg, Manitoba R3P 1J7
- AND TO: 4816774 MANITOBA LTD. o/a MOUNTAIN CONSTRUCTION  
611 Academy Road  
Winnipeg, Manitoba R3N 0E7
- AND TO: PAUL R. LAMONTAGNE  
541 Redditt Road  
Kenora, Ontario P9N 0E2
- AND TO: FABCA PROJECTS LTD.  
c/o Taylor McCaffrey LLP  
900 – 400 St. Mary Avenue  
Winnipeg, Manitoba R3C 4K5
- AND TO: FABCA-PMG PROJECTS LTD.  
c/o Taylor McCaffrey LLP  
900 – 400 St. Mary Avenue  
Winnipeg, Manitoba R3C 4K5
- AND TO: FABCA WARDLAW LTD.  
c/o Taylor McCaffrey LLP  
2200 – 201 Portage Avenue  
Winnipeg, Manitoba R3B 3L3
- AND TO: FABCA KING EDWARD LTD.  
c/o Taylor McCaffrey LLP  
2200 – 201 Portage Avenue  
Winnipeg, Manitoba R3B 3L3
- AND TO: GREGORY CHRISTO FIORENTINO  
66 Kinkora Drive  
Winnipeg, Manitoba R3R 2L6
- AND TO: PETER GIANNUZZI  
33 Devonport Boulevard  
Winnipeg, Manitoba R3P 0B1

- AND TO: MARIA ROSA FIORENTINO  
66 Kinkora Drive  
Winnipeg, Manitoba R3R 2L6
- AND TO: DUNMORE CORPORATION  
c/o Aikins & Co LLP  
30<sup>th</sup> Floor – 360 Main Street  
Winnipeg, Manitoba R3C 4G1
- AND TO: OSSAMA ABOUZEID  
123 Waterhouse Bay  
Winnipeg, Manitoba R3R 2N6
- AND TO: ADJELEIAN ALLEN RUBELI LIMITED  
75 Albert Street, Suite 1005  
Ottawa, Ontario K1P 5E7
- AND TO: PETER CHANG  
1733 Hunter's Run Drive  
Ottawa, Ontario K1C 6W1
- AND TO: GRC ARCHITECTS INC.  
401 – 47 Clarence Street  
Ottawa, Ontario K1N 9K1
- AND TO: PATRICK DUBUC  
60 rue de Maricourt  
Cantley, Quebec J8V 2V2
- AND TO: 8165521 CANADA LTD. o/a PHGD CONSULTING  
60 rue de Maricourt  
Cantley, Quebec J8V 2V2
- AND TO: 2316287 ONTARIO LTD. o/a PJC CONSULTING  
1733 Hunter's Run Drive  
Ottawa, Ontario K1C 6W1
- AND TO: FSS FINANCIAL SUPPORT SERVICES INC.  
1900 – 155 Carlton Street  
Winnipeg, Manitoba R3C 3H8
- AND TO: PHIL SHEEGL  
14 Andover Avenue  
Winnipeg, Manitoba R3P 0W5

AND TO: 2686814 MANITOBA LTD.  
c/o Duboff Edwards & Co  
1900-155 Carlton Street  
Winnipeg, Manitoba R3C 3H8

AND TO: ABC LTD.  
Particulars unknown

AND TO: DEF LTD.  
Particulars unknown

AND TO: GHI LTD.  
Particulars unknown

AND TO: JKL LTD.  
Particulars unknown

AND TO: JOHN DOE I  
Particulars unknown

AND TO: JOHN DOE II  
Particulars unknown

AND TO: JOHN DOE III  
Particulars unknown

AND TO: JOHN DOE IV  
Particulars unknown

AND TO: JOHN DOE V  
Particulars unknown

AND TO: JOHN DOE VI  
Particulars unknown

AND TO: JOHN DOE VII  
Particulars unknown

AND TO: JOHN DOE VIII  
Particulars unknown

**CLAIM**

1. The plaintiff claims as against the defendants:
  - (a) general damages in an amount to be determined at trial for fraud, conversion, fraudulent and/or negligent misrepresentation, deceit, conspiracy, unjust enrichment, negligence and breach of contract;
  - (b) special damages in an amount to be determined at trial arising out of the detection, investigation and quantification of the losses suffered by the plaintiff;
  - (c) punitive and aggravated damages;
  - (d) an interim order requiring the Royal Canadian Mounted Police (the “RCMP”) and/or Manitoba Prosecution Services (the “MPS”) to preserve all information, documents, notes, correspondence, records, including electronic records, and other particulars seized by the RCMP from the defendants or from any other person in the course of the RCMP’s investigation relating to the redevelopment of the former Canada Post Building located at 266 Graham Avenue, in Winnipeg, Manitoba for use as the Winnipeg Police Service Headquarters, including certain work at 245 Smith Street, in Winnipeg and the construction of an outdoor shooting range at Wyper Road, in Winnipeg, which investigation is known as Project Dalton (“Project Dalton”) (hereinafter, the “Seized Documents”) pursuant to Court

of Queen's Bench Rule 45, subject to such conditions as the Court may deem just in the circumstances;

- (e) an interim order permitting the plaintiff and its expert(s) to access, examine and make copies of the Seized Documents pursuant to section 490 of the *Criminal Code*, R.S.C. 1985, c. C-46, subject to such conditions as the Court may deem just in the circumstances;
- (f) an order compelling the RCMP and/or the MPS, non-parties, to produce copies of the Seized Documents pursuant to Court of Queen's Bench Rule 30.10, subject to such conditions as the Court may deem just in the circumstances;
- (g) a declaration that the monies fraudulently obtained from the plaintiff and in the possession or control of the defendants are subject to a trust in favour of the plaintiff;
- (h) a declaration that the plaintiff is entitled to trace the monies fraudulently obtained from the plaintiff into and through any financial institution, accounts or deposit facilities in the name of the defendants and into or through any assets purchased by the defendants with the plaintiff's monies and to cause them to disgorge same;
- (i) pre-judgment and post-judgment interest in accordance with the *Court of Queen's Bench Act*, C.C.S.M. c. C280;



- (j) costs; and
- (k) such further and other relief as counsel may advise and this Honourable Court may deem just.

### **Parties**

2. The plaintiff is a municipal corporation continued under *The City of Winnipeg Charter*, S.M. 2002, c. 39 and amendments thereto. In or about 2009, the City purchased the former Canada Post Building located at 266 Graham Avenue, in Winnipeg (the “Property”) with the intention that the Property would be adapted for use as the Winnipeg Police Service Headquarters (the “WPS Headquarters”). Thereafter, the City entered into various contracts for the redevelopment of the Property, including certain work to be performed at 245 Smith Street, in Winnipeg, and the construction of an outdoor shooting range at Wyper Road, in Winnipeg (the “Project”).

3. The defendant, Caspian Projects Inc. (“Caspian Projects”), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, and operates a general contracting business.

4. The defendant, Caspian Construction Inc. (“Caspian Construction”), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, Manitoba, and operates a contracting business.

5. Caspian Projects and Caspian Construction shall hereinafter be referred collectively as “Caspian”. At all material times, Caspian was the general contractor on the Project.

