

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

Schedule 20

Dispute Resolution Procedure

***Edmonton Valley Line LRT – Stage 1
Project Agreement – Execution Version
Schedule 20 – Dispute Resolution Procedure
Date: February 8, 2016***

SCHEDULE 20

DISPUTE RESOLUTION PROCEDURE

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SCHEDULE 20

DISPUTE RESOLUTION PROCEDURE

1. DISPUTE RESOLUTION

1.1 Procedure

Unless both parties otherwise agree, all Disputes will be resolved in accordance with the provisions of this Schedule 20 [*Dispute Resolution Procedure*] (the “**Dispute Resolution Procedure**”).

In accordance with the protocol requirements of: (a) Section 1.4(a) [*Fast Track Referee Process*]; the Standing Referees shall be appointed; for the Construction Period within 30 days following the Effective Date; and (b) Section 1.4(b) [*Fast Track Referee Process*]; a Referee shall be appointed during the Operating Period at the time the Dispute arises.

1.2 Dispute Notice and Response

The Dispute Resolution Procedure may be commenced by either party (the “**Initiating Party**”) by giving notice to the other party (the “**Dispute Notice**”) briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought. Within 5 Business Days of receiving a Dispute Notice, the party that received the Dispute Notice (the “**Receiving Party**”) will provide a response to the Dispute Notice (the “**Response**”) to the Initiating Party briefly setting out the Receiving Party’s views of the pertinent facts, the remedy or relief sought by the Receiving Party and the grounds on which such remedy or relief is sought by the Receiving Party.

1.3 Diligent Negotiation

Within 3 Business Days of the Initiating Party receiving a Response from the Receiving Party or, if a Response was not received, within 5 Business Days of receipt of the Dispute Notice by the Receiving Party, or such longer period as the parties may agree, the appointed Representative of each party will meet and, in a diligent manner, commence without prejudice negotiations to resolve the Dispute. The parties will attempt to resolve the Dispute within 5 Business Days of meeting or within such longer period as the parties may agree.

1.4 Fast Track Referee Process

If the Dispute is not resolved pursuant to Section 1.3 [*Diligent Negotiation*] of this Schedule 20 [*Dispute Resolution Procedure*] to the mutual satisfaction of the parties within the time stipulated in Section 1.3 [*Diligent Negotiation*] of this Schedule 20 [*Dispute Resolution Procedure*], either party may, by notice to the other (a “**Referee Notice**”), request the appointment of a referee (“**Referee**”) as provided under the terms of this Section 1.4 [*Fast Track Referee Process*]. The Referee will be appointed as an expert to resolve the Dispute and will participate in the resolution of the Dispute, as set out below:

- (a) **During the Construction Period:** if the Referee Notice is given during the Construction Period, the Referee will be appointed in the following manner:

- (i) Appointment of Standing Referees: the four standing referees from which the Referee to a Dispute will be selected (collectively, the “**Standing Referees**”) shall be appointed within 30 days following the Effective Date of this Agreement for the term set out in Section 1.4(a)(iii) [*Term of Appointment and No Conflicts*] of this Schedule 20 [*Dispute Resolution Procedure*], pursuant to a referee agreement which the parties shall enter into with each Standing Referee at the time of such appointment (such agreement to be in the form attached as Appendix 20A [*Referee Agreement*] (the “**Referee Agreement**”));
- (ii) Standing Referee Categories: the Standing Referees shall consist of:
 - (A) two qualified individuals, to be appointed for resolution of Disputes relating to geotechnical, engineering design, and construction matters, including matters arising out of Schedule 4 [*Design and Construction Protocols*]; Schedule 5 [*D&C Performance Requirements*] and Schedule 7 [*O&M Performance Requirements*] (the “**Technical Referee**”); and
 - (B) two qualified individuals, to be appointed for resolution of all Disputes not relating to matters described in Section 1.4(ii)(A) [*Standing Referee Categories*], including, without limitation, legal Disputes in respect of the interpretation, breach, validity or enforcement of rights, obligations or remedies under this Agreement (the “**Commercial Referee**”);

If the Parties cannot agree on whether a particular Dispute should be referred to a Technical Referee or a Commercial Referee for resolution, the disagreement shall be referred to the Commercial Referee for resolution in accordance with the protocol set out in Section 1.4(a)(v) [*Selection of Standing Referee*] of this Schedule.

