

THE CITY OF EDMONTON  
PROJECT AGREEMENT  
VALLEY LINE LRT – STAGE 1

*Schedule 13*

*Changes*

*Edmonton Valley Line LRT – Stage 1  
Project Agreement – Execution Version  
Schedule 13 – Changes  
Date: February 8, 2016*

**SCHEDULE 13**

**CHANGES**

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## **SCHEDULE 13 CHANGES**

### **1. GENERAL PROVISIONS**

#### **1.1 Changes**

Subject to the provisions of this Schedule 13 *[Changes]* and without invalidating this Agreement, the City may from time to time propose or require Project Co to carry out and implement a Change. Project Co shall not be entitled to any payment, compensation or extension of time for a Change except in accordance with this Agreement and this Schedule 13 *[Changes]*. A Change shall not result in:

- (a) an extension to the Target Service Commencement Date, Long Stop Date or any of the items listed in Table 2 *[Valued Items]* or Table 3 *[NSRV Landscaping Adjustment]* of Appendix 1 *[Payment and Payment Adjustment Inputs]* of Schedule 16 *[Payment Mechanism]*, unless expressly stipulated in the applicable Change Order Confirmation; or
- (b) any duplication of relief granted or payment due under any other provision of this Agreement, including Section 12 *[Force Majeure]* or Section 13 *[Relief Events]* of the Agreement. If the Parties cannot agree on whether a matter is a Change, then the Dispute shall be determined in accordance with the Dispute Resolution Procedure.

#### **1.2 No Entitlement to Perform a Change**

Without prejudice to the Parties' rights under this Agreement, the City may, at any time perform, or engage any Person to perform, Other Works, and none of Project Co or its Subcontractors will have any right or entitlement to perform any such work. Project Co may submit a proposal to the City for the performance of such work, but nothing in this Agreement will obligate the City to consider or accept such proposal.

#### **1.3 Deficiencies and Nonconformities not a Change**

The cost of the correction of a Deficiency or Nonconformity shall not be included in the valuation of any Change.

#### **1.4 Responsibility for Changes, Minor Works, Innovation Proposals**

Except as specifically provided in this Agreement, the City will bear no risk or liability whatsoever arising from any Change, Minor Works or Innovation Proposal, other than the liability to make payment in connection therewith. Notwithstanding the previous sentence, the City will pay to Project Co increased costs or any Direct Losses suffered by Project Co as a result of any particular design, materials, goods or method of construction, operation or maintenance which: (i) the City specifies must be incorporated in a Change, Minor Works or Innovation Proposal; and (ii) is subsequently shown to be defective (other than as a result of the Legal Fault of Project Co or any Project Co Person), if:

- (a) Project Co objected in writing to the incorporation of such design, materials, goods or method of construction, operation or maintenance prior to issuance of the relevant Change Order Confirmation and provided:
  - (i) a reasonable and reasoned justification for its objection; and
  - (ii) details of the specific increased costs or Direct Losses that would result from incorporation of such design, materials, goods or method of construction, operation or maintenance; and
- (b) the City confirms its direction to incorporate the particular design, materials, goods or method of construction, operation or maintenance after receipt of Project Co's objection.

### **1.5 Valuation and Payments for Reductions or Avoided Costs**

- (a) If a Change involves any reductions in the Project or the Project Requirements, and results in net savings in costs (in the context of a reduction in the Project or the Project Requirements having regard, without limitation, to any reasonable make whole premiums, hedging or other breakage costs, or prepayment fees, and all reasonable redemption implementation costs reasonably incurred by Project Co as a result of any adjustments to debt service payments) to Project Co for completing the Project or performing the Project Requirements, then the value of all such savings shall be reflected in a lump sum payment to the City, or in adjustments to the Construction Period Payments and/or the Operating Period Payments, as determined by the Parties, acting reasonably.
- (b) Project Co shall not be entitled to claim for any losses, costs or damages for fixed overhead or profit due to the reduction, deletion or removal of any part of the Project or the Project Requirements, except to the extent that any of such amounts would have been incurred by Project Co and are included in the Construction Period Payments or Operating Period Payments payable by the City after the date on which the Project or the Project Requirements are reduced, deleted or removed.
- (c) The City will not issue any Change Enquiries except in accordance with this Agreement and this Schedule 13 *[Changes]*.