6. The defendant, Armik Babakhanians (“Armik”), is an individual residing in Winnipeg. At all material times, Armik was the president, and an officer and shareholder, of Caspian, was a principal and/or one of the directing minds thereof, was Caspian’s project director on the Project, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

7. The defendant, Shaun Andre Babakhanians (“Shaun”), is an individual residing in Winnipeg. At all material times, Shaun was a director of Caspian Projects and was a principal and/or one of the directing minds of Caspian, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

8. The defendant, Jenik Babakhanians (“Jenik”), is an individual residing in Winnipeg. At all material times, Jenik was the vice-president, and a director and officer, of Caspian Construction, was a principal and/or one of the directing minds of Caspian, was Caspian’s cost control project manager on the Project and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

9. The defendant, Pamela Anderson (“Anderson”), is an individual residing in Winnipeg. At all material times, Anderson was an employee of Caspian, namely the office manager and/or accounting manager thereof, was a principal and/or one of the directing

minds thereof, was Caspian's project coordinator on the Project and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

10. The defendant, 4816774 Manitoba Ltd. operating as Mountain Construction ("Mountain"), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg. At all material times, Mountain was, or purported to be, a subcontractor of Caspian in respect of the Project.

11. The defendant, Paul R. LaMontagne ("LaMontagne"), is an individual residing in Winnipeg. At all material times, LaMontagne was the president and a director, officer and shareholder of Mountain, was a principal and/or one of the directing minds thereof, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

12. At all material times, LaMontagne was an employee of Caspian, was a principal and one of the directing minds thereof and was the safety officer for Caspian on the Project.

13. At all material times, Armik was a director, a principal and one of the directing minds of Mountain.

14. At all material times, Anderson was a principal and one of the directing minds of Mountain.

15. The defendant, Fabca Projects Ltd. ("Fabca Projects"), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, and operates a construction business.

16. The defendant, Fabca-PMG Projects Ltd. ("Fabca-PMG"), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, and operates a general contracting business.

17. The defendant, Fabca Wardlaw Ltd. ("Fabca Wardlaw"), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, and operates an investment and/or holding company.

18. The defendant, Fabca King Edward Ltd. ("Fabca King Edward"), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, Manitoba, and operates an investment and/or holding company.

19. Fabca Projects, Fabca-PMG, Fabca Wardlaw and Fabca King Edward shall hereinafter be referred to as "Fabca". At all material times, Fabca was, or purported to be, a subcontractor of Caspian in respect of the Project.

20. The defendant, Gregory Christo Fiorentino ("Fiorentino"), is an individual residing in Winnipeg. At all material times, Fiorentino was the president, and a director, officer and shareholder of Fabca Projects, was a principal and/or one of the directing minds thereof, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

21. At all material times, Fiorentino was also the president, and a director, officer and shareholder of Fabca-PMG and Fabca King Edward, and was a principal and/or one of the directing minds thereof.

22. At all material times, Fiorentino was also the president, and a director and officer of Fabca Wardlaw, and was a principal and/or one of the directing minds thereof.

23. The defendant, Maria Rosa Fiorentino ("Maria Rosa"), is an individual residing in Winnipeg. At all material times, Maria Rosa was the secretary, and a director, officer and shareholder, of Fabca Projects, was a principal and/or one of the directing minds thereof and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

24. At all material times, Maria Rosa was a shareholder of Fabca King Edward and was a principal and/or one of the directing minds thereof.

25. The defendant, Peter Giannuzzi ("Giannuzzi"), is an individual residing in Winnipeg. At all material times, Giannuzzi was the secretary, and a director, officer and shareholder, of Fabca-PMG and Fabca Wardlaw, was a principal and/or one of the directing minds of Fabca, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

26. At all material times, Giannuzzi was an employee of Caspian, a principal and/or directing mind thereof, and was Caspian's site project manager on the Project.

27. Collectively, Caspian, Mountain and Fabca are referred to hereinafter as the "Contractors".

28. Collectively, Armik, Shaun, Jenik, Anderson, LaMontagne, Fiorentino, Giannuzzi and Maria Rosa, being the named defendant principals and/or directing minds of the respective Contractors, are referred to hereinafter collectively as the "Contractor Principals".

29. The defendant, Dunmore Corporation ("Dunmore"), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, and is an investment and/or holding company.

30. The defendant, Ossama Abouzeid ("Abouzeid"), is an individual residing in Winnipeg. At all material times, Abouzeid was the president, and director, officer and shareholder, of Dunmore, was a principal and one of the directing minds thereof, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

31. Dunmore and/or Abouzeid was the project director on the Project (the "Project Director") starting in or around June 2011 until in or around December 2013.

32. The defendant, Adjeleian Allen Rubeli Limited (also known as A.A.R.) ("AAR"), is a corporation incorporated pursuant to the laws of Ontario with its registered office in Ottawa, Ontario, and operates as a professional engineering and/or consulting firm.

33. The defendant, Peter Chang (“Chang”), is an individual residing in Ottawa, Ontario. At all material times, Chang was an employee, a principal and/or one of the directing minds of AAR for whom AAR was and is vicariously liable, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

34. The defendant, GRC Architects Inc. (“GRC”), is a corporation incorporated pursuant to the laws of Ontario with its registered office in Ottawa, Ontario, and is registered to operate as a professional architectural firm in, among other places, Manitoba.

35. The defendant, Patrick Dubuc (“Dubuc”), is an individual residing in Cantley, Quebec. At all material times, Dubuc was an employee, a principal and/or one of the directing minds of GRC for whom AAR was and is vicariously liable, was GRC’s project supervisor on the Project, and was personally involved in and responsible for the acts, omissions and breaches alleged herein.

36. Collectively, Dunmore, AAR and GRC are referred to hereinafter as the “Consultants”.

37. Collectively, Abouzeid, Chang and Dubuc, being the named defendant principals and/or directing minds of the respective Consultants, are referred to hereinafter as the “Consultant Principals”.

38. The defendant, 8165521 Canada Ltd. operating as PHGD Consulting (“PHGD”), is a corporation incorporated pursuant to the laws of Canada, with its registered office in Cantley, Quebec, and operates a consulting business.

39. At all material times, Chang was a corporate administrator of PHGD and was a principal and/or one of the directing minds thereof.

40. At all material times, Dubuc was a director of PHGD and was a principal and/or one of the directing minds thereof.

41. The defendant, 2316287 Ontario Ltd. operating as PJC Consulting (“PJC”), is a corporation incorporated pursuant to the laws of Ontario, with its registered office in Ottawa, Ontario, and operates a consulting business.

42. At all material times, Chang was a director of PJC and was a principal and/or one of the directing minds thereof.

43. The defendant, Triple D Consulting Services Inc. (“Triple D”), is a corporation incorporated pursuant to the laws of Manitoba, with its head office located in Winnipeg, and operates a consulting business.

44. At all material times, Anderson was also the president, and a director, officer and shareholder, of Triple D as well as a principal and one of the directing minds thereof, in addition to being an employee, a principal and/or one of the directing minds of Caspian.



45. The defendant, Phil Sheegl (“Sheegl”), is an individual residing in Winnipeg. At all material times, Sheegl was an employee and officer of the City. From November 2008 until May 2011, Sheegl was the Deputy Chief Administrative Officer of the City. In or around May 2011, Sheegl was appointed to the position of Chief Administrative Officer of the City and remained in that position until in or around October 2013.