- (iii) Term of Appointment and No Conflicts: subject to Section 1.4(a)(iv) [*Termination*] of this Schedule 20 [*Dispute Resolution Procedure*], each Standing Referee will be appointed for a term in length equal to that of the Construction Period and shall be reasonably available to act as the Referee at any time during the Construction Period that he or she is appointed as the Referee pursuant to Section 1.4(a)(v) [*Selection of Standing Referee*] of this Schedule 20 [*Dispute Resolution Procedure*]. No Standing Referee shall act as the Referee if he or she has a conflict of interest in so acting, and each Standing Referee shall disclose to the parties, as soon as the Standing Referee becomes aware of, any conflict or potential conflict of interest that does or might hinder the Standing Referee’s ability to act as the Referee;
- (iv) Termination: each Standing Referee’s appointment may be terminated during the Construction Period, which termination will be without prejudice to any accrued rights and obligations of the parties and the Standing Referee as at the date of termination, by:

- (A) mutual agreement of the City and Project Co on 15 days' notice to the Standing Referee;
 - (B) either the City or Project Co in the event of a breach by the Standing Referee that has not been rectified within 7 days' notice of breach having been given to the Standing Referee;
 - (C) the Standing Referee on 120 days' written notice of termination to the City and Project Co unless the Standing Referee is acting as the Referee on a Dispute, in which case the Standing Referee may not terminate his or her appointment until the later of the resolution of that Dispute and the end of the 120-day notice period;
- (v) Selection of Standing Referee: the parties will appoint the Referee from the Standing Referees in the following manner:
- (A) the party that issues the Referee Notice (the "**FTRP Initiating Party**") will designate in the Referee Notice a Standing Referee to serve as the Referee having regard to the nature or category of the Dispute and the Standing Referee categories set out in Section 1.4(a)(ii) [*Standing Referee Categories*] of this Schedule 20 [*Dispute Resolution Procedure*];
 - (B) if the party receiving the Referee Notice has an objection to the choice of Referee designated in the Referee Notice, it will give written notice of such objection with reasons to the FTRP Initiating Party; and
 - (C) if the parties are unable to agree on the selection of a Standing Referee or if for any other reason within 2 Business Days of the delivery of a Referee Notice the Referee has not been appointed, then either party may refer the matter for resolution to a Commercial Referee designated in Section 1.4(a)(ii)(B) [*Standing Referee Categories*] of this Schedule 20 [*Dispute Resolution Procedure*] to make the determination of whether he or she or a Standing Referee designated in Section 1.4(a)(ii)(A) [*Standing Referee Categories*] shall be appointed. The selected Commercial Referee shall alternate from Dispute to Dispute, starting with the first listed name;
- (vi) Alternative Selection: if the Standing Referee appointed as the Referee under Section 1.4(a)(v) [*Selection of Standing Referee*] of this Schedule 20 [*Dispute Resolution Procedure*] notifies the parties that he or she is unable to act as the Referee due to a conflict of interest, illness, travel, or other legitimate reason, within 2 Business Days of the Standing Referee's notice, the parties will appoint the Referee in accordance with the protocol provided for in Section 1.4(b) [*During the Operating Period*] of this Schedule 20 [*Dispute Resolution Procedure*].
- (b) **During the Operating Period:** if the Referee Notice is given during the Operating Period, the Referee will be appointed in the following manner:

- (i) Appointment of Referee: the Referee will be selected and appointed by the parties and the Referee Agreement entered into by the parties with the Referee each time a Dispute arises in the following manner:
 - (A) the FTRP Initiating Party will nominate in the Referee Notice three qualified individuals (collectively, the "**Nominees**"), with a description of each Nominee's qualifications and expertise, to serve as the Referee having regard to the nature or category of the Dispute and the Nominees' qualifications and expertise;
 - (B) within 5 Business Days of receiving the Referee Notice, the party receiving the Referee Notice shall, by notice to the FTRP Initiating Party, either indicate its choice of Nominee, in which case such Nominee shall be selected to serve as the Referee, or object to the Nominees set out in the Referee Notice;
 - (C) if the party receiving the Referee Notice fails to indicate its choice of Nominee or object to the Nominees set out in the Referee Notice within 5 Business Days of receiving the Referee Notice, then the FTRP Initiating Party shall select a Nominee to serve as the Referee;
 - (D) if the party receiving the Referee Notice objects to the Nominees set out in the Referee Notice, then either party may apply to the **ADR Institute of Alberta ("ADRIA")** for a referee to be promptly appointed under the **National Arbitration Rules** to act as the Referee.
- (ii) Termination: the appointment of this Referee may be terminated in like manner as a Standing Referee pursuant to Section 1.4(a)(iv) [*Termination*] of this Schedule 20 [*Dispute Resolution Procedure*].
- (c) **Final Offer Proposal:** within 3 Business Days of the Referee's appointment, (unless this time is extended by mutual agreement) each party must submit to the Referee its "best and final offer" (the "**BAFOs**") for settlement of the Dispute. If a Party fails to submit a BAFO within the stipulated time frame, that Party shall be deemed to have submitted the same BAFO as the other Party.
- (d) **Referee's Rights and Obligations:** in addition to any other rights and obligations the Referee may have under this Schedule 20 [*Dispute Resolution Procedure*] or the Referee Agreement:
 - (i) Referee Review: the Referee will conduct an impartial review of the Dispute in such manner as the Referee thinks fit, including carrying out on-site inspections and interviews with any persons that the Referee thinks fit. In conducting a review, the Referee will rely on the Dispute Notice and the Response and will not be obliged to conduct his enquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Referee thinks fit, and may render his decision notwithstanding the failure of a party to participate in the

proceedings. The Referee may require supplemental submissions from either or both parties, but such supplemental submissions will not modify any of the time frames stipulated herein for the rendering of a decision by the Referee. Any submission or documentation in respect of the Dispute provided to the Referee by a party will also be provided by the Referee to the other party;

- (ii) **Standard of Care:** the Referee will exercise the standard of skill, care, and diligence that would be expected of an expert professional experienced in providing services of a similar nature to those of the Referee on projects of a similar nature to the Project;
 - (iii) **Disclosure of Conflicts:** the Referee will disclose to the parties, as soon as the Referee becomes aware of, any conflict or potential conflict of interest that arises during the Referee's appointment;
 - (iv) **Engagement of Advisors/Experts:** the Referee may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for him to retain such other professional persons or experts; and
 - (v) **Referee's Decision:** the Referee will render a written and impartial decision with reasons on the Dispute and identifying the strengths and deficiencies of each BAFO, with copies to both parties, as soon as practicable in the circumstances, with the objective of rendering a decision within 3 Business Days of receiving the BAFOs. The Referee shall only be authorized to select and issue as its final decision one party's "best and final offer" submitted pursuant to Section 1.4(c) [Final Offer Proposal] of this Schedule 20 [Dispute Resolution Procedure]. For the avoidance of doubt, the Referee shall not be authorized or permitted to issue any final decision that deviates from the "BAFOs" submitted by the parties unless the Parties mutually agree in writing at the time to empower the Referee with the authority to make his or her own decision.
- (e) ***Parties' Cooperation:*** the parties will cooperate with the Referee and comply with all reasonable requests from the Referee for additional information, documents and access to personnel and the Site which the Referee considers necessary for the review.
- (f) ***Referee's Decision Binding:*** a decision of a Referee is binding on the parties unless and until reversed or modified by a decision of an arbitrator pursuant to Section 1.6 [Arbitration] of this Schedule 20 [Dispute Resolution Procedure].
- (g) ***Fees and Expenses:*** the Standing Referee's or the Referee's fees and expenses, including any retainer payable pursuant to the terms of the applicable Referee Agreement (as it may be amended from time to time), will be shared equally by the City and Project Co. The City will pay the full amount of the Standing Referee's or the Referee's fees and expenses on the day that such fees and expenses are due (including any advances on fees and expenses) in accordance with the Referee Agreement and Project Co will

