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ROYAL BANK OF CANADA

DEFENDANT

SPRAGUE-ROSSER CONTRACTING CO. LTD.,  
SPRAGUE-ROSSER DEVELOPMENTS INC., PACIFIC  
FEDERATION EQUITY GROUP INC., JEFFERY JESSAMINE,  
DANIEL EDWARDS AND MATTHEW MACKAY

DOCUMENT

**SIXTH REPORT OF ALVAREZ & MARSAL CANADA  
INC., IN ITS CAPACITY AS COURT APPOINTED  
RECEIVER OF SPRAGUE-ROSSER CONTRACTING CO.  
LTD., SPRAGUE-ROSSER DEVELOPMENTS INC.,  
PACIFIC FEDERATION EQUITY GROUP INC.**

**November 9, 2015**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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ALVAREZ & MARSAL

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## INTRODUCTION AND BACKGROUND

1. Alvarez & Marsal Canada Inc. was appointed Receiver (the “**Receiver**” or “**A&M**”) of all of the assets, undertakings and properties of Sprague-Rosser Contracting Co. Ltd. (“**Contracting**”), Sprague-Rosser Developments Inc. (“**Developments**”) and Pacific Federation Equity Group Inc. (“**Pacific**”) (collectively, “**SR**” or the “**Companies**”) pursuant to an order of Honourable Madam Justice J. B. Veit (the “**Receivership Order**”) granted on July 31, 2014 (the “**Receivership Date**”).
2. Sprague-Rosser Leasing Inc. (“**Leasing**”) is a wholly owned subsidiary of Pacific and the shares of Leasing constitute Property as defined in the Receivership Order.
3. On August 7, 2014 this Honourable Court amended and restated the Receivership Order (the “**Amended Receivership Order**”) to provide for certain rights to Western Surety Company (“**Western**”) in respect of ongoing bonded construction contracts undertaken by SR in Alberta and Saskatchewan that the Receiver does not intend to complete.
4. On August 28, 2014, upon application of the Receiver, a Court Order was granted authorizing and empowering A&M to:
  - a) cause Contracting to make a voluntary assignment in bankruptcy; and
  - b) act as trustee of Contracting pursuant to the provisions of the Bankruptcy and Insolvency Act.
5. On September 3, 2014 A&M assigned SR into bankruptcy and A&M is now acting in a capacity as Trustee in Bankruptcy (“**Trustee**”) as well as Receiver.
6. On July 17, 2015 this Honourable Court granted an order:
  - a) authorizing the Receiver to make distributions (the “**Distribution Order**”) to Royal Bank of Canada (“**RBC**”); and
  - b) transferring the Receivership action to the judicial centre of Calgary.
7. The Receiver is filing a Notice of Application to be heard on November 19, 2015 seeking an order (the “**Approval Order**”) which provides for, among other things:
  - a) approval of a settlement agreement (the “**RMWB Settlement Agreement**”) between SR and the Regional Municipality of Wood Buffalo (“**RMWB**”) and direction with respect to distribution of the settlement proceeds;

- b) approval of an accounting of funds (the “**BWZ Trust Funds**”) paid by RMWB and held in trust by the Company’s former legal counsel, Burstall Winger Zammit LLP (“**BWZ**”);
  - c) direction to BWZ with respect to distribution of the BWZ Trust Funds; and
  - d) a declaration of the validity and enforceability of builders’ liens and settlement of the lien funds with respect to a project referred to as “Saline 3” (subsequently defined).
8. Further background including a copy of the Amended Receivership Order, the previous five reports of the Receiver and other motion materials are posted on the Receiver’s website at [www.alvarezandmarsal.com/sprague](http://www.alvarezandmarsal.com/sprague).
9. Capitalized terms not defined in this Sixth report of the Receiver (the “**Sixth Report**”) are as defined in the Amended Receivership Order.
10. All references to dollars are in Canadian currency unless otherwise noted.

#### **TERMS OF REFERENCE**

11. In preparing the Sixth Report, the Receiver has relied upon unaudited financial information, company records and discussions with management of SR. The Receiver has not performed an audit, review or other verification of such information.

#### **PURPOSE OF REPORT**

12. The Sixth Report is a special purpose report intended to provide this Honourable Court with information with respect to the following:
- a) an accounting of the BWZ Trust Funds;
  - b) a summary of builder’s lien claims and calculation of the lien fund for Saline 3;
  - c) a summary of the RMWB Settlement Agreement;
  - d) a summary of the Approval Order; and
  - e) the Receiver’s comments and recommendations with respect to its application for the Approval Order.
13. The Receiver has also provided an analysis of SR’s claims against RMWB in a Confidential Supplement to this Sixth Report (the “**Confidential Supplement**”). The Confidential Supplement contains information regarding the merits of SR’s claims against RMWB. This information is highly sensitive and would cause irreparable harm to the estate of SR in the event that the RMWB Settlement Agreement does not close.