46. The defendant, FSS Financial Support Services Inc. (“FSS”), is a corporation incorporated pursuant to the laws of Manitoba, with its head office in Winnipeg, and operates a financial services business. At all material times, Sheegl was the president, secretary, and a director and officer, of FSS as well as a principal and/or a directing mind thereof.

47. The defendant, 2686814 Manitoba Ltd. (“268”), is a corporation incorporated pursuant to the laws of Manitoba, with its head office in Winnipeg, and operates a financial services business. At all material times, Sheegl was the president and secretary, and a director, officer and shareholder, of 268 as well as a principal and/or a directing mind thereof.

48. FSS and 268 were amalgamated in early 2019. FSS and 268 shall hereinafter be referred to as the “Sheegl Companies”.

49. The defendant, ABC Ltd. (“ABC”), is a body corporate, the particulars of which are unknown to the City. At all material times, ABC carried on business as a contractor and/or equipment and/or materials supplier or any other person in or around Winnipeg.

50. The defendant, DEF Ltd. (“DEF”), is a body corporate, the particulars of which are unknown to the City. At all material times, DEF carried on business as a contractor and/or equipment or materials supplier or any other person in or around Winnipeg.

51. The defendant, GHI Ltd. (“GHI”), is a body corporate, the particulars of which are unknown to the City. At all material times, GHI carried on business as a contractor and/or equipment or materials supplier or any other person in or around Winnipeg.

52. The defendant, JKL Ltd. (“JKL”), is a body corporate, the particulars of which are unknown to the City. At all material times, JKL carried on business as a contractor and/or equipment or materials supplier or any other person in or around Winnipeg.

53. The defendants, John Doe I, John Doe II, John Doe III, John Doe IV, John Doe V, John Doe VI and John Doe VII, are all individuals, the particulars of which are unknown to the City, and were at all material times directors, officers, shareholders, employees and/or principals and/or directing minds of the defendants, ABC, DEF, GHI, and/or JKL, or any other person.

### **Background**

54. On or about November 18, 2010, the City issued a Request for Proposal for Phase 1 of the Construction Management Services for the Design and Development of the WPS Headquarters (the “Phase 1 RFP”). Even prior to the issuance of the Phase 1 RFP, the Contractors, the Consultants, the Contractor Principals and the Consultant

Principals, and in particular, Caspian, Armik, Shaun, Anderson, Giannuzzi and Abouzeid, were in contact and acted in concert with Sheegl.

55. On or about February 10, 2011, the City entered into a contract with Caspian and Akman Construction Ltd. (“Akman”) with those two firms acting in a joint venture (the “Joint Venture”) whereby they jointly agreed to perform certain pre-construction services for the execution of Phase 1 of the Construction Management Services for the Design and Development of the WPS Headquarters (the “Phase 1 Contract”).

56. The scope of work for the Phase 1 Contract included, but was not limited to, the following services:

- (a) participation in the design development of the Project to provide consultation, expertise, advice, planning and scheduling, cost estimating for budgets, construction alternative recommendations, value engineering processes and coordination of subcontractor pricing and contract documents, throughout the design development, detail design and contract document preparation processes;
- (b) preparation, monitoring and revision of the master schedule for construction activities based on design decisions and provision of expert advice on any labour, equipment or materials which should be pre-ordered to meet the master schedule;

- (c) preparation and issuance of bid documents, in accordance with City standard bid document requirements, for solicitation of competitive subcontractor bids; and
- (d) confirmation and submission of a total price for construction, including all work necessary to complete construction in accordance with drawings and specifications developed during the design stage.

57. On or about June 14, 2011, the Joint Venture, as Assignor, entered into an assignment agreement with Caspian, as Assignee, with the consent of the City whereby the Joint Venture assigned all its rights, title, estate and interest in the Phase 1 Contract to Caspian, in consideration for Caspian undertaking to perform all of the obligations that the Joint Venture owed to the City under the Phase 1 Contract (the "Assignment Agreement").

58. On or about November 18, 2011, the City entered into a guaranteed maximum price (the "GMP") contract with Caspian whereby Caspian agreed to act as the general contractor on the Project at a contract price of \$137,100,000.00 and to perform, among other things, certain pre-construction services, construction services and post-construction services for the execution of Phases 1, 2 and 3 of the Construction Management Services for the Design and Development of the WPS Headquarters (the "Principal Agreement"), which was subsequently amended by documents including but not limited to the following:

- (a) a supplemental agreement, effective December 11, 2013, which incorporated various change orders in order to set out the final contract price (the “First Supplemental Agreement”);
- (b) a second supplemental agreement, effective February 12, 2015, which addressed particular remedial work arising out of flood damage which occurred on or about August 21, 2014 (the “Second Supplemental Agreement”); and
- (c) various change notices and/or orders, to be elaborated upon at trial.

(collectively “the Caspian Contract”).

59. In general terms, the Principal Agreement provided that Caspian was to be paid a management fee for its services, namely Construction Management Services, on the Project and to be reimbursed for its actual costs incurred on the Project. In particular, as part of the monthly progress claim process, Caspian was required to include the following documentation in order to be reimbursed:

- (a) a Caspian invoice;
- (b) copies of all subcontractor invoices showing the actual costs incurred by Caspian in respect of the Project for that particular month;
- (c) a Caspian progress claim, which summarized the subcontractor invoices submitted by Caspian as part of its monthly progress claim for that particular

month and which was intended to substantiate the total progress amount reported on the Caspian invoice referred to above; and

- (d) a Project Claim Cost Breakdown, which outlined how the GMP would be allocated by Caspian to various budget items (e.g. demolition, electrical) and how the subcontractor invoices submitted by Caspian for that particular month would be allocated to these various budget items.

60. In general terms, the First Supplemental Agreement increased the GMP to \$156,374,911.67. Pursuant to that agreement, Caspian was required to follow the monthly progress claim process outlined in paragraph 59 herein in respect of certain budget items, but was not required to provide subcontractor invoices in respect of certain other budget items, as identified in the First Supplemental Agreement.

61. Pursuant to the terms of the Caspian Contract, Caspian agreed, among other things:

- (a) that it would construct the whole and all parts of the WPS Headquarters, including the outdoor shooting range, and perform all work associated with the major components and phases of the Project;
- (b) to assume all responsibility and costs as the "general contractor" on the Project;

- (c) to confirm and submit a total price for construction, including all work necessary to complete construction in accordance with drawings and specifications for the Project developed during Phase 1 of the Project;
- (d) to properly plan, manage and control the work and services performed and materials supplied for the Project;
- (e) to supervise the work and services performed by any subcontractors engaged on the Project so as to ensure that said work and services would be carried out in a good and workmanlike manner;
- (f) to assemble and enter into contracts with all successful subcontractors and to supervise, coordinate and administer contracts with subcontractors during construction, relating (among other things) to:
  - (i) providing on-site supervision and coordinating all subcontractors;
  - (ii) controlling and inspecting subcontractor work to ensure conformance to technical specifications and drawings; and
  - (iii) implementing cost control and change control procedures with subcontractors and issuing required contract documents to effect proposed change requests, change orders and quotes and approvals;

- (g) to submit to the Project Director and the City any request for payment with such supporting documentation as may be required, which request was to be verified under oath by an officer of Caspian and was to seek payment for costs incurred not in excess of the percentage of the final breakdown of costs completed for that item of the work performed during the previous month as certified by the Project Director;
- (h) to prepare a detailed cost breakdown for each element of the work on the Project within 45 days of completion and acceptance of the designs, drawings, plans and specifications;
- (i) to advise the Project Director and the City of any variations and/or discrepancies between the actual cost and the detailed cost breakdown throughout the Project following the completion and provision of each item of work;
- (j) to submit to the Project Director and the City all requests for approval of any proposed change order, accompanied by working drawings and a written narrative of the proposed change, along with evidence of the cost and time necessary to complete the proposed change;
- (k) to submit to the Project Director and the City all requests for use of the Construction Contingency for approval with supporting documentation and pricing; and



- (l) to furnish of all other services and things expressly or impliedly required from the contract documents.