reimburse the City for Project Co's share of all such fees and expenses within 5 Business Days of receipt of a written demand from the City, failing which the City will be entitled to deduct the amount of Project Co's share of the Standing Referee's or the Referee's fees and expenses from amounts otherwise due to Project Co under the provisions of this Agreement.

- (h) **No Liability for Referee:** the parties hereby release and save harmless the Referee from any liability arising from the Referee's actions, made in good faith, in carrying out the duties of the Referee as described in this Schedule 20 *[Dispute Resolution Procedure]*.
- (i) **Independence/Authority of Referee:** the Referee:
 - (i) is an independent consultant and is not, and will not purport to be, a partner, joint venturer, or agent of either party;
 - (ii) other than as may be expressly set out in this Agreement (including this Schedule 20 *[Dispute Resolution Procedure]*), has no authority to give any directions to the parties or the parties' officers, employees, contractors, consultants, or agents; and
 - (iii) has no authority to waive or alter any terms of this Agreement nor to discharge or release either party from its obligations under this Agreement unless jointly agreed in writing by the parties.
- (j) **Confidentiality:** the proceedings under this Section 1.4 *[Fast Track Referee Process]* will be confidential and all information, data or documentation disclosed or delivered by either party to the Referee as a result or in connection with the Referee's duties as the Referee will be treated as confidential and neither the parties nor the Referee will, except as would be permitted under this Section 1.4(j) *[Confidentiality]* of the Agreement or as required by law, disclose to any Person any such information, data or documentation unless the parties otherwise agree in writing.
- (k) **Evidence in Arbitration:** notwithstanding Section 1.4(j) *[Confidentiality]* of this Schedule, the decision of the Referee and any and all documents, evidence, and submissions relating to a Dispute decided under this Section 1.4 *[Fast Track Referee Process]* of this Schedule 20 *[Dispute Resolution Procedure]* may be submitted as evidence or background information by either party in arbitration proceedings of the same Dispute under Section 1.6 *[Arbitration]* of this Schedule 20 *[Dispute Resolution Procedure]*.

1.5 Commencement of Arbitration Proceedings

If either party wishes to arbitrate a Dispute decided by the Referee under Section 1.4 *[Fast Track Referee Process]* of this Schedule 20 *[Dispute Resolution Procedure]*, either party may, at any time up to 90 days following the Referee's decision, commence proceedings to have the Dispute settled by arbitration under Section 1.6 *[Arbitration]* of this Schedule 20 *[Dispute Resolution Procedure]*. In any such proceedings,

the scope of issues will not be limited strictly to the terms of the Dispute Notice but may extend to include directly related matters for the purpose of completely resolving the Dispute, including, without limitation, issues that are the subject of the Referee's decision.

Any Dispute decided by the Referee under Section 1.4 [*Fast Track Referee Process*] of this Schedule 20 [*Dispute Resolution Procedure*] and subsequently referred to arbitration under Section 1.6 [*Arbitration*] of this Schedule 20 [*Dispute Resolution Procedure*] shall be decided on a *de novo* basis and shall not be, or considered to be, an appeal of the Referee's decision. For greater certainty, the arbitrator selected to hear the Dispute shall not be bound by, or be required to adhere to, any findings of fact by, or any other findings or decisions of, the Referee, and Section 1.4(k) [*Evidence in Arbitration*] of this Schedule 20 [*Dispute Resolution Procedure*] applies to the arbitration of the Dispute.