## SUMMARY OF SR'S CLAIMS AGAINST RMWB

14. Prior to the Receivership, SR was contracted by RMWB to complete three separate public works construction projects (collectively, the “**RMWB Contracts**”) as follows:
- a) 2011 Urban Infrastructure Rehabilitation Program Abasands Heights Contract dated June 21, 2011 (“**Abasands**”);
  - b) Saline Creek Drive and Bridge Phase 1 Contract dated June 6, 2012 (“**Saline D&B**”); and
  - c) Sanitary Outfall Sewer and Water Line Supply Contract dated January 18, 2013 (“**Saline 3**”).
15. On February 24, 2014, RMWB issued a notice of termination for convenience to SR with respect to Saline 3 and on March 19, 2014, RMWB issued notices of termination for convenience to SR with respect to Abasands and Saline D&B.
16. On May 20, 2014 SR issued invoices totaling \$30.6 million to RMWB with respect to time and materials costs incurred by SR following termination of the RMWB Contracts comprised as follows:

Sprague-Rosser Contracting Co. Ltd. RMWB Invoices Issued on May 20, 2014 (\$000's)		
Abasands	\$	8,488
Saline D&B		18,172
Saline 3		3,989
	\$	<u>30,649</u>

17. RMWB disputed the invoices and there has been an ongoing disagreement between RMWB and SR as to the amounts remaining owing by RMWB in respect of the RMWB Contracts.
18. On July 31, 2014 the Company filed a statement of claim against RMWB (the “**Statement of Claim**”) in the amount of \$30.9 million plus interest and various other heads of damages. The Receiver effected service of an amended version of the Statement of Claim on RMWB in order to preserve the Action but has otherwise pursued the possibility of a negotiated settlement.
19. On September 2, 2014 the Receiver received a letter from legal counsel for RMWB stating that RMWB is of the position that there are no amounts due by RMWB to SR. RMWB cited several reasons for disputing the invoices including fundamental disagreement with SR’s methodology for determining amounts due to SR in the event of terminations for convenience under the

RMWB Contracts as well as certain actions and omissions on the part of SR with respect to its obligations under the RMWB Contracts.

20. The Receiver has expended considerable time and resources to the review, analyze and advance the claims against RMWB including:
  - a) reviewing the methodology used by SR to calculate amounts due following termination of the RMWB Contracts;
  - b) meeting with former legal counsel of SR to obtain background information with respect to the claims;
  - c) retaining former management of SR to compile documentation in support of claims that could be advanced by the Receiver against RMWB;
  - d) instructing its legal counsel to perform a thorough review of a voluminous amount of documentation to assess the legal merits of the claims against RMWB and provide advice regarding legal alternatives for pursuing recovery through negotiated settlement, litigation or otherwise;
  - e) engaging in discussions and negotiations with RMWB; and
  - f) engaging in discussions with various stakeholders including secured lenders, lien holders and Western.
21. A summary of project receivables due from RMWB and identified builders' liens, as reported by SR as at July 31, 2014 and updated to November 5, 2015, is tabled below:

**Sprague-Rosser Contracting Co. Ltd.**  
**RMWB Accounts Receivable Summary**  
**As at November 5, 2015**  
**(\$000's)**

	Abasands	Saline D&B	Saline 3	Total
<b>Project receivables (book value)</b>	\$ 7,950 <sup>1</sup>	18,172	3,989	30,111
<b>Builders' liens - Sub-contractors</b>				
Wilco	135	-	-	135
E Construction	-	4,030	-	4,030
Corix	-	-	318	318
Michels	-	-	4,424	4,424
	\$ 135	4,030	4,742	8,907

1. The book value of accounts receivable in respect of Abasands of \$7,950,000 includes an invoice issued on May 20, 2014 for \$8,488,000 less a payment of \$538,000 that was received by SR on July 6, 2014.

22. The Receiver has provided a detailed analysis of the claims against RMWB in the Confidential Supplement.
23. In respect of the builders' lien claims made by sub-contractors under the *Builders' Lien Act* (Alberta) (the "**BLA**"), the Receiver has identified no basis for disputing the validity or enforceability of the liens registered by Corix Water Products LP ("**Corix**") and Michels Canada Co. ("**Michels**") against the Saline 3 lands. The Receiver is of the view that there are potential issues with the validity and enforceability of the liens registered by Wilco Contractors Northwest Inc. ("**Wilco**") and E Construction Co. ("**E Construction**"). Accordingly, the Approval Order provides for distribution of the Saline 3 lien fund to each of Corix and Michels on a pro rata basis. The Receiver is also applying to have funds held in trust in respect of the Wilco lien and the E Construction lien pending determination of the validity and enforceability of such liens.

#### **BWZ TRUST FUNDS**

24. Commencing in December 2013, RMWB remitted certain payments due to SR pursuant to the RMWB Contracts into a trust account maintained by BWZ. The payments were subject to certain trust conditions, primarily requiring that the funds be used to make payments to sub-trades and discharge of liens before any funds were released to SR.