(collectively, the "Caspian Duties")

62. It was an express or implied term of the Caspian Contract that:

- (a) Caspian was capable and skilled to perform the Contractor Work and was aware that the City was relying on Caspian to perform the Contractor Work in a competent manner and in keeping with the standards of a professional general contracting company;
- (b) Caspian had the expertise, experience and knowledge as well as the necessary personnel and financial capability to perform the Work in accordance with the terms of the Caspian Contract;
- (c) Caspian assumed full responsibility to the City for the improper acts and omissions of its subcontractors and others employed or retained by Caspian in connection with the Project;
- (d) the City was entitled to rely upon the accuracy and completeness of the information furnished by Caspian in connection with any request for payment under the Caspian Contract;
- (e) in the event that the Project Director or the City determined that Caspian had been paid any sums not due to Caspian, those sums were to be

reimbursed by Caspian to the City for the use and benefit of the Project within 48 hours of demand by the Project Director;

- (f) all records in the possession of Caspian and/or its subcontractors would be made available to the City for inspection and copying upon their request at any time at the City's cost and expense;
- (g) Caspian would exercise all reasonable care, skill, diligence and competence as the general contractor on the Project; and
- (h) Caspian would take all reasonable steps required to ensure that no loss or damage was sustained by the City.

63. On or about June 1, 2011, the City entered into a contract with Dunmore whereby Dunmore agreed to provide the services of Abouzeid as the Project Director for construction project management services to the City in respect of the Project (the "Dunmore Contract").

64. Pursuant to the terms of the Dunmore Contract, Dunmore agreed, among other things:

- (a) to perform the duties of Project Director of the Caspian Contract;
- (b) to participate in the negotiation of the Caspian Contract and other tender prices;

- (c) to firm up the initial budget and to control the budget change process that will impact the cost of the Project;
- (d) to review, approve and coordinate the issuance of all remaining contracts;
- (e) to scrutinize the project schedule and milestones and submitting weekly reports to the Project Steering Committee;
- (f) to review and approve any progress claims and/or requests for progress payment, change orders, contemplated change notices and other such documents submitted by Caspian and/or AAR and required to be approved by the Project Director pursuant to the Caspian Contract; and
- (g) to report to the City at times and as frequently as required by the City on the status of the Project.

(the “Dunmore Duties”).

65. It was an express or implied term of the Dunmore Contract that:

- (a) Dunmore and/or Abouzeid would perform the Dunmore Duties honestly and diligently and would observe the terms of the Dunmore Contract;
- (b) in the event that it was shown that a member of the City Council or an officer of employee had any pecuniary interest in the Dunmore Contract or that Dunmore and/or Abouzeid had participated in any collusive scheme or

combine, Dunmore and/or Abouzeid would forfeit all claims under the Dunmore Contract and refund the City any monies paid to them; and

- (c) Dunmore and/or Abouzeid would exercise all reasonable care, skill, diligence and competence in the performance of their duties under the Dunmore Contract to ensure that the City was not injured, its property was not damaged and its rights were not infringed.

66. On or about December 23, 2011, the City entered into a contract with AAR whereby AAR agreed to provide certain professional engineering services to the City with respect to the Project (the "AAR Principal Agreement"), which was subsequently amended by documents including but not limited to the following:

- (a) a supplementary agreement, effective June 8, 2012; and
- (b) a second supplemental agreement, effective December 23, 2013.

(collectively "the AAR Contract")

67. Pursuant to the terms of the AAR Contract, AAR agreed, among other things:

- (a) to review and complete the calculations, documentation, design drawings and specifications previously commenced by AECOM in respect of the Project, to recertify and seal the said design drawings and to do all other necessarily incidental services required to complete the design drawings and which may not have been completed by AECOM;

- (b) to act as the engineer-of-record with the City on the Project for periodic inspections and occupancy;
- (c) to lead the value engineering process to assist the City in achieving its budget and design requirements;
- (d) to assist the Project Director in the procurement process of the Project, including bid evaluation; and
- (e) to assist the Project Director with, among other things, the following duties:
  - (i) reviewing the schedule of construction on the Project;
  - (ii) reviewing and evaluating progress payments;
  - (iii) preparing and reviewing contemplated change notices and change orders;
  - (iv) reviewing contractor PCN pricing and other submittals;
  - (v) reviewing and evaluating subtrade tender prices;
  - (vi) processing, reviewing and issuing certificate for payment;
  - (vii) preparing substantial performance reports and certification;
  - (viii) performing inspections and preparing reports with respect to all engineering disciplines, including: structural, mechanical, electrical, civil construction, data/communication and security systems; and

- (ix) inspecting the Project and certifying substantial performance of the work on the Project.

(the “AAR Duties”)

68. The City says that at all material times:

- (a) AAR represented itself as capable and skilled to perform the AAR Duties and was aware that the City was relying on AAR to perform the AAR Duties in a competent manner and in keeping with the standards of a professional engineering and/or consulting firm;
- (b) AAR was required to conduct its own due diligence in relation to all aspects of the Project and was responsible for carrying out, at its own cost, any independent investigations, surveys and studies;
- (c) AAR would work with Caspian and their sub-trades to maintain the Project schedule and the accurate and actual cost of the Project;
- (d) AAR had a duty to coordinate the services to be performed by AAR and its sub-consultants, Caspian and its sub-contractors and the City’s own forces on the Project;
- (e) AAR would exercise all reasonable care, skill, diligence and competence as the engineer-of-record on the Project; and

- (f) AAR would take all reasonable steps required to ensure that no loss or damage was sustained by the City.

69. On or about December 8, 2008, the City entered into an employment agreement with Sheegl whereby, in exchange for valuable consideration, Sheegl was appointed to, and employed as, the Deputy Chief Administrative Officer for the City, effective November 1, 2008 (the “Deputy CAO Agreement”).

70. On or about July 21, 2011, the City entered into a second employment agreement with Sheegl whereby, in exchange for valuation consideration, Sheegl was appointed to, and employed as, the Chief Administrative Officer for the City, effective May 25, 2011 (the “CAO Agreement”).

71. Pursuant to the terms of both the Deputy CAO Agreement and the CAO Agreement, Sheegl agreed, among other things:

- (a) to acknowledge, and did acknowledge by virtue of the Deputy CAO Agreement and the CAO Agreement, that he was in a fiduciary relationship with the City;
- (b) to act honestly, in good faith, and in a manner not in conflict with but in the best interests of the City;
- (c) to abide by the City’s Code of Conduct for Employees (the “Code of Conduct”) adopted from time to time by the City, which provided as follows:

Employees must avoid situations in which their personal interest conflicts, or appears to conflict, with the interests of the City in their dealings with persons doing or seeking to do business with the City.