### **1.6 Restrictions on Changes**

The City will not at any time during the Term require, and Project Co may refuse to implement a Change (including Minor Works) which:

- (a) would be contrary to Applicable Law;
- (b) would render the insurance policies required under this Agreement void or voidable, unless the City agrees to provide replacement security acceptable to Project Co acting reasonably;

- (c) would cause revocation of any Project Approval required by Project Co to perform its obligations under this Agreement, where such Project Approval would not, using reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Project Approval for Project Co to perform its obligations under this Agreement, which Project Approval would not, using reasonable efforts, be reasonably obtainable;
- (e) would cause Project Co to be unable to obtain a Project Approval required by Project Co to perform its obligations under this Agreement, provided that such Project Approval:
  - (i) was previously required but at the time of the Change Enquiry had not yet been obtained by Project Co; and
  - (ii) would not, using reasonable efforts, be reasonably obtainable as a result of the Change;
- (f) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to Design, Construction or Services; or
- (g) would result in a change to the essential nature of the Infrastructure, including an expansion or extension of the system that is tantamount to adding a New Line.

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then Project Co will promptly give notice to the City of its objection, with written reasons. If the City disagrees then it may deliver a Dispute Notice to Project Co, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

## 1.7 Effect On Schedule

Project Co shall use all reasonable efforts to minimize the effect of a Change on the Construction Schedule, the Target Service Commencement Date and the performance of the Services and subject to the foregoing and Sections 1.1 [*Changes*] and 2.3(a)(ii) [*Change Estimate Requirements*] of this Schedule, the Target Service Commencement Date, Long Stop Date, the date in Section 16.7(g) and the requirements for performance of the Services shall be adjusted by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Change, as confirmed in the applicable Change Order Confirmation, but the Expiry Date will not be extended as a result of the Change. Where by reason of a Change, Service Commencement is delayed until beyond the Target Service Commencement Date (as it was immediately prior to adjustment in accordance with this Section) (the "**Change Reference Date**"):

- (a) the City shall upon Service Commencement pay to Project Co its reasonable Direct Losses resulting from Service Commencement being delayed beyond the applicable Change Reference Date solely as a result of the Change; and
- (b) to the extent the Direct Losses resulting from Service Commencement being delayed beyond the applicable Change Reference Date solely as a result of the Change can

reasonably be determined prior to Service Commencement, then from any after the applicable Change Reference Date, the City will make advance payment to Project Co on account of such Direct Losses, it being mutually anticipated by the Parties that the Direct Losses included in such advance payment will include at least an amount equal to each Capital Payment that would have been payable had Service Commencement been achieved on the applicable Change Reference Date, subject to Project Co's obligation to take reasonable steps to mitigate the delay and to mitigate its Direct Losses.

The Parties acknowledge that pursuant to the terms of this Agreement, the Target Service Commencement Date may be subject to multiple adjustments throughout the Construction Period and that such adjustments may result in the Target Service Commencement being earlier or later than the original Target Service Commencement Date of December 15, 2020. As such, the Direct Losses, if any, resulting from each adjustment of the Target Service Commencement Date shall be determined separately by reference to the applicable Change Reference Date.

## **2. CHANGE ENQUIRY PROCESS**

### **2.1 Initiating a Change Enquiry**

If the City proposes or requires a Change it will deliver to Project Co a Change Enquiry. The Change Enquiry will describe the proposed Change with sufficient detail to enable Project Co to prepare a Change Estimate.