1.6 Arbitration

If a party is entitled under Section 1.5 [*Commencement of Arbitration Proceedings*] of this Schedule 20 [*Dispute Resolution Procedure*] to commence proceedings to have a Dispute settled by arbitration, then the party may commence such proceedings at such time and according to the protocol set out below in this Section 1.6 [*Arbitration*] by giving the other party notice of its intention to submit the Dispute to binding arbitration, which notice will set out the proposed arbitrator and the scope of issues to be determined by arbitration in addition to those set out in the Dispute Notice, if any.

No Dispute shall be referred by a Party to arbitration until the commencement of the Operating Period unless:

- (a) the Parties mutually agree in writing to proceed with the arbitration of a particular Dispute during the Construction Period; or
- (b) the Referee vested with dealing with the Dispute in question determines that the postponement of the arbitration to the Operating Period would be materially prejudicial and unfair to one of the Parties to the Dispute or that significant harm or detriment to the Project would result from the postponement of the arbitration to the Operating Period; and in accordance with Section 1.5 [*Commencement of Arbitration Proceedings*] of this Schedule 20 [*Dispute Resolution Procedure*], the Party requesting arbitration provided notice to arbitrate the Dispute within 90 days of the Referee decision in respect of that Dispute.

The Parties shall consolidate all outstanding Disputes as at commencement of the Operating Period into a single arbitration proceeding to the extent that the criteria for consolidation set out in Section 2.3 [*Consolidation*] of this Schedule 20 [*Dispute Resolution Procedure*] are satisfied and the appointed arbitrator agrees to deal with multiple Disputes in one proceeding.

If a party commences proceedings to have a Dispute settled by arbitration pursuant to this Section 1.6 [*Arbitration*], the following procedure will apply:

- (c) **Applicable Rules:** the "National Arbitration Rules" of the ADR Institute of Canada Inc. (**ADRIC**) will apply to the arbitration, as modified by this Schedule 20 [*Dispute Resolution Procedure*] or as otherwise agreed by the parties;

- (d) **Single Arbitrator:** a single arbitrator will be selected (the selected arbitrator, the “**Arbitrator**”) on a rotational basis based on the appointment procedure and protocol, and such agreed Appendix 20B [*Appointment of Arbitrators*] of this Schedule 20 [*Dispute Resolution Procedure*];
- (e) **Scope of Award:** the Arbitrator will have the authority to award any remedy or relief that a court or judge of the Court of Queen's Bench of Alberta could order or grant in accordance with the Agreement, including specific performance of any obligation created under the Agreement, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process;
- (f) **Place/Language of Arbitration:** the place of arbitration shall be Edmonton and all meetings and hearings of the Arbitrator will take place in the City of Edmonton or in such other place as the parties agree and such meetings and hearings will be conducted in the English language unless otherwise agreed by such parties;
- (g) **Date/Time/Location of Arbitration:** the Arbitrator may at any time fix the date, time and location of meetings and hearings in the arbitration, upon reasonable notice to the parties;
- (h) **Privacy/Legal Representation:** all meetings and hearings will be in private unless the parties agree otherwise, and either party may be represented at any meetings or hearings by legal counsel;
- (i) **Confidentiality:** the arbitration will be kept confidential and the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, and testimony or other oral submission and any awards) will not be disclosed to any party other than the Arbitrator, the parties (and their respective directors, officers, shareholders, experts and legal counsel), the [Senior Creditors] and such other persons as may be necessary to the conduct of the proceeding or required by law;
- (j) **Arbitrator's Decision:** the Arbitrator will deliver a decision in writing as soon as possible in the circumstances after the conclusion of the hearing and, unless the parties agree otherwise, will set out reasons for the decision;
- (k) **Arbitrator's Decision Binding:** the decision of the Arbitrator is final and binding on the parties; and
- (l) **Fees and Expenses:** each party shall pay one-half of the Arbitrator's fees and expenses, and shall bear all of its own expenses in connection with the arbitration. The Arbitrator shall, however, have the authority, in the Arbitrator's discretion, to award recovery of all costs and fees (including legal fees on a solicitor and own client basis, administrative fees, and the Arbitrator's fees and expenses, as applicable) to the prevailing party in the arbitration.