1. No employee shall engage in any outside employment, business, or undertaking for the employee's direct or indirect personal gain,

- (a) that will, or is likely to, interrupt or interfere with, the performance of his or her employment duties;
- (b) that requires or involves activities related to the outside employment, business, or undertaking, during any portion of the work day in which the employee is required to perform duties for the City;
- (c) in which the employee will gain, or appear to gain, a benefit as a result of his or her position with the City;
- (d) that will, or is likely to, influence, affect, or impair the manner in which the employee carries out his or her duties with the City, or his or her impartiality;
- (e) in such a manner, or in such a way, as to appear to be acting on behalf of the City, or appears to represent an opinion of the City.

...

4. No employee shall accept any gift, favour, commission, reward, advantage or benefit of any kind from any person who is directly or indirectly involved in any business relationship whatsoever with the City, unless it is:

- (a) a nominal exchange of hospitality among persons doing business;
- (b) a token exchanged as a part of protocol; or
- (c) a normal presentation made to persons participating in public functions.



Where an employee, as a result of the performance of his or her duties, receives or becomes entitled to receive any monetary payment, good, or service, that is outside the limits set out in this section, the employee shall turn over the monetary payment, good or service to his or her department head for such civic or charitable purposes as the department head may determine.

...

9. No employee shall use any information acquired as a result of his or her duties with the City for personal benefit unless the information is available to the public.

10. No employee shall grant any special consideration, treatment or advantage to any person in their dealings with the City.

11. No employee shall represent the City in dealings with any persons in which he or she has a direct or indirect pecuniary interest or with his or her dependants or relatives.

- (d) to declare, and did declare by virtue of the Deputy CAO Agreement and the CAO Agreement, that he had no interest which conflicted with his acceptance of the position of Deputy Chief Administrative Officer and Chief Administrative Officer;
- (e) to diligently and faithfully devote substantially all of his working time, attention and best efforts to the business of the City and to the performance of his duties to his utmost ability;
- (f) to not actively engage in any other business or occupation without the City's written consent and to disclose to the City in writing all of his conflicting outside commitments;

- (g) to not carry on or undertake any activity during his off-duty hours, which would be inconsistent or conflict with his duties and obligations as Deputy Chief Administrative Officer and as Chief Administrative Officer; and
- (h) to keep confidential and to not reveal to anyone, in any manner, any and all confidential information obtained by Sheegl in the performance of his duties as Deputy Chief Administrative Officer and as Chief Administrative Officer without the City's approval;

72. The City says that at all material times:

- (a) Sheegl owed fiduciary duties to the City, including the duty to carry out his duties as Deputy Chief Administrative Officer and as Chief Administrative Officer loyally, honestly, diligently and in good faith, in the best interests of the City;
- (b) it was an express and/or implied term of the Deputy CAO Agreement and of the CAO Agreement that Sheegl would abide by the City's Code of Conduct and other policies, including but not limited to, the Materials Management Policy, which provides as follows:

B6.2 A City employee shall be in breach of the ethical standards of this Policy who:

- (a) responds to a solicitation for or contracts for a supply to or by the City; or
- (b) while an owner, partner, shareholder, director or officer of a business, allows such business to respond to a solicitation for or contract for a supply to or by the City; or

- (c) is the employee of or a subcontractor to a contractor in connection with a solicitation for or contract for a supply to or by the City; or
- (d) solicits or accepts from a person, on behalf of himself or herself or any other person:
  - (i) employment; or
  - (ii) a contract as a subcontractor; or
  - (iii) any money, property or services whether present or promised which provides for an inadequate consideration;

in connection with a solicitation or contract for a supply to or by the City; or

- (e) offers to disclose, discloses or uses confidential information in connection with a solicitation or contract for a supply to or by the City; or
- (f) for a supply for personal use:
  - (i) directly or indirectly uses the City; or
  - (ii) directly or indirectly uses the name of the City to solicit a discount or any other favourable terms accorded the City; or
  - (iii) where his or her identity is known to a person, knowingly accepts a discount or any other favourable terms accorded the City

unless the supply is made pursuant to a contract or program authorized by the Chief Administrative Officer.

73. Collectively, the defendants (whether as direct contractors of the City on the Project or as subcontractors retained by the City's direct contractors) owed the City a duty of good faith and a duty of honest contractual performance in respect of their work on the Project, which includes but is not limited to the following duties:

- (a) to act honestly, diligently and in good faith in the performance of the work on the Project;

- (b) to be honest, candid and forthright with the City in relation to the performance of their contractual obligations;
- (c) not to lie to or mislead the City in respect of their contractual performance;  
and
- (d) generally, to exercise reasonable care toward the City.

**Nature of Scheme**

74. During the currency of the Project and as early as late 2010, prior to the issuance of the Phase 1 RFP by the City, the Contractors and the Consultants, the Contractor Principals, the Consultant Principals and other unknown persons designed, orchestrated and implemented a scheme to defraud the City and thereby obtain monies under false pretenses (the “Scheme”), which included, but was not limited to:

- (a) the creation of fraudulent and/or inflated sub-trade quotes, invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments so as to wrongfully inflate the cost of the Project;
- (b) the fraudulent alteration of actual, *bona fide* sub-trade quotes and/or invoices so as to wrongfully inflate the cost of the Project;
- (c) the approval of these fraudulent and/or inflated s sub-trade quotes, invoices, change orders, contemplated change notices, requests for progress

payments and/or progress payments and/or altered sub-trade quotes and invoices; and

- (d) the payment of secret commissions and other benefits (“Kickbacks”) to the Contractors, the Consultants, the Contractor Principals, the Consultant Principals, their related corporations, Sheegl, the Sheegl Companies and other unknown persons in return for their participation and complicity in the Scheme.

75. The full particulars of the Scheme are not yet known to the City, but are within the knowledge of the defendants.

76. The particulars of the Scheme include, but are not limited to, the following:

- (a) The Contractors and the Contractor Principals knowingly and fraudulently altered and/or inflated actual, *bona fide* sub-trade quotes and invoices and/or created fraudulent and inflated sub-trade quotes, invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments, which misrepresented or dishonestly overstated the costs of sub-trade work and/or materials and resulted in the City being overcharged in respect of the Project and making overpayments thereon. In particular, the Contractors and the Contractor Principals:

- (i) fraudulently altered actual, *bona fide* sub-trade invoices and/or quotes and submitted them to the City so as to inflate the cost of work on the Project;
  - (ii) fraudulently issued to the City sub-trade quotes, invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments for work not performed and/or for work performed or materials supplied by entities listed and/or not listed on said invoices;
  - (iii) fraudulently issued to the City multiple quotes, invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments in respect of the same work; and/or
  - (iv) fraudulently issued to the City quotes, invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments in respect of work performed on different construction projects unrelated to the Project, including but not limited to other City projects and renovations to the personal residences of Shaun and/or Armik; and
- (b) The Consultants and the Consultant Principals knowingly and fraudulently allowed and approved, or recommended for approval, fraudulent and/or inflated sub-trade quotes, invoices, change orders, contemplated change

notices, requests for progress payments and/or progress payments and/or altered actual, *bona fide* sub-trade invoices and quotes submitted to them by the Contractors and the Contractor Principals, in exchange for which the Consultants and the Consultant Principals received Kickbacks either paid to them personally or paid to their related corporations, none of which Kickbacks were disclosed to or approved by the City. These Kickbacks include, but are not limited to, the following:

- (i) the payment of approximately \$400,000.00 from Triple D, a corporation related to and beneficially owned by Anderson, to corporations related to and beneficially owned by Chang and Dubuc, namely PHGD and PJC.