### **2.2 Delivery of Change Estimate**

As soon as practicable and in any event not more than 15 Business Days after receipt of a Change Enquiry, or such longer period as the Parties, acting reasonably, mutually agree, Project Co shall deliver to the City a Change Estimate prepared in accordance with and meeting the requirements of Section 2.3 [*Change Estimate Requirements*] of this Schedule 13 [*Changes*].

If Project Co is of the reasonable opinion that the accuracy of the Change Estimate will benefit from certain third party design work or third party detailed cost estimating (excluding design work or detailed cost estimating done by the Project Contractors (the "**Third Party Input**"), Project Co may propose to the City that the Third Party Input be arranged by Project Co at the City's expense. If the City gives its written agreement to such proposal, which written agreement may be expressly subject to any terms and conditions that the City deems appropriate, then such Third Party Input expenses shall be paid by the City whether or not the Change Enquiry is ultimately withdrawn, or deemed to have been withdrawn, by the City. In deciding to give its written agreement, the City will give consideration to the reasonableness of the Third Party Input expenses and the reasonableness of the assurances given by Project Co that the sum of the Change Estimate with the Third Party Input plus the Third Party Input expenses may be materially less than a Change Estimate without the Third Party Input.

### **2.3 Change Estimate Requirements**

- (a) The Change Estimate shall include such of the following information as is applicable to the proposed Change, in sufficient detail to demonstrate to the City's reasonable satisfaction:

- (i) the steps Project Co will take to implement the Change, in such detail as is reasonable and appropriate in all the circumstances;
- (ii) any impact on Service Commencement and any impact on Project Co's Construction Schedule (failure to provide this information with the Change Estimate will disallow Project Co from claiming amendments to the Target Service Commencement Date or the Long Stop Date due to the Change);
- (iii) any impact on Project Co's ability to perform the Operations or Maintenance, including any impact on the Operating Period Payments and any other impact of the Change on this Agreement;
- (iv) any impact on the items listed in Table 2 [*Valued Items*] or Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*] (failure to provide this information with the Change Estimate will disallow Project Co from claiming amendments to the values in Table 2 [*Valued Items*] or Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*] due to the Change);
- (v) any subcontractors required in addition to or in substitution for any existing Subcontractors;
- (vi) the estimated Change value, calculated on the same basis, and using the mark-ups, as specified for valuation of a Change Directive in Section 3.4 [*Valuation of Change Directive Costs*] of this Schedule 13 [*Changes*], provided, for clarity, that the estimated Change value will be a fixed amount determined on the basis of Project Co's estimate of the applicable costs described in Section 3.4 [*Valuation of Change Directive Costs*] of this Schedule 13 [*Changes*], rather than an assessment of the actual costs incurred;
- (vii) any Project Approvals that are required to be obtained or amended, attributable to the proposed Change, and the estimated time for obtaining or amending same;
- (viii) the proposed methods of certification of any Project Requirements required by the proposed Change, if not currently contemplated within the provisions of this Agreement, in each case, together with such supporting information and justification as is reasonably required;
- (ix) that Project Co has used commercially reasonable efforts, including the use of competitive quotes or tenders if appropriate or as required by Good Industry Practice, to oblige its Subcontractors to minimize any increase in costs and to maximize any reduction in costs;