25. The BWZ Trust Funds include monies relating to another SR customer, K+S Potash Canada GP, but have been accounted for separately.
26. An accounting of the cash receipts and disbursements in the BWZ trust account prepared by the Receiver based on the books and records of SR and BWZ is attached as Appendix "A".
27. RMWB made payments to the trust account totaling approximately \$20.4 million of which approximately \$15.6 million has been disbursed to either subcontractors and vendors or the Company.
28. The BWZ Trust Funds currently held in respect of each of the RMWB Contracts are summarized as follows:

<b>Sprague-Rosser Contracting Co. Ltd.</b> <b>BWZ Trust Funds</b> <b>As at November 5, 2015</b> <b>(\$000's)</b>					
	<b>Abasands</b>	<b>Saline D&amp;B</b>	<b>Saline 3</b>	<b>Total</b>	
BWZ Trust Funds	\$ -	\$ 4,590	\$ 195	\$ 4,785	

#### **Nason**

29. The only disbursement made from the BWZ Trust Funds since the Receivership Date was a payment of \$390,000 made on June 4, 2015 to Nason Contracting Group Ltd. ("Nason").
30. Nason supplied work and materials to SR in relation to Saline 3 pursuant to a subcontract. On November 30, 2013 Nason registered a builders' lien against the Saline 3 lands in the amount of \$1.2 million.
31. On December 10, 2013 a Court order was granted pursuant to which the lien was discharged and \$1.3 million was provided by SR to be held in trust by BWZ as alternative security for the lien.
32. On July 17, 2014 a Court order was granted which provided for the release of \$795,000 to Nason from the funds held in trust by BWZ and procedures and timelines with respect to an arbitration process for determining Nason's entitlement to the remaining \$375,000, plus interest and costs.
33. On or about September 10, 2014 Nason submitted a Proof of Claim to the Trustee in the amount of \$413,000. The Trustee accepted the claim in the revised amount of \$390,000 and on April 29, 2015 a Court order was granted which provided for the release of \$390,000 from the BWZ Trust Funds to Nason.



### **SALINE 3 LIEN FUND**

34. RMWB has advised the Receiver that it is only willing to enter into the RMWB Settlement Agreement if the Receiver concurrently obtains a Court order that sets the lien fund (as defined in the BLA) with respect to Saline 3 and that RMWB makes up the shortfall by way of a direct cash contribution of the remaining lien fund payable.
35. RMWB has prepared a calculation of the amount it will need to contribute to the lien fund which is summarized as follows:

<b>Sprague-Rosser Contracting Co. Ltd.</b>		
<b>Saline 3 Lien Fund Calculation Summary</b>		
<b>As at November 5, 2015</b>		
<b>(\$000's)</b>		
Lien fund calculation per BLA:		
10% of actual work performed by SR on Saline 3	\$	3,677
Amounts paid by RMWB to SR while liens were on title		<u>1,228</u>
Total Saline 3 Lien Fund		4,905
Less:		
Amounts paid to lien holders		<u>(3,315)</u>
Saline 3 Lien Fund payable		1,590
Less:		
Balance in BWZ Trust Funds for Saline 3		<u>(195)</u>
Required RMWB contribution to Saline 3 Lien Fund	\$	<u><u>1,395</u></u>

36. As noted in paragraph 23, the Receiver does not dispute the validity of the builders' liens registered by Corix and Michels against the Saline 3 lands.
37. The Saline 3 lien fund is to be distributed pro rata based on the gross lien amounts. Accordingly, RMWB has prepared a calculation of the appropriate distribution of the lien funds which is summarized as follows:

**Sprague-Rosser Contracting Co. Ltd.**  
**Saline 3 Lien Fund Distribution Calculation Summary**  
**As at November 5, 2015**  
**(\$000's)**

	Corix	Michels	Total
Gross lien amount (before amounts paid to lien holders)	\$ 518	\$ 7,539	\$ 8,057
Pro rata percentage of liens	6%	94%	100%
Total Saline 3 lien fund per BLA (pro rata)	\$ 315	\$ 4,590	\$ 4,905
Less: Amounts paid to lien holders	(200)	(3,115)	(3,315)
Saline 3 Lien Distributions	<u>\$ 115</u>	<u>\$ 1,475</u>	<u>\$ 1,590</u>

38. The values used in the calculation prepared by RMWB are consistent with the books and records of SR.
39. The Receiver has corresponded with Corix, Michels and RMWB and understands that they are all in agreement as to the quantum and distribution of the lien fund for Saline 3 and will support an application to set the lien fund on that basis.

**RMWB SETTLEMENT AGREEMENT**

40. As discussed more fully in the Confidential Supplement, there are a number of issues associated with the claims on each of the RMWB Projects including, but not limited to, the time and costs required to bring SR's claims against RMWB to trial.
41. In order to avoid costly and what is likely to be protracted litigation, the Receiver entered into settlement discussions with RMWB and the Receiver and RMWB agreed to the key commercial terms of the draft RMWB Settlement Agreement, subject to conditions including approval of this Honourable Court. A copy of the Settlement Agreement is attached as Appendix "B".
42. The key commercial terms of the draft RMWB Settlement Agreement are as follows:
- a) RMWB will pay SR the amount of \$4.0 million (the "**RMWB Settlement Amount**") within ten business days from issuance of the Approval Order;
  - b) RMWB will be released by SR with respect to all actions and liabilities resulting or arising from the RMWB Contracts, the construction projects or the RMWB Settlement Agreement;
  - c) SR will be released by RMWB with respect to all actions and liabilities resulting or arising from the RMWB Contracts, the construction projects or the RMWB Settlement Agreement; and

- d) the obligation of RMWB and SR to complete the transactions contemplated by the agreement is conditional upon this Honourable Court granting an order substantially in the form of the Approval Order.
43. The Receiver's willingness to enter into the RMWB Settlement Agreement reflects an acceptance by the Receiver that there are significant risks to obtaining a judgment against RMWB in further litigation and an effort to secure a favorable recovery on the claims as well as to avoid costly litigation the costs of which will be borne by the primary secured creditors of the SR estate.
44. All terms of the Settlement Agreement are conditional upon the Approval Order being granted which, among other things, provides for direction for BWZ to disburse approximately \$4.4 million of the BWZ Trust Funds to the Receiver to be held in place of E Construction's lien registration pending determination as to the E Construction Lien's validity and enforceability, which is expected to result in additional recoveries to the Receiver.