2. CONSOLIDATION OF PROCEEDINGS

2.1 Acknowledgement

The parties acknowledge that a Dispute under this Agreement may be based on facts or issues of law that also apply or relate to a dispute under a Project Contract or a Collateral Agreement and in these circumstances it may be appropriate for the dispute proceedings that may have been initiated under two or more of these agreements to be consolidated into one proceeding.

2.2 Definition

For the purposes of this Section 2 [*Consolidation of Proceedings*], “**proceeding**” means a fast track referee proceeding under, or similar to that under, Section 1.4 [*Fast Track Referee Process*] of this Schedule 20 [*Dispute Resolution Procedure*] or an arbitration proceeding under, or similar to that under, Section 1.6 [*Arbitration*] of this Schedule 20 [*Dispute Resolution Procedure*] between:

- (a) the City and Project Co under this Agreement; or
- (b) the parties to a Project Contract or Collateral Agreement.

2.3 Consolidation

Where:

- (a) a party in one proceeding may be entitled to contribution or indemnity from a party in another proceeding in relation to any relief that is being sought against the party in the first proceeding;
- (b) a party in one proceeding is entitled to relief against a party in another proceeding and that relief relates to or is connected with the subject matter of the first proceeding; or
- (c) a question or issue:
 - (i) in one proceeding is substantially the same as a question or issue that relates to or is connected with: (A) the relief claimed in another proceeding; or (B) the subject matter of another proceeding; and
 - (ii) should properly be determined in a single proceeding.

a party to any of these proceedings may require the proceedings to be consolidated (such consolidated proceeding, the “**Consolidated Proceeding**”) by giving written notice to all parties to the proceedings proposed to be consolidated (the “**Consolidated Notice**”). The consolidation of two or more proceedings may occur by agreement of the affected parties or by the decision of the first appointed Referee or Arbitrator (as applicable) under this Agreement.

Where a party to a Project Contract or Collateral Agreement becomes a party to a Consolidated Proceeding, such party shall be required to join any Referee Agreement applicable to such Consolidated Proceeding to the extent it is not already party thereto.

Notwithstanding the foregoing, a fast track referee proceeding may not be consolidated with an arbitration proceeding and vice versa.

2.4 Terms

To the extent appropriate, the terms of this Schedule 20 [*Dispute Resolution Procedure*] apply to the Consolidated Proceeding (including all parties to the Consolidated Proceeding and the Referee or the Arbitrator, as applicable, appointed for the Consolidated Proceeding) in the same manner as they apply to the individual proceedings being consolidated, and the parties to the Consolidated Proceeding will appoint the Referee or the Arbitrator for the Consolidated Proceeding, as applicable, in accordance with Sections 1.4 [*Fast Track Referee Process*] and 1.6 [*Arbitration*] of this Schedule 20 [*Dispute Resolution Procedure*]. If the Referee or Arbitrator has already been appointed under this Agreement, that person shall continue to act in that capacity in the Consolidated Proceeding.

All references to “Referee Notice” in Sections 1.4 [*Fast Track Referee Process*] and 1.6 [*Arbitration*] of this Schedule will be replaced with “Consolidation Notice,” and all references to “parties” in this Schedule 20 [*Dispute Resolution Procedure*] will be read to include all parties to the Consolidated Proceeding, as appropriate.