- (x) that the full amount of any and all expenditures that have been reduced or avoided have been taken into account and applied in total to reduce the amount of all Change costs;
- (xi) that Project Co has mitigated or will mitigate the impact of the proposed Change, including on Project Co's Construction Schedule for completion of the Project and the performance of the Operations and Maintenance;
- (xii) that in considering the impact of the proposed Change on the Operating Period Payments, if applicable, Project Co has considered, where the proposed Change will increase the Operations and Maintenance or the O&M Requirements, the costs attributable to such increase, including anticipated rehabilitation;
- (xiii) any changes required to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project;
- (xiv) the value of the loss or reduction in benefits resulting from the contemplated Change;
- (xv) a description of any impact on expected usage of Utilities for the current Contract Year and subsequent Contract Years;
- (xvi) a description of any impact on the obligations of Project Co under any Project Contracts;
- (xvii) a description of any actions that would be reasonably required by the City to implement the contemplated Change; and
- (xviii) where the City has requested that Project Co make commercially reasonable efforts to obtain financing for a lump sum payment to be made by the City and have such paid by way of a amendments to the Operating Period Payments pursuant to Section 9.9 of the Project Agreement:
  - (A) evidence of Project Co's commercially reasonable efforts where Project Co was unsuccessful (in which case (B) through (E) do not apply) or, where successful, the necessary amendment to the Operating Period Payments;
  - (B) Project Co's source(s) of funds to offset the costs incurred as a result of not receiving the lump sum payment;
  - (C) the impact on Equity and Senior Debt Financing of the amendment, including any additional Equity or Senior Debt Financing or changes in their required rates of return, that are attributable to the adjustment;
  - (D) any material change to the risk profile of the Project arising from the adjustment; and

- (E) any other impact on the economics of the Project including impacts on taxes or any benefits accrued to the parties including refinancing gains, amongst other items.
- (b) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring any work, services, financing, supplies, materials or equipment required by the proposed Change and shall comply with Good Industry Practice in relation to any such procurement to a standard no less than Project Co would apply if all costs incurred were to its own account.
- (c) As soon as practicable, and in any event not more than 15 Business Days after the City receives a Change Estimate, including any consequential changes to the Change Estimate resulting from a modification, Project Co and the City shall discuss and seek to agree on the Change Estimate including, if applicable, any adjustment to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*].
- (d) If the City would be required by Applicable Law or inter-provincial agreements to require Project Co to competitively tender any contract in relation to the proposed Change, the City may require Project Co to seek and evaluate competitive tenders for the proposed Change.
- (e) The City may modify a Change Enquiry in writing, at any time prior to the agreement between the Parties referred to in Section 2.3(c) [*Change Estimate Requirements*] of this Schedule 13 [*Changes*], in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, or such longer period as the Parties acting reasonably mutually agree, notify the City in writing of any consequential changes to the Change Estimate including, if applicable, any adjustment to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*].
- (f) If the Parties cannot agree on the reasonableness and validity of a Change Estimate provided pursuant to a Change Enquiry including, if applicable, any adjustment to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*], then the Dispute shall be determined in accordance with the Dispute Resolution Procedure.

## 2.4 Change Order Confirmation

- (a) As soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by Project Co, acting reasonably) after the date on which the Change Estimate, including if applicable, any adjustment to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*], was agreed to, the City will either:
- (i) withdraw the Change Enquiry by written notice to Project Co; or
  - (ii) issue a Change Order Confirmation.
- (b) If the City does not issue a Change Order Confirmation within 10 Business Days (or such extended period as may have been agreed to), after the date on which the Change Estimate, including if applicable, any adjustment to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*], was agreed to, then the Change Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Change Order Confirmation being issued:
- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents necessary to implement the Change;
  - (ii) Project Co shall implement the Change as provided for in the Change Order Confirmation;
  - (iii) the Construction Schedule, the Target Service Commencement Date and the Long Stop Date will be adjusted in accordance with the terms of the Change Order Confirmation, if applicable;
  - (iv) the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*] will be adjusted in accordance with the terms of the Change Order Confirmation, if applicable; and
  - (v) the City will pay to Project Co the fixed amount specified in the agreed Change Estimate for the Change in accordance with the terms of the Change Order Confirmation, if applicable.

### **3. CHANGE DIRECTIVE PROCESS**

#### **3.1 Initiating a Change Directive**

At any time and from time to time (including whether or not the City has made a Change Enquiry, or Project Co fails to provide a Change Estimate, or a Change Estimate is not promptly agreed upon by the Parties, or there is a Dispute as to whether a matter is a Change or as to the reasonableness and validity of a Change Estimate), if the City wishes to proceed with a proposed Change, then subject to Section 1.6 *[Restrictions on Changes]* of this Schedule 13 *[Changes]*, the City may issue a Change Directive. A Change Directive shall describe the proposed Change with sufficient detail to enable Project Co to prepare a Change Estimate and to proceed with the work attributable to the Change.