#### **APPROVAL ORDER**

45. The Receiver is seeking the Approval Order which provides for, among other things:
- a) approval of the Settlement Agreement;
  - b) authorization and direction for RMWB to pay \$148,029 (the "**Wilco Lien Funds**") of the RMWB Settlement Amount to the Receiver to be held in place of Wilco's lien registration pending determination as to the validity and enforceability of Wilco's lien. The Wilco Lien Funds are not to be disbursed by the Receiver unless agreed to by the Receiver and Wilco or authorized by this Honourable Court;
  - c) authorization and direction for RMWB to pay the remainder of the RMWB Settlement Amount to the Receiver which is to be distributed to RBC pursuant to the Distribution Order;
  - d) approval of the accounting of the funds paid by RMWB and currently held in trust by BWZ as set out in Appendix "A";
  - e) a declaration that the value of the work actually done and the materials actually furnished in respect of Saline 3 is \$36,761,941;
  - f) a declaration that the amount payable in connection with the lien fund (as defined in the BLA) for Saline 3 is \$1,589,964;

- g) a declaration that the builders' lien registered by Corix against the Saline 3 lands is valid and enforceable in the amount of \$318,299;
- h) a declaration that the builders' lien registered by Michels against the Saline 3 lands is valid and enforceable in the amount of \$4,424,396;
- i) authorization and direction for BWZ to pay \$194,765 (the "**BWZ Payment**") from the BWZ Trust Funds into Court in the within proceedings and such amount shall be credited against RMWB's obligations arising in respect of the Saline 3 lien fund;
- j) authorization and direction for RMWB to pay \$1,395,199 (the "**RMWB Payment**") into Court in the within proceedings and such amount shall be credited against RMWB's obligations arising in respect of the Saline 3 lien fund;
- k) authorization and direction for the Clerk of the Court, upon receipt of the BWZ Payment and RMWB Payment, to distribute \$115,687 to Corix on account of the Corix lien and \$1,474,277 to Michels on account of the Michels lien which, collectively, shall constitute full and final satisfaction of RMWB's obligations in connection with the Saline 3 lien fund and the Corix lien and the Michels lien will be discharged;
- l) authorization and direction for BWZ to disburse \$4,432,455 from the BWZ Trust Funds to the Receiver to be held in place of E Construction's lien registration pending determination as to the E Construction Lien's validity and enforceability and not to be disbursed by the Receiver unless agreed to by the Receiver and Wilco or authorized by this Honourable Court. Payment of the E Construction Lien Funds to the Receiver shall constitute full and final satisfaction of RMWB's obligations in connection with the E Construction Lien; and
- m) authorization for BWZ to disburse any remaining amount from the BWZ Trust Funds, after making the distributions provided for in the Approval Order, to the Receiver and directing the Receiver to disburse all such amounts in accordance with the Distribution Order.

#### **Receiver's Comments**

46. The estimated proceeds resulting from the Approval Order and the Settlement Agreement as well as the corresponding distributions to stakeholders are summarized in the table below:

**Sprague-Rosser Contracting Co. Ltd. et al**  
**Proceeds and Distribution of the Approval Order and RMWB Settlement Agreement**  
**As at November 5, 2015**  
**(\$000's)**

	Abasands	Saline D&B	Saline 3	Total
<b>Proceeds</b>				
RMWB Payment	\$ 4,000	\$ -	\$ 1,395	\$ 5,395
Release of BWZ Trust Funds	-	4,590	195	4,785
	<u>\$ 4,000</u>	<u>\$ 4,590</u>	<u>\$ 1,590</u>	<u>\$ 10,180</u>
<b>Distribution</b>				
Receiver - Security for Wilco Lien	\$ 148	\$ -	\$ -	\$ 148
Receiver - Security for E Construction Lien	-	4,432	-	4,432
Court - Distribution to Michels	-	-	1,475	1,475
Court - Distribution to Corix	-	-	115	115
Receiver - Distribution to RBC	3,852	158	-	4,010
	<u>\$ 4,000</u>	<u>\$ 4,590</u>	<u>\$ 1,590</u>	<u>\$ 10,180</u>

47. The Receiver is seeking the Approval Order for the following reasons:
- the Receiver is of the view that the Settlement Agreement and Approval Order are a favorable outcome with respect to SR's claims against RMWB;
  - the Receiver will avoid costly and what is likely to be protracted litigation;
  - recoveries on litigation with respect to Saline 3 would be unlikely to exceed the value of the registered liens and therefore it would be unlikely that the Receiver would recover any surplus;
  - \$3.852 million of proceeds from Abasands will be available for timely distribution to RBC;
  - it is expected that significant recoveries from Saline D&B will be available for distribution to RBC contingent on discharge or adjustment of the Wilco Lien and the E Construction Lien;
  - it provides for settlement of the Saline 3 lien fund which is a condition of RMWB's agreement to the RMWB Settlement Agreement;
  - SR will be released from any claims that may be advanced by RMWB in connection with the RMWB Projects;
  - Corix and Michels will receive their pro-rata share of the Saline 3 Lien Fund;
  - all liens will be discharged against the RMWB Projects; and

- j) the application is supported by stakeholders including the Receiver, the secured lenders and lien holders.