The full particulars of the Kickbacks resulting from the Scheme are not yet known to the City, but are known the defendants.

77. As a result of the Scheme, the City suffered losses resulting from the fraudulent and/or inflated pricing caused by fraudulent and/or inflated sub-trade quotes, invoices, change orders, contemplated change notices, request for progress payments and/or progress claims and/or by altered actual, *bona fide* sub-trade invoices and quotes. In particular, as a result of the altered actual, *bona fide* sub-trade invoices and quotes and/or of the fraudulent and inflated sub-trade quotes, invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments fraudulently submitted by the Contractors and/or the Contractor Principals and knowingly and

fraudulently allowed and approved by the Project Director, the Consultants and/or the Consultant Principals, the City was overcharged for the Contractor's services which resulted in an increase in the cost of the Project in an amount to be proved at trial.

78. At all material times, the Contractor Principals and the Consultant Principals were the ultimate owners and directing minds of the Contractors and/or the Consultants and perpetrated and controlled the Scheme described herein. The City pleads that the Principals, in perpetrating the Scheme, are personally responsible for their own tortious and/or fraudulent conduct and that the Contractors and the Consultants are jointly and severally liable for such tortious and/or fraudulent conduct, both directly and indirectly.

#### The Phase 1 Contract

79. On or about November 18, 2010, the City issued a Request for Proposal for Construction Management Services in respect of Phase 1 of the Project.

80. On or about January 18, 2011, the Joint Venture submitted to the City a proposal in respect of the City's Request for Proposal dated November 18, 2010, which included pricing with respect to Phases 1, 2 and 3 of the Project (the "Project Pricing").

81. On or about February 9, 2011, the City received an amendment to the proposal submitted by the Joint Venture on or about January 18, 2011 wherein the Joint Venture sought increased the pricing with respect to Phase 2 of the Project by \$2,520,000.00.



82. On or about February 11, 2011, the City awarded the Phase 1 Contract to the Joint Venture, which was ultimately assigned to Caspian on or about June 14, 2011 pursuant to the Assignment Agreement.

83. The City says that:

(a) the Project Pricing submitted to the City by the Joint Venture was based on:

- (i) actual, *bona fide* sub-trade quotes knowingly and fraudulently altered and inflated by the Contractors and the Contractor Principals; and
- (ii) sub-trade quotes fraudulently created and/or inflated by the Contractors and the Contractor Principals,

which misrepresented and overstated the true cost of sub-trade work and/or materials and which wrongfully inflated the Project Pricing and the overall Budget for the Project; and

(b) the Contractors, the Contractor Principals, including but not limited to Caspian, Armik, Shaun, Anderson and Giannuzzi, and Sheegl conspired and combined amongst themselves and other unknown persons to procure, and induce the City to award, the Phase 1 Contract to the Joint Venture by, among other things, providing Kickbacks to Sheegl and/or the Sheegl Companies and to other unknown persons in exchange for improper procurement advantages in respect of the Project, none of which Kickbacks were disclosed to or approved by the City.

The Principal Agreement

84. In or around May 2011, Sheegl was appointed the Chief Administrative Officer for the City.

85. In or around June 2011, Sheegl awarded the Dunmore Contract to Dunmore in the absence of a competitive bid process and appointed Abouzeid as the Project Director. In his capacity as Project Director, Abouzeid was responsible for assisting, and did in fact assist, the City in developing a guaranteed maximum price contract and a budget in respect of the Project (the “Budget”).

86. Shortly after the Dunmore Contract was awarded, Abouzeid and Sheegl initiated negotiations with Caspian, and in particular, Armik and Shaun, in respect of the Project.

87. On or about July 13, 2011, Caspian presented the City with a proposal to complete the Project for a guaranteed maximum price of \$137,100,000.00 (the “GMP Proposal”). On or about the same day, Sheegl was delegated authority to award the required contracts in respect of the Project.

88. On or about July 22, 2011, the Contractors, the Contractor Principals and/or one or more of the Contractors or the Contractor Principals issued payment, or arranged for payment to issue, to FSS, a corporation closely related to, and beneficially owned by, Sheegl, in the amount of \$200,000.00. In particular, on or about that date, Caspian issued the payment of \$200,000.00 to Mountain, who in turn issued payment in the same amount to FSS.

89. On or about November 18, 2011, Sheegl, acting on behalf of the City, awarded the Caspian Contract to Caspian.

90. The City says that:

- (a) the GMP Proposal submitted to the City by Caspian was based on:
  - (i) actual, *bona fide* sub-trade quotes knowingly and fraudulently altered and inflated by the Contractors and the Contractor Principals; and
  - (ii) sub-trade quotes fraudulently created and/or inflated by the Contractors and the Contractor Principals,

which misrepresented and overstated the true cost of sub-trade work and/or materials and which wrongfully inflated the GMP Proposal and the overall Budget for the Project;

- (b) the Contractors, the Consultants, the Contractor Principals, the Consultant Principals and/or Sheegl conspired and combined amongst themselves and other unknown persons to procure, and induce the City to award, the Principal Agreement to Caspian and the Dunmore Contract to Dunmore by providing Kickbacks to Sheegl and/or the Sheegl Companies and other unknown persons in exchange for improper procurement advantages in respect of the Project, none of which Kickbacks were disclosed to or approved by the City; and

- (c) the Consultants and the Consultant Principals knowingly and fraudulently allowed and approved, and recommended for approval, fraudulently created and/or inflated sub-trade quotes and approved, or recommended for approval, the GMP Proposal and/or the overall Budget for the Project, in exchange for which the Consultants and the Consultant Principals received Kickbacks either paid to them personally or paid to their related corporations, none of which Kickbacks were disclosed to or approved by the City.

91. Work commenced on the Project in or around 2011 and continued until in or around 2016. At all material times, the Contractors, the Consultants, the Contractor Principals and/or the Consultant Principals and other unknown persons perpetrated the Scheme as described in paragraph 74 herein. In particular:

- (a) the Contractors and the Contractor Principals knowingly submitted to the City fraudulent requests for progress payments and/or progress payments based on:
  - (i) actual, *bona fide* sub-trade quotes and/or invoices knowingly and fraudulently altered and inflated by the Contractors and the Contractor Principals; and
  - (ii) sub-trade quotes and/or invoices fraudulently created and/or inflated by the Contractors and the Contractor Principals,

which misrepresented or overstated the true costs of sub-trade work and/or materials and resulted in the City being overcharged in respect of the Project and making overpayments thereon; and

- (b) the Consultants and the Consultant Principals knowingly and fraudulently allowed and approved, or recommended for approval, these fraudulent requests for progress payments and/or progress payments submitted to them by the Contractors and the Contractor Principals, in exchange for which the Consultants and the Consultant Principals received Kickbacks either paid to them personally or paid to their related corporations, none of which Kickbacks were disclosed to or approved by the City.