#### **3.2 Proceeding with Work**

Project Co shall immediately implement the work attributable to a Change, including the appropriate method of procurement, if applicable, upon receipt of a Change Directive. Without limiting the preceding sentence, where the Change Directive includes specific schedule or other requirements, Project Co shall implement the Change in accordance with such requirements unless it is not technically practicable to do so. Where Project Co believes that it is not technically practicable to implement a Change in accordance with any specific schedule or other requirements set out in a Change Directive, Project Co shall promptly give notice to the City of its objection, with written reasons. If the City disagrees then it may deliver a Dispute Notice to Project Co, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

#### **3.3 Change Estimate and Change Order Confirmation**

- (a) If Project Co has not previously done so, Project Co shall as soon as practicable and in any event not more than 15 Business Days after the issuance of the Change Directive, or such longer period as the Parties acting reasonably mutually agree, provide a Change Estimate to the City prepared in accordance with and meeting the requirements of Section 2.3 *[Change Estimate Requirements]* of this Schedule 13 *[Changes]*;
- (b) as soon as practicable, and in any event not more than 15 Business Days after the City receives a Change Estimate, Project Co and the City shall discuss and seek to agree on the Change Estimate, including, any adjustment to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 *[Valued Items]* and Table 3 *[NSRV Landscaping Adjustment]* of Appendix 1 *[Payment and Payment Adjustment Inputs]* of Schedule 16 *[Payment Mechanism]*;
- (c) as soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by Project Co, acting reasonably) after the date the Change Estimate was agreed to, the City will issue a Change Order Confirmation;
- (d) as soon as practicable after the City has issued the Change Order Confirmation:

- (i) the Parties will do all acts and execute all documents necessary to implement the Change;
  - (ii) the Construction Schedule, the Target Service Commencement Date and the Long Stop Date will be adjusted in accordance with the terms of the Change Order Confirmation, if applicable;
  - (iii) the City will pay Project Co for the Change in accordance with the terms of the Change Order Confirmation, if applicable; and
  - (iv) the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*] will be adjusted in accordance with the terms of the Change Order Confirmation, if applicable; and
- (e) pending issuance of the Change Order Confirmation, the undisputed value of the work performed by Project Co pursuant to the Change Directive, as the parties acting reasonably mutually agree, will be invoiced by Project Co and will be paid by the City in accordance with Section 16.6.5 [*Due Dates for Payments during the Construction Period*] or Section 16.6.6 [*Due Dates for Payments during the Operating Period*] of Schedule 16 [*Payment Mechanism*], as applicable, and all such amounts paid will be accounted for in determining the costs under Section 3.4 [*Valuation of Change Directive Costs*] of this Schedule 13 [*Changes*].

### 3.4 Valuation of Change Directive Costs

If the City has issued a Change Directive and the City and Project Co have not been able to reach agreement on the Change Estimate including, if applicable, any adjustment to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*], then adjustments to Project Co's Construction Schedule, the Target Service Commencement Date, the Long Stop Date, the Construction Period Payments, the Operating Period Payments or the items listed in Table 2 [*Valued Items*] and Table 3 [*NSRV Landscaping Adjustment*] of Appendix 1 [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*], as applicable, shall be determined by the Dispute Resolution Procedure, applying the criteria set out in Section 2.3(a)(xii) [*Change Estimate Requirements*] of this Schedule 13 [*Changes*] and having regard to the manner in which value and payment are determined below, and the work attributable to the Change shall be valued and payment to Project Co shall be determined as follows:

- (a) For the work under the Change Directive that is to be performed by Project Co's own forces or by the Project Contractors, that portion of the Change (the "**Own Forces Work**") shall be valued as follows:
  - (i) for all labour for construction directly involved in the Own Forces Work, the City will pay the actual cost of labour on the Own Forces Work including payments made to or on behalf of the workers for holiday pay, Workers Compensation

\*, Redaction under review, Subject to dept review

(ii)

(iii)

(iv)

(v)

(vi)

\* , Redaction under review, Subject to dept review

on work other than the Subcontractor Work, only that portion attributable to the Subcontractor Work shall be paid for by the City;

- (vi) for all design, engineering, quality control, quality assurance, and inspection services directly involved in the Subcontractor Work, an amount equal to 10% of the sum of the amounts determined in Section 3.4(b)(i) [*Valuation of Change Directive Costs*] of this Schedule 13 [*Changes*]; and
- (vii) for Project Co's work (including without limitation direct costs, indirect costs, overhead and profit) on the Subcontractor Work, an amount equal to 10% of the sum of the amounts determined in Sections 3.4(b)(iii) and 3.4(b)(iv) [*Valuation of Change Directive Costs*] of this Schedule 13 [*Changes*].

#### **4. MODIFICATIONS TO PROCESSES AND PROCEDURES**

##### **4.1 Agreement to Modified Process**

Nothing in this Schedule 13 [*Changes*] shall limit the ability of the Parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule in respect of Changes.

##### **4.2 Design Development Changes**

\*, Redaction under review, Subject to dept review

##### **4.3 Design Development Change Process**

Where, during the design development process, a Party identifies a potential Design Development Change, that Party may present the potential Design Development Change to the other Party in a form, and with such supporting information, as it considers to be appropriate to the nature and complexity of the potential Design Development Change.



Where a Party presents a potential Design Development Change it shall do so as early as practicable and the Parties' respective Representatives will meet as soon as practicable to discuss the proposed Design Development Change and where:

- (a) the proposed Design Development Change meets the requirements of Section 4.2 [*Design Development Changes*] of this Schedule 13 [*Changes*]; and
- (b) the Parties reach agreement with respect to the value of the proposed Design Development Change and any contractual amendments required to implement the proposed Design Development Change,

Project Co shall record the terms of the Parties' agreement with respect to the applicable Design Development Change (a "***Design Development Change Record***").

Promptly after preparing a Design Development Change Record, and in any event prior to implementation of the agreed Design Development Change, Project Co shall concurrently deliver a copy of the Design Development Change Record to the City's Representative and the Independent Certifier.

#### **4.4 Opportunity to Object**

If, within 5 Business Days after receipt of a Design Development Change Record:

- (a) the City's Representative objects to the Design Development Change Record on the basis that it is not an accurate representation of the Parties' agreement; or
- (b) the Independent Certifier objects to an agreed Design Development Change on the basis that it does not meet the criteria in Section 4.2 [*Design Development Changes*] of this Schedule 13 [*Changes*],

the Parties and, if applicable, the Independent Certifier shall meet to discuss the Design Development Change and attempt to resolve the objection. If an objection cannot be resolved, then the proposed Change will be deemed not to be a Design Development Change and will not be implemented by the Parties; provided that:

- (c) the City will be permitted to pursue such Design Development Change in accordance with the processes set out in Section 2 [*Change Enquiry Process*] or Section 3 [*Change Directive Process*] of this Schedule 13 [*Changes*]; and
- (d) Project Co shall be permitted to pursue such Design Development Change in accordance with the process set out in Section 6 [*Innovation Proposals*] of this Schedule 13 [*Changes*].

Any objection to a proposed Design Development Change pursuant to this Section 4.4 [*Opportunity to Object*] must be delivered concurrently to the Parties' Representatives in writing.

Where, following discussions on a Design Development Change, the Parties agree on the terms of the Design Development Change, Project Co's Representative shall record the terms of the Design

Development Change (a "**Design Development Change Record Confirmation**"), which will be signed on behalf of the Parties.