#### **RECOMMENDATION**

48. The Receiver respectfully recommends that this Honourable Court grant the Approval Order.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 9th day of November, 2015.

**Alvarez & Marsal Canada Inc.,  
in its capacity as Receiver and Manager of  
Sprague-Rosser Contracting Co. Ltd,  
Sprague-Rosser Developments Inc. and  
Pacific Federation Equity Group Inc.**



Per: Todd M. Martin  
Senior Vice President



Per: Tom Powell  
Director

## APPENDIX A

**Sprague-Rosser Contracting Co. Ltd.**  
**Burstall Winger Zammit LLP Trust Account History by Project (Note 1)**  
**For the period December 6, 2013 to November 5, 2015**

Date	Description	Regional Municipality of Wood Buffalo			K+S	Interest and Legal Fees	Total
		Abasands	Saline D&B	Saline 3			
12/6/2013	RMWB - Collection of accounts receivable			\$ 3,775,908.15			\$ 3,775,908.15
12/11/2013	RMWB - Collection of accounts receivable			6,718,241.25			6,718,241.25
12/12/2013	RMWB - Disbursement to Sprague Rosser			(6,718,394.02)			(6,718,394.02)
12/19/2013	RMWB - Disbursement to EOS			(1,440,637.48)			(1,440,637.48)
12/23/2013	RMWB - Disbursement to Sprague Rosser			(1,036,801.76)			(1,036,801.76)
3/31/2014	RMWB - Collection of accounts receivable			3,395,674.36			3,395,674.36
3/31/2014	RMWB - Collection of accounts receivable		1,619,528.64				1,619,528.64
4/10/2014	RMWB - Disbursement to PCL		(1,320,147.30)				(1,320,147.30)
4/25/2014	RMWB - Disbursement to Corix			(199,500.00)			(199,500.00)
4/25/2014	RMWB - Disbursement to Michels Canada			(2,415,000.00)			(2,415,000.00)
5/23/2014	RMWB - Disbursement to Michels Canada			(700,000.00)			(700,000.00)
5/26/2014	K-S - Collection of accounts receivable				3,131,274.13		3,131,274.13
6/10/2014	RMWB - Collection of accounts receivable	537,570.31					537,570.31
6/10/2014	RMWB - Collection of accounts receivable		3,804,437.57				3,804,437.57
6/11/2014	K-S - Disbursement to Lehigh Hansen				(138,392.12)		(138,392.12)
6/13/2014	K-S - Disbursement to Kramer				(158,845.10)		(158,845.10)
6/16/2014	K-S - Disbursement to A. H. McElroy				(87,920.58)		(87,920.58)
6/17/2014	K-S - Disbursement to Witchetowak Mechanical Services				(2,339,448.00)		(2,339,448.00)
6/17/2014	K-S - Disbursement to Sprague-Rosser				(300,000.00)		(300,000.00)
6/18/2014	K-S - Disbursement to Cara Dawn				(21,753.38)		(21,753.38)
6/26/2014	RMWB - Disbursement to Wilson						
7/9/2014	RMWB - Disbursement to Nason Contracting						
7/24/2014	RMWB - Collection of accounts receivable		486,904.48	(794,751.10)			(307,846.62)
6/4/2015	RMWB - Payment to Brownlee LLP in trust (Nason Contracting) (Note 2)			(389,974.00)			(389,974.00)
Aggregate	Legal fees (Note 3)					(126,506.40)	(126,506.40)
Aggregate	Interest earned (Note 4)					50,853.55	50,853.55
11/5/2015		\$ -	\$ 4,590,723.39	\$ 194,765.40	\$ 84,914.95	\$ (75,652.85)	\$ 4,794,750.89

**Notes**

- The summary account history has been prepared by Alvarez & Marsal Canada Inc. ("A&M") in its capacity as receiver and manager of Sprague-Rosser Contracting Co. Ltd., Sprague-Rosser Developments Inc. and Pacific Federation Equity Group Inc. (the "Company") based on trust account ledgers provided by Burstall Winger Zammit LLP ("Burstall"). A&M has not conducted an audit nor otherwise attempted to verify the accuracy or completeness of any of the information provided by Burstall or the Company. Accordingly, A&M expresses no opinion and does not provide any other form of assurance on the accuracy of any information contained in this summary.
- Funds were being held in trust pursuant to a Court order dated December 10, 2013 pending determination of a claim against Sprague by Nason Contracting Group Ltd. ("Nason"). Nason submitted a claim to the Trustee in the bankruptcy proceedings of SR in the amount of \$412,949 (the "Nason POC"). In April 2014 the Trustee allowed the Nason POC in the total amount of \$389,974 and on April 29, 2015 an order was granted lifting the stay of proceedings against SR and enabling amounts being held in trust totaling \$389,974 to be released to Nason.
- Disbursements in respect of legal fees totalling \$126,506 were paid to Burstall and Dentons Canada LLP during the period and have been presented in aggregate.
- Interest totalling \$50,834 earned on the trust funds during the period is presented in aggregate and includes various transfers relating to investments and redemptions of term term deposits that were transacted in order to maximize interest earned on the trust funds.