#### The First Supplemental Agreement

92. Subsequent to the Principal Agreement and the commencement of work on the Project, various change orders were issued to reflect changes in the scope of work on the Project and were incorporated into the First Supplemental Agreement dated December 11, 2013, which established a total contract price of \$156,374,911.67.

93. The City says that:

- (a) the various change orders and/or contemplated change notices issued by Caspian to the City and subsequently incorporated into the First Supplemental Agreement were based on:

- (i) actual, *bona fide* sub-trade quotes knowingly and fraudulently altered and inflated by the Contractors and the Contractor Principals; and
- (ii) sub-trade quotes fraudulently created and/or inflated by the Contractors and Contractor Principals,

which misrepresented and overstated the true cost of sub-trade work and/or materials and which wrongfully inflated the cost of these change orders, which cost was ultimately reflected in the First Supplemental Agreement; and

- (b) the Consultants and the Consultant Principals knowingly and fraudulently allowed and approved, or recommended for approval, these fraudulent and inflated change orders and/or contemplated change notices submitted to them by the Contractors and the Contractor Principals, in exchange for which the Consultants and the Consultant Principals received Kickbacks either paid to them personally or paid to their related corporations, none of which Kickbacks were disclosed to or approved by the City.

#### The Second Supplemental Agreement

94. On or about August 21, 2014, the Property and the WPS Headquarters building located thereon was damaged by flooding as a result of a rain event, which required remedial and restoration work (the "Remedial Work").

95. On or about February 12, 2015, the City and Caspian entered into the Second Supplemental Agreement whereby the parties agreed to certain change orders relating to the Remedial Work and agreed that additional change orders would be issued in respect of the Remedial Work, as required.

96. The City says that:

(a) the various change orders and/or contemplated change notices issued by Caspian to the City pursuant to the Second Supplemental Agreement were based on:

(i) actual, *bona fide* sub-trade quotes knowingly and fraudulently altered and inflated by the Contractors and the Contractor Principals; and

(ii) sub-trade quotes fraudulently created and/or inflated by the Contractors and the Contractor Principals,

which misrepresented and overstated the true cost of sub-trade work and/or materials and which wrongfully inflated the cost of these change orders, which cost was ultimately reflected in the total contract price for the Project; and

(b) the Consultants and the Consultant Principals knowingly and fraudulently allowed and approved, or recommended for approval, these fraudulent and inflated change orders and/or contemplated change notices submitted to them by the Contractors and the Contractor Principals, in exchange for

which the Consultants and the Consultant Principals received Kickbacks either paid to them personally or paid to their related corporations, none of which Kickbacks were disclosed to or approved by the City.

97. A portion of the costs associated with and derived from the Second Supplemental Agreements and the work performed pursuant to that agreement was borne by the City's insurer and that portion of said costs borne by the City's insurer is not being claimed in the action herein.

### **Liability**

98. The City pleads that the defendants perpetrated the Scheme described herein in order to obtain a secret profit for their own benefit, to the detriment of the City.

99. The defendants, and in particular, the Contractors, the Consultants, the Contractor Principals and the Consultant Principals, conspired with each other to perpetrate the Scheme described herein against the City. The defendants agreed amongst themselves and acted cooperatively to assist each other in defrauding the City and in obtaining a secret profit for their own benefit, to the detriment of the City. The full particulars of the conspiracy and the agreement between the defendants to defraud the City are not yet known to the City, but are within the knowledge of the defendants.

100. The predominant purpose of the defendants' conduct was to cause loss or damage to the City in the form of the overpayment of monies to the Contractors and other related loss or damage. In addition, the defendants' conduct was unlawful and directed towards



the City and the defendants knew, or ought to have known, in the circumstances that injury to the City was likely to result from their conduct, as it did. The defendants are therefore liable for predominant purpose conspiracy and/or unlawful act conspiracy.

101. The Contractors and the Contractor Principals submitted to the City fraudulent and inflated sub-trade quotes and invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments and/or altered true sub-trade quotes and invoices, which contained false information.

102. Such fraudulent and inflated sub-trade quotes and invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments and/or altered true sub-trade quotes and invoices were submitted to the City with the Contractors' and the Contractor Principals' knowledge that the information contained therein was false or otherwise were submitted with reckless disregard as to the accuracy of such information (the "Misrepresentations").

103. The Misrepresentations were made knowingly and with the fraudulent intent to deceive the City and to induce it to approve and pay to Caspian the inflated costs associated with the fraudulent and inflated sub-trade quotes and invoices, change orders, contemplated change notices, requests for progress payments and/or progress payments and/or altered true sub-trade quotes and invoices.

104. The City relied upon the Misrepresentations made by the Contractors and the Contractor Principals to its detriment and suffered loss and damage as a result, namely the overpayment of monies to the Contractors in respect of the Project.

105. Further and in the alternative, the City says that:

- (a) there existed a duty of care between the Contractors and the Contractor Consultants on the one hand, and the City on the other;
- (b) the Misrepresentations were untrue, inaccurate or misleading;
- (c) the Contractors and the Contractor Principals acted negligently or with willful and/or or reckless disregard as to the truth of the Misrepresentations;  
and
- (d) the City reasonably relied on the Misrepresentations made by the Contractors and the Contractor Principals to its detriment and suffered loss and damage as a result, namely the overpayment of monies to the Contractors in respect of the Project.

106. The defendants are liable in conversion insofar as the Scheme caused the City to pay monies to the Contractors in excess of the amounts legitimately, honestly and in good faith expended by Caspian and/or the Contractors for work performed on the Project. The City's overpayment to the Contractors resulted from the Contractors' and/or the Consultants' wrongful interference with the City's possession over their own funds and resulted in the payment of monies to persons who were neither entitled to nor the rightful owners of those monies. The defendants interfered with the property of the City in a manner inconsistent with its right of possession and the City suffered damages as a result.

107. The defendants unjustly benefitted from, and were enriched by, the Scheme at the expense of the City in the form of the overpayment of monies to the Contractors (which monies are subject to a resulting or constructive trust in favour of the City) and other related injuries and there is no juristic reason for them to have so benefited. The defendants are therefore liable to make restitution to the City and to disgorge all such unjust benefits to the City.

108. By their involvement and participation in the Scheme described herein, by actively misleading the City as to the true costs of the Project, and by defrauding the City in order to obtain a secret commission for its own benefit, to the detriment of the City, Caspian, Dunmore, AAR, and Sheegl or their respective employees, agents and/or subcontractors breached their fiduciary and contractual duties to the City as particularized in paragraphs 59, 60, 61, 62, 64, 65, 67, 68, 71, 72 and 73 herein, thereby causing loss and damage to the City.

109. Further and in the alternative, the Consultants and the Consultant Principals owed a duty of care and/or and contractual duties to the City as particularized in paragraphs 64, 65, 67 and 68 herein, including but not limited to the following:

- (a) to properly supervise the Project, the work performed by the Contractors and the costs associated therewith;
- (b) to firm up the project budget and control the budget change process;

- (c) to review and approve sub-trade quotes and invoices, requests for progress payments, progress payments, change orders, contemplated change notices and other such documents submitted by Caspian and others and required to be approved;
- (d) to represent the City and act in its best interests in respect of the Project;
- (e) to exercise the degree of care, skill, diligence and expertise in the performance of their work as would be expected of a competent construction consulting firm; and
- (f) generally, to exercise reasonable care towards the City.