#### **4.5 Representatives**

The City's Representative and Project Co's Representative shall have authority to agree on the value of Design Development Changes and contractual amendments to implement such Design Development Changes.

#### **4.6 Implementation**

Where, there are no objections to a proposed Design Development Change within the 5 Business Day period specified in Section 4.4 [*Opportunity to Object*] of this Schedule 13 [*Changes*], the Design Development Change Record will become the Design Development Change Record Confirmation. Following the issuance of a Design Development Change Record Confirmation, the Parties shall promptly proceed with implementation of the applicable Design Development Change on the terms set out in the applicable Design Development Change Record Confirmation.

#### **4.7 Reconciliation**

No later than the 10<sup>th</sup> day of each month, Project Co's Representative shall prepare and deliver to the City's Representative a register of all Design Development Changes agreed during the prior month (the "**Design Development Change Register**").

#### **4.8 Design Development Change Register**

Within 30 days after the Service Commencement Date, the City will prepare and deliver to Project Co a consolidated Change Order Confirmation encompassing all of the agreed Design Development Changes, as set out in the applicable Design Development Change Registers.

#### **4.9 No Dispute**

The Parties agree that a failure to reach agreement with respect to a proposed Design Development Change pursuant to the procedure set out in this Section 4 [*Modifications to Processes and Procedures*] shall not constitute a Dispute, and shall not be referred for resolution pursuant to the Dispute Resolution Procedure.

### **5. MINOR WORKS DURING THE OPERATING PERIOD**

#### **5.1 Minor Works Rates**

Rates for Minor Works will be those established by the Equipment Rental Rates Guide and Membership Roster as issued by the Alberta Roadbuilders and Heavy Construction Association or the rate guide published by the Consulting Engineers of Alberta, as applicable, or their successor publications or equivalent publications agreed upon by the Parties (the "**Minor Works Rates**").

## **5.2 Direction for Minor Works**

\* , Redaction under review, Subject to dept review

## **5.3 Project Co to Minimize Inconvenience**

Prior to commencing any Minor Works, Project Co shall notify the City of the estimated duration of the Minor Works so that Project Co and the City can agree upon a convenient time for carrying out the Minor Works in a manner that minimizes and mitigates inconvenience and disruption to the use and operation of the Infrastructure. Project Co shall use all reasonable efforts to minimize the duration of any Minor

Works, and will schedule Minor Works as reasonably requested by the City, including doing works during Off Peak Periods or outside normal operating hours.

#### **5.4 Payment for Minor Works**

Project Co shall as of the end of a month invoice the City monthly for Minor Works completed in the month using the rates and costs set out in Section 5.2 [*Direction for Minor Works*] of this Schedule 13 [*Changes*], supported by appropriate invoices and work records, and the City will pay Project Co in accordance with Section 16.6.6 [*Due Dates for Payments during the Operating Period*] of Schedule 16 [*Payment Mechanism*].

#### **5.5 Relief from Obligations**

Subject to its obligations under Section 5.3 [*Project Co to Minimize Inconvenience*] of this Schedule 13 [*Changes*] and its duty to mitigate, Project Co shall be relieved from any liability or consequence under this Agreement arising from its delay in performing any obligation, to the extent that, and for so long as, performance of such obligation is prevented, hindered or delayed as a direct result of its performance of the Minor Works.

#### **5.6 Minor Works Disputes**

Any Dispute arising in connection with Minor Works, including the price to be paid for Minor Works and the applicable Minor Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.

### **6. INNOVATION PROPOSALS**

#### **6.1 Innovation and Value Engineering**

Project Co may at any time submit a proposal to the City (an "***Innovation Proposal***") to implement modifications to the Project or the Project Requirements, including through innovation or value engineering, for the purpose of achieving efficiencies, reducing the Construction Period Payments, Operating Period Payments or the overall cost to the City of the Infrastructure, the Operations or Maintenance or realizing other benefits. An Innovation Proposal must:

- (a) be originated and initiated solely by Project Co without the involvement of the City or any City Person; and
- (b) offer savings, innovations, efficiencies or other benefits that are not otherwise called for or provided by this Agreement.