## **SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

**AMONG:**

**SPRAGUE-ROSSER CONTRACTING CO. LTD.**, a corporation incorporated pursuant to the laws of the Province of Alberta, by and through **ALVAREZ & MARSAL CANADA INC.**, in its capacity as court-appointed receiver and manager of Sprague-Rosser Contracting Co. Ltd., and not in its personal or corporate capacity ("**SRC**")

- and -

**REGIONAL MUNICIPALITY OF WOOD BUFFALO**, a corporation incorporated pursuant to the provisions of the *Municipal Government Act*, RSA 2000, c M-26 ("**RMWB**")

**WHEREAS**, SRC and RMWB are Parties to the Contracts;

**AND WHEREAS**, pursuant to the Contracts SRC, as contractor, agreed to provide certain materials and services to RMWB, as owner, in accordance with the terms of the Contracts;

**AND WHEREAS**, throughout the terms of the Contracts, RMWB deposited certain Trust Funds, currently held by BWZ, in trust, in connection with the Contracts and the Projects;

**AND WHEREAS**, on or about February 24, 2014, RMWB terminated the Saline #3 Contract, effective February 24, 2014, without cause, in accordance with the terms and conditions of the Saline #3 Contract;

**AND WHEREAS**, on or about March 19, 2014, RMWB terminated the Abasand Contract and the Bridge Contract, effective March 21, 2014, without cause, in accordance with the terms and conditions of the Abasand Contract and the Bridge Contract;

**AND WHEREAS**, as a result of SRC's role as contractor under the Contracts, the subsequent termination of the Contracts, and certain actions or omissions on the part of RMWB with respect to the Contracts and the Projects, SRC is the holder of the SRC Claim against RMWB;

**AND WHEREAS**, as a result of its role as owner under the Contracts, the filing of certain Liens, and certain actions or omissions on the part of SRC with respect to the Contracts and the Projects, RMWB is the holder of the RMWB Claim against SRC;

**AND WHEREAS**, on or about July 31, 2014, SRC filed the Statement of Claim;

**AND WHEREAS**, similarly, on or about July 31, 2014, upon the application of the Royal Bank of Canada, the court granted the Receivership Order, appointing the Receiver as receiver and manager of SRC, in accordance with the terms therein;

**AND WHEREAS**, the Parties hereto wish to fully and finally settle and resolve any and all actual or potential disputes in connection with the SRC Claim and the RMWB Claim, all in accordance with the terms and conditions stated herein;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, each of the Parties covenant and agree as follows:

## **ARTICLE 1 CONSTRUCTION AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, including the aforementioned recitals, this Section 1.1, and any schedules attached hereto, unless the context otherwise requires, or unless otherwise defined herein, the following words and phrases shall have the following meanings:

- (a) **"Abasand Contract"** means, the 2011 Urban Infrastructure Rehabilitation Program Abasand Heights Contract, dated June 21, 2011, between RMWB, as owner, and SRC, as contractor, and including, but not limited to, any and all schedules, addendums, amendments, supplements, and any and all other documents, instruments, and contracts incorporated therein or related thereto;
- (b) **"Affiliate"** means, with respect to any Person, any other Person or group of Persons acting in concert, directly or indirectly, that controls, is controlled by, or is under common control with such Person. The term "control" as used in the preceding sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through ownership of more than fifty percent (50%) of the voting securities of such Person, by contract or otherwise;
- (c) **"Agreement"** means, this agreement, as the same may be amended, modified, supplemented, or restated from time to time in accordance with the provisions hereof;
- (d) **"Applicable Laws"** means, in relation to any Person, asset, transaction, Contract, Project, event, or circumstance:
  - (i) statutes (including regulations enacted thereunder);
  - (ii) judgments, decrees, and orders of courts of competent jurisdiction;
  - (iii) regulations, orders, ordinances, and directives issued by Government Authorities;
  - (iv) the terms and conditions of all permits, licenses, approvals, and authorizations; and,
  - (v) common law, equity, or any other laws of any nature whatsoever;

which are applicable to such Party, Person, asset, transaction, Contract, Project, event, or circumstance;