2.5 Objection

Where any party to whom the Consolidation Notice was issued objects to the consolidation of the proceedings referred to in the Consolidation Notice, that party may, within 5 Business Day of its receipt of the Consolidation Notice, refer its objection to **ADRIC** by giving written notice with reasons to the **ADRIC** and all other parties to the Consolidation Notice. Where no objection is made within 5 Business Days of a party’s receipt of the Consolidation Notice, that party shall be deemed to have agreed to the consolidation of proceedings referred to in the Consolidation Notice and shall be bound by any award made by the Referee or the Arbitrator, as applicable, in the Consolidated Proceeding.

3. GENERAL

3.1 Other Remedies

Neither party may initiate a proceeding in a court of competent jurisdiction, whether before or after the Dispute has been initiated by a Dispute Notice, in respect to the application or interpretation of any provision of this Agreement except as expressly permitted by the (a) Agreement; (b) the Arbitration Act (Alberta); or (c) the prior written approval of both Parties.

3.2 Strict Compliance with Time Limits

The parties acknowledge that timely resolution of Disputes is mutually beneficial and the time limits set out in this Schedule 20 [*Dispute Resolution Procedure*], or as otherwise agreed to by the parties, will therefore be strictly complied with and enforced.

3.3 The City's Directive

If a Dispute occurs, then the City and Project Co will diligently carry out their respective obligations under this Agreement pending resolution of the Dispute pursuant to the Dispute Resolution Procedure. Prior to resolution of the Dispute, the City may in its discretion by notice to Project Co direct Project Co to proceed with work activities in respect of the matter in Dispute or any related matter and Project Co will comply with and implement the direction. Such City direction however will be without prejudice to Project Co's rights to claim compensation or other relief as an element or aspect of the resolution of the Dispute or as a Relief Event pursuant to Section 13.1.1 [*Relief Event Defined*] of the Agreement to the extent such City directions establish a supplemental or incremental scope of work, or increased cost, to the Project Work or to assert other rights under the Agreement. Nothing in this Schedule 20 [*Dispute Resolution Procedure*] will limit the City's right to require a Change in circumstances where the Dispute is determined in favour of Project Co.

3.4 Other Project Contracts

Project Co shall ensure that each and every Project Contract and Collateral Contract contains terms that are substantially similar to, and in no way inconsistent with, the terms of this Schedule 20 [*Dispute Resolution Procedure*] or otherwise expressly incorporates the terms of this Schedule 20 [*Dispute Resolution Procedure*] into the Project Contract and Project Contract. Specifically, but without limitation, Project Co shall ensure that each and every Project Contract:

- (a) contains identical provisions relating to the appointment of the Referee and the Arbitrator as provided in this Schedule 20 [*Dispute Resolution Procedure*] (including identical roster of Standing Referees as provided in Appendix 20B [*Appointment of Arbitrators*] of this Schedule 20 [*Dispute Resolution Procedure*]);
- (b) provides for the mandatory fast track referee process and binding arbitration proceedings for the resolution of all disputes that are governed by identical rules of procedures as provided in this Schedule 20 [*Dispute Resolution Procedure*]; and
- (c) provides for the consolidation of proceedings as contemplated under Section 2 [*Consolidation of Proceedings*] of this Schedule 20 [*Dispute Resolution Procedure*];

Project Co shall also cause each Project Co Person to abide by, comply with, and enforce the terms of this Section 3.4 [*Other Project Contracts*] of this Schedule 20 [*Dispute Resolution Procedure*] to, among other things, give effect to the requirements of mandatory arbitration and consolidation of proceedings under this Schedule 20 [*Dispute Resolution Procedure*] for any Dispute in which the City is a party or a participant.

3.5 No Disruption to Project

It is the intent of the City and Project Co that no Dispute will disrupt, compromise, limit, restrict or otherwise adversely affect the performance of their respective obligations or the exercise of their rights under this Agreement while the Dispute is outstanding and in progress and not fully resolved between the Parties. Each Party will use reasonable commercial efforts at all times in a diligent manner to take such steps or actions as may be reasonably necessary to avoid or mitigate any potential or possible

disruption, compromise, limitation, restriction or other adverse impact to the Project, the Project Work or the performance of obligations and the exercise of rights of or by the Parties in relation to a Dispute.