#### **6.2 Content of Innovation Proposal**

An Innovation Proposal will:

- (a) set out all the information required in a Change Estimate as required under Section 2.3 [*Change Estimate Requirements*] of this Schedule 13 [*Changes*], modified to apply to an Innovation Proposal;

- (b) specify Project Co's reasons and justification for proposing the Innovation Proposal;
- (c) request the City to consult with Project Co with a view to the City deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the City may require;
- (d) indicate any implications of the Innovation Proposal, including the differences between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to Project Co and the City;
- (e) indicate whether a payment by the City in respect of direct costs or a variation to the Construction Period Payments or Operating Period Payments is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (f) indicate if there are any dates by which a decision by the City must be made; and
- (g) include such other information and documentation as may be reasonably requested by the City to fully evaluate and consider the Innovation Proposal.

### **6.3 Preliminary Information**

Prior to development of an Innovation Proposal, Project Co may, at its option, prepare and submit to the City preliminary information with respect to a potential Innovation Proposal. Where Project Co submits preliminary information with respect to a potential Innovation Proposal, Project Co's submission will include:

- (a) a proposal with respect to the sharing or allocation of the costs of developing the Innovation Proposal (if applicable);
- (b) any other information about the potential Innovation Proposal about which Project Co is seeking the City's preliminary input; and
- (c) sufficient information to permit the City to make informed decisions with respect to the potential Innovation Proposal.

Where Project Co submits preliminary information with respect to a potential Innovation Proposal the City's Representative will, within 15 Business Days, evaluate and give consideration to the potential Innovation Proposal, including any proposal with respect to the sharing or allocation of development costs. The City may request clarification or additional information regarding the potential Innovation Proposal, and may request modifications to Project Co's proposal.

Notwithstanding anything else in this Section 6 [*Innovation Proposals*], unless the City, in its discretion, agrees to pay or share the costs of developing an Innovation Proposal, the costs of investigating and developing a potential Innovation Proposal will be borne entirely by Project Co.

#### **6.4 Evaluation of Innovation Proposal**

The City will evaluate and give consideration to an Innovation Proposal, taking into account all relevant issues, including whether:

- (a) a change in the Construction Period Payments or Operating Period Payments will occur;
- (b) the Innovation Proposal affects the quality or delivery of the Infrastructure, the Operations or the Maintenance;
- (c) the Innovation Proposal will interfere with the relationship of the City with any third parties;
- (d) the financial strength of Project Co is sufficient to deliver the changed Infrastructure or changed Operations and Maintenance, as applicable;
- (e) the residual value of the Infrastructure is affected;
- (f) the Innovation Proposal materially affects the risks or costs to which the City is exposed; and
- (g) any other matter the City, in its discretion, considers relevant.

The City may request clarification or additional information regarding an Innovation Proposal, and may request modifications to an Innovation Proposal.

#### **6.5 Acceptance and Implementation of Innovation Proposal**

Notwithstanding any potential cost savings, efficiencies or other benefits of an Innovation Proposal, the City is under no obligation to accept an Innovation Proposal and may in its discretion elect not to implement any Innovation Proposal. An Innovation Proposal that is accepted by the City will be implemented as a Change and Project Co shall not implement an Innovation Proposal prior to the issuance of a Change Order Confirmation.

#### **6.6 Sharing Benefits of an Innovation Proposal**

If an Innovation Proposal causes or will cause:

- (a) a decrease in the costs incurred by Project Co or a Subcontractor;
- (b) a decrease in the retained operational costs of the City; or
- (c) any other benefit,

after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co, the Subcontractors and the City) of the Innovation Proposal and taking into account any other uses of the Innovation Proposal by Project Co, the net cost savings and other benefits will be shared equally by Project Co and the City, unless the Parties otherwise agree in the applicable Change Order Confirmation.