- (e) **"Approval Order"** has the meaning ascribed to it in Article 4.1 hereto;
- (f) **"BWZ"** means, Burstall Winger Zammit LLP, in its capacity as counsel for Sprague-Rosser Contracting Co. Ltd.;
- (g) **"Bridge Contract"** means, the Saline Creek Drive and Bridge Phase 1 Contract, dated June 6, 2012, between RMWB, as owner, and SRC, as contractor, and including, but not limited to, any and all schedules, addendums, amendments, supplements, and any and all other documents, instruments, and contracts incorporated therein or related thereto;
- (h) **"Contract"** means, either the Abasand Contract, the Bridge Contract, or the Saline #3 Contract, as the context may require, and **"Contracts"** means, collectively, the Abasand Contract, the Bridge Contract, and the Saline #3 Contract;
- (i) **"Court"** means, the Court of Queen's Bench of Alberta;
- (j) **"Government Authority"** means, any federal, national, provincial, territorial, municipal, or other government, any political subdivision thereof, and any ministry, sub ministry, agency or sub agency, court, board, bureau, office, or department, including any government owned entity, having jurisdiction over a Party, the Contracts, the Projects, or any transactions or process contemplated by this Agreement;
- (k) **"Order"** means, any order as may be granted or pronounced by any court of competent jurisdiction;
- (l) **"Party"** means, either SRC or RMWB, as the context may require, and **"Parties"** means both SRC and RMWB;
- (m) **"Persons"** means, any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executor, Government Authority or any other entity capable of entering into a binding legal contract;
- (n) **"Project"** means, all of the projects, works, services, and materials contemplated by any of the Abasand Contract, the Bridge Contract, or the Saline #3 Contract, as the context may require, and **"Projects"** means, all of the projects, works, services, and materials contemplated by all of the Contracts;
- (o) **"RMWB Claim"** means, any and all present and future obligations, indebtedness, liabilities, covenants, agreements, claims, causes of action, and undertakings of SRC, which may be owing or become owing, or exist, now or hereafter, to or in favour of RMWB, including but not limited to any and all obligations, indebtedness, liabilities, covenants, agreements, claims, causes of action, and undertakings owed by SRC, to or otherwise available to RMWB under, pursuant to, or relating to any such claims, causes of action, agreements, instruments, or other documents which evidence claims or relate to the Contracts, the Projects or which may otherwise result from the mutual business relationship between SRC and RMWB with respect

to the Contracts or the Projects wheresoever and howsoever incurred or arising, whether direct or indirect, absolute or contingent, matured or not, extended or renewed, and any ultimate unpaid balance thereof;

- (p) **"Receiver"** means, Alvarez & Marsal Canada Inc., in its capacity as receiver and manager in accordance with the Receivership Order;
- (q) **"Receivership Order"** means, the order issued by the Court in the Receivership Proceedings on July 31, 2014, as amended, modified, or supplemented from time to time;
- (r) **"Receivership Proceedings"** means, the proceedings before the Court and identified as Court File No. 1403-10990;
- (s) **"Representatives"** means, with respect to any Party, its Affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants, and representatives of that Party and its Affiliates;
- (t) **"SRC Claim"** means, any and all present and future obligations, indebtedness, liabilities, covenants, agreements, claims, causes of action, and undertakings of RMWB which may be owing or become owing, or exist, now or hereafter, to or in favour of SRC, including but not limited to any and all obligations, indebtedness, liabilities, covenants, agreements, claims, causes of action, and undertakings owed by RMWB to or otherwise available to SRC under, pursuant to, or relating to any such claims, causes of action, agreements, instruments, or other documents which evidence claims or relate to the Contracts, the Projects or which may otherwise result from the mutual business relationship between SRC and RMWB with respect to the Contracts or the Projects wheresoever and howsoever incurred or arising, whether direct or indirect, absolute or contingent, matured or not, extended or renewed, and any ultimate unpaid balance thereof;
- (u) **"Saline #3 Contract"** means, the Saline Creek Contract #3 Contract, dated January 18, 2013, between RMWB, as owner, and SRC, as contractor, and including, but not limited to, any and all schedules, addendums, amendments, supplements, and any and all other documents, instruments, and contracts incorporated therein or related thereto;
- (v) **"Settlement Payment"** has the meaning given in Section 2.2 of this Agreement;
- (w) **"Statement of Claim"** means, the Statement of Claim, filed with the Court on July 31, 2014, by SRC, as plaintiff, against RMWB, E Construction, and Jack Farrar, as defendants, commencing the proceedings under court file number 1401-08353; and
- (x) **"Trust Funds"** means, the funds currently held in trust by BWZ with respect to the Contracts and Projects.

## **1.2 Construction**

In this Agreement, unless otherwise expressly stated:

- (a) the headings in this Agreement are inserted for convenience of reference only and shall not affect the meaning, interpretation, or construction of this Agreement;
- (b) whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or referring to a body politic or corporate, and vice versa, as the context requires;
- (c) the words "hereto", "herein", "hereof", "hereby", "hereunder", and similar expressions refer to this Agreement and not to any particular provision of this Agreement;
- (d) reference to any Article, Section, or Schedule means an Article, Section, or Schedule of this Agreement unless otherwise specified;
- (e) if any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict; and
- (f) "include" and derivatives thereof shall be read as if followed by the phrase "without limitation".

### **1.3 References to Agreements and Enactments**

Unless otherwise stated, references herein to any agreement, instrument, licence, or other document shall be deemed to include reference to such agreement, instrument, licence, or other document as the same may from time to time be amended, modified, supplemented, or restated; and reference herein to any enactment shall be deemed to include reference to such enactment as re-enacted, amended, or extended from time to time and to any successor enactment.

## **ARTICLE 2 SETTLEMENT PAYMENT**

### **2.1 General**

Notwithstanding the terms of any agreements, instruments, or other documents giving rise to the RMWB Claim, the SRC Claim, or the Trust Funds, the Parties hereby agree that any and all of the Parties' rights, including the enforcement, payment, priority, allocation, or any and all rights, claims, or interests, associated with the RMWB Claim, the SRC Claim, and the Trust Funds, as between the Parties, shall be governed and determined, in accordance with the terms of this Agreement.

### **2.2 Payment**

RMWB hereby covenants and agrees to pay SRC the amount of Cdn.\$4,000,000 (the "**Settlement Payment**") in accordance with the terms of the Approval Order and by way of certified cheque, bank draft, or wire transfer, on or before the date that is ten (10) business days from issuance of the Approval Order.