3.6 Limitation Periods

The limitation of actions as outlined in section 51 of the *Arbitration Act* (Alberta) is suspended pursuant to section 7 of the *Limitations Act* (Alberta) once a Dispute has been referred for resolution pursuant to this Schedule 20 [*Dispute Resolution Procedure*].

APPENDIX 20A

REFEREE AGREEMENT

_____, 20__

[Name and address of Referee]

Re: Referee Appointment

We write to confirm your appointment as a [referee/standing referee] under the Project Agreement dated February 8, 2016 between the City and Project Co (the "**Project Agreement**"). The terms of your appointment are as contained in Schedule 20 [*Dispute Resolution Procedure*] to the Project Agreement, which terms are incorporated by reference in this Referee Agreement.

By signing the Acknowledgement below, you confirm that:

- (i) you have received a briefing from the City and Project Co on the Project, the Project Agreement, the types of disputes that might possibly arise for which you may be appointed and have reviewed a copy of the Project Agreement and related materials, including Schedule 20 [*Dispute Resolution Procedure*] to the Project Agreement;
- (ii) you accept your appointment as, and agree to perform in a diligent and professional manner the functions of, a referee under the Project Agreement on the terms and conditions set out in Schedule 20 [*Dispute Resolution Procedure*] of the Project Agreement;
- (iii) you agree to be bound by the terms and conditions set out in Schedule 20 [*Dispute Resolution Procedure*] of the Project Agreement as applicable and acknowledge that those terms and conditions are incorporated by reference in this Referee Agreement;
- (iv) you will keep yourself reasonably well informed of the progress and status of the Project not less than bi-monthly during the Construction Period; and
- (viii) you agree that additional parties may join this Referee Agreement without any additional standby retainer fee payable to you where such parties are party to a Consolidated Proceeding as defined in Schedule 20 [*Dispute Resolution Procedure*] of the Project Agreement.

We confirm that your compensation will consist of:

- (a) an annual standby retainer fee of \$[•];

- (b) daily/hourly rate for fees for specific appointments in dealing with Disputes is \$_____ . In addition to your invoiced fees, the City will pay any and all reasonable disbursements incurred in providing your services.

Please submit your invoices on a monthly basis directly to _____ **[Insert name of the City's Design, Construction or Operating Period Representative as applicable]** (the "**the City's Representative**"). The City will make payment within 30 calendar days of receipt on behalf of itself and Project Co.

This Referee Agreement is not assignable.

It is the express wish of the parties that this document and any related documents be drawn up and executed in English. Les parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés et signés en anglais.

Please confirm your agreement to the terms of this Referee Agreement by signing the Acknowledgement below and returning a copy of this letter with the signed Acknowledgement to The City's Representative.

Yours truly,

Authorized Signatory of The City

Date

Authorized Signatory of Project Co

Date

ACKNOWLEDGEMENT

The undersigned hereby acknowledges receipt of the Referee Agreement and agrees to the terms set out therein.

[Referee's Name]

APPENDIX 20B

APPOINTMENT OF ARBITRATORS

Within 20 days after receipt of a notice to arbitrate pursuant to Section 1.6 [*Arbitration*] of Schedule 20 [*Dispute Resolution Procedure*], the other party shall give notice to the first party advising whether such other party accepts the arbitrator proposed by the first party, and, if not, proposing another individual to be the single arbitrator. If such notice is not given by the other party within such 20 day period, the other party shall be deemed to have accepted the arbitrator proposed by the first party. If the parties do not agree upon a single arbitrator within 20 days after the other party proposed an alternate individual, any party may apply to a court of competent jurisdiction under the *Arbitration Act* (Alberta) for the appointment of a single arbitrator.