110. By failing to recognize the Scheme and/or by failing to identify and to advise the City of the fraudulent and inflated sub-trade quotes and invoices, change orders, contemplated notices, requests for progress payments and/or progress payments and/or altered actual, *bona fide* sub-trade quotes and invoices, the Consultants and the Consultant Principals breached their aforementioned duties and were negligent.

111. The particulars of the Consultants' negligence and/or breach of contract include, among other things, the following:

- (a) failing to satisfy the Consultants' respective contractual obligations as particularized in paragraphs 64, 65, 67 and 68 herein;

- (b) failing to properly supervise the Project, the work performed by the Contractors and the costs associated therewith;
- (c) failing to firm up the project budget and to control the budget change process;
- (d) failing to properly review and approve sub-trade quotes and invoices, progress claims and/or requests for progress payment, change orders, contemplated change notices and other such documents submitted by Caspian and others and required to be approved;
- (e) failing to represent the City and to act in its best interests in respect of the Project;
- (f) failing to exercise the degree of care, skill, diligence and expertise in the performance of their work as would be expected of a competent construction consulting firm; and
- (g) generally, failing to exercise reasonable care towards the City.

112. By his knowledge of, and involvement and participation in, the Scheme described herein, Sheegl breached his fiduciary duties to the City, the particulars of which included, but are not limited to, the following:

- (a) in his position as Deputy Chief Administrative Officer, and then Chief Administrative Officer for the City, Sheegl had access to the City's

confidential information, including procurement information relating to the Project and was entrusted with, and enjoyed, substantial autonomy, power and discretion which could be exercised in a manner affecting the City's interests such that the City was particularly vulnerable to the improper use of Sheegl's discretion and power;

- (b) Sheegl used his position of trust, and the discretion and power derived therefrom, to provide improper procurement advantages in exchange for Kickbacks to himself and/or the Sheegl Companies, and to conceal these Kickbacks and conflicts of interest from the City, thereby breaching his contractual and fiduciary duties to the City as particularized in paragraphs 71 and 72;
- (c) during the performance of his duties as Deputy Chief Administrative Officer, and Chief Administrative Officer, Sheegl engaged in outside business or undertakings with the Contractors and the Contractor Principals in which he gained, or appeared to gain, a benefit as a result of his position with the City in direct violation of the City's Code of Conduct. In particular:
  - (i) on or about July 22, 2011, Caspian issued payment in the amount of \$200,000.00 to Mountain, who, in turn, issued payment in the same amount to Sheegl and/or the Sheegl Companies, shortly after Sheegl was granted authority to award the Principal Agreement in respect of

the Project and shortly before Sheegl awarded the Principal Agreement to Caspian; and

- (ii) in or around 2011, in or around the same time as the \$200,000 payment issued to Sheegl and/or the Sheegl Companies, Armik agreed to pay, and did pay, \$327,000.00 to Sheegl and/or an Arizona corporation related to and beneficially owned by Sheegl, namely Winnix Properties Corporation, in respect of a partial interest in an Arizona property.

113. Insofar as Sheegl and/or the Sheegl Companies, including but not limited to FSS, received a gift, favour, commission, reward, advantage or benefit from one or more of the defendants, who were directly or indirectly involvement in a business relationship with the City, Sheegl is required to turn over any such gift, favour, commission, reward, advantage or benefit or its monetary equivalent to the City pursuant to the City's Code of Conduct.

114. By their involvement and participation in the Scheme described herein, by actively misleading the City as to the true costs of the Project, and by defrauding the City in order to obtain a secret commission for their own benefit, to the detriment of the City, the defendants breached their duty of good faith and duty of honest contractual performance as described in paragraph 73 herein, the particulars of which include, but are not limited to, the following:

- (a) failing to act honestly, diligently and in good faith in the performance of the work on the Project;

- (b) failing to be honest, candid and forthright in relation to the performance of their contractual obligations;
- (c) lying or misleading the City in respect of their contractual performance; and
- (d) generally, failing to exercise reasonable care towards the City.

115. As a result of the defendants' aforementioned negligence, fraud, conversion, breaches of trust and/or breaches described herein, the City suffered loss and damage as outlined herein.

### **Damages**

116. The City has suffered damages as a result of the Scheme described herein. Said damages are comprised of the overpayments made to the Contractors and/or to the Consultants, which it would not have paid but for the Scheme and/or defendants' acts, omissions and breaches described herein, the full particulars of which are not available at this time. The City seeks damages against the defendants for the entire amount of the overpayments made to the Contractors and/or to the Consultants in respect of the Project.

117. The City has incurred, and will continue to incur, significant expenses resulting from the Scheme pleaded herein, including legal, investigative and other professional fees. The City also seeks damages from the defendants for investigative and other costs, the full particulars of which are not available at this time but will be proved at the trial of this action.



118. The City says that it is entitled to damages for the fraud, conversion, conspiracy and breaches described herein, the full particulars of which are not available at this time but will be proved at the trial of this action.

119. The City is entitled to a declaration that such monies in the possession or control of the defendants are subject to a resulting and/or constructive trust in favour of the City.

120. The defendants perpetrated the deliberate and intentional Scheme over a significant period of time and at great cost to the City and as such, bear, both collectively and individually, a high degree of blameworthiness for their fraudulent conduct. The defendants' acts, omissions and breaches described herein constitute callous and deceitful conduct, and a flagrant disregard for the rights of the City. As a result, the City is entitled to recover punitive and aggravated damages therefor.

121. The City is entitled to an interlocutory and permanent injunction restraining the defendants from disposing of any of their assets, wherever so located, and an accounting of all assets, effects and property, including any trust accounts or jointly-held assets, or any improper disposition thereof, and of all money received by the defendants or any person on their behalf and of all dealings and transactions between or among the defendants, their contractors and/or suppliers and the City.

122. The City pleads that the liability of the defendants arises out of their fraud, embezzlement, misappropriation, and/or defalcation while acting in a fiduciary capacity and/or resulted from obtaining property or services by false pretenses and/or fraudulent

misrepresentation. The City relies accordingly upon the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and in particular, section 178 thereof.

123. The plaintiff pleads and relies upon the provisions of *The Tortfeasors and Contributory Negligence Act*, C.C.S.M. c. T90.

124. The plaintiff pleads and relies upon the provisions of *The City of Winnipeg Charter*, S.M. 2002, c. 39.

125. The plaintiff is entitled to serve this claim outside Manitoba without leave pursuant to Queen’s Bench Rules 17.02(a), (f), (g), (h) and (m) as this proceeding is in respect of:

- (a) real or personal property in Manitoba (Rule 17.02(a));
- (b) contract made in whole or in part in Manitoba (Rule 17.02(f));
- (c) a tort committed in Manitoba (Rule 17.02(g));
- (d) loss and damages sustained in Manitoba (Rule 17.02(h)); and
- (e) persons carrying on business in Manitoba (Rule 17.02(m)).

126. The City claims as outlined in paragraph 1 herein.

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