## **ARTICLE 3 SETTLEMENT AND RELEASE**

### **3.1     Release of SRC Claim**

In consideration of RMWB making the Settlement Payment and RMWB's release of the RMWB Claim in accordance with Section 3.2, SRC, on its behalf as well as on behalf of all of its respective directors, officers, employees, agents, Representatives, successors, affiliates, security holders, insurers, heirs, and assigns hereby releases and forever discharges RMWB and any and all of its employees, agents, Representatives, successors, Affiliates, insurers, heirs, and assigns from any and all actions, liabilities, causes of action, claims, suits, proceedings, debts, contracts, complaints, demands, damages, interest, duties, costs, expenses, and compensation of whatsoever kind and howsoever arising, whether in law or in equity, whether at common law, under any legislation, Applicable Laws, or otherwise, whether known or unknown, and which SRC now has or at any time hereafter can, shall, or may have in any way resulting or arising from, or in any other way connected to, any matters associated with the SRC Claim, the Contracts, the Projects, this Agreement, or any matters related thereto; provided, however, that nothing herein shall release or discharge RMWB from operating in accordance with this Agreement.

### **3.2     Release of RMWB Claim**

In consideration of SRC's release of the SRC Claim in accordance with Section 3.1, RMWB on its behalf as well as on behalf of all of its respective elected officials, directors, officers, employees, agents, Representatives, successors, affiliates, security holders, insurers, heirs, and assigns hereby releases and forever discharges SRC, the Receiver, and any and all of their Representatives, administrators, employees, servants, agents, counsel, insurers, successors, heirs, and assigns from any and all actions, liabilities, causes of action, claims, suits, proceedings, debts, contracts, complaints, demands, damages, interest, duties, costs, expenses, and compensation of whatsoever kind and howsoever arising, whether in law or in equity, whether at common law, under any legislation, Applicable Laws, or otherwise, whether known or unknown, and which RMWB now has or at any time hereafter can, shall, or may have in any way resulting or arising from, or in any other way connected to, any matters associated with the RMWB Claim, the Contracts, the Liens, the Projects, this Agreement or any matters related thereto; provided, however, that nothing herein shall release or discharge SRC from operating in accordance with this Agreement.

## **ARTICLE 4 GENERAL**

### **4.1     Court Approval**

The obligation of the Parties to complete the transactions contemplated by Agreement is conditional on the granting of an Order of the Court approving this Agreement substantially in the form attached as Schedule "A" hereto or in a form as otherwise agreed to by each of the Parties (the "**Approval Order**"). In the event that the Approval Order is not obtained on or before December 31, 2015 this Agreement shall terminate and be of no force and effect and neither of the Parties shall have any claims, rights, liabilities or obligations hereunder.

#### **4.2 Acknowledgment**

The Parties acknowledge and agree that the facts as set out in the Recitals to this Agreement are true and accurate in all respects and the same are expressly incorporated into and form part of this Agreement.

#### **4.3 No Waiver**

No waiver by any Party of any breach of any of the terms, conditions, representations, or warranties in this Agreement shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party and any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

#### **4.4 Non-Merger**

The provisions contained in this Agreement shall survive the closing of the transactions contemplated hereby and shall not merge upon any transfer or other document or instrument in connection herewith. Without limiting the generality of the foregoing, the liability of any Party for any breach of any of its representations, warranties, covenants, agreements, releases, or other obligations hereunder, in accordance with its terms, as contemplated herein, shall not be extinguished or in any manner diminished by such completion.

#### **4.5 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and the Parties agree and confirm that this Agreement cancels and supersedes any prior understandings and agreements between the Parties hereto with respect to the subject matter hereof. No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the Parties.

#### **4.6 Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein but the reference to such laws shall not, by conflict of laws rules or otherwise, require the application of the law of any jurisdiction other than the Province of Alberta. Each party hereto irrevocably attorns to the jurisdiction of the Courts of the Province of Alberta.

#### **4.7 Severability**

In the case any of the provisions of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **4.8 Further Assurances**

Each of the Parties shall from time to time and at all times on and after the date hereof, without further consideration, do and perform all such further acts and things, and execute and deliver all such further agreements, assurances, notices, releases, and other documents and instruments, at their own expense, as may reasonably be required to more fully give effect to the intent and purpose of this Agreement.



**4.9    Counterpart Execution**

This Agreement may be executed in counterparts and all executed counterparts together shall constitute one agreement. This Agreement shall be binding upon any Party upon such Party's execution and delivery of this Agreement in accordance with the terms herein.

**4.10   Electronic Execution**

Delivery of an executed signature page to this Agreement by any Party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such Party.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF** the Parties have executed and delivered this Agreement as of the date first above written.

**SPRAGUE-ROSSER CONTRACTING CO. LTD.** by its court appointed receiver and manager **ALVAREZ & MARSAL CANADA INC.**, in its capacity as court appointed receiver and manager of all of the assets, properties, and undertakings of Sprague-Rosser Contracting Co. Ltd., and not in its personal capacity

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]

**REGIONAL MUNICIPALITY OF WOOD BUFFALO**

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]

**SCHEDULE "A"**  
**FORM OF APPROVAL ORDER**