

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE WEST LRT

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 Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date or the value of any of the items listed in Table 7 *[Valued Items]* of Appendix 16A *[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 10 *[Force Majeure]* or Section 11 *[Relief Events and Limited 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 Project Co Persons shall 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 and Innovation Proposals

Except as specifically provided in this Agreement, the City bears no risk or liability whatsoever arising from any Change or Innovation Proposal, other than the liability to make payment in connection therewith. Notwithstanding the previous sentence, the City shall 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 which: (i) the City specifies must be incorporated in a Change 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 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; and
- (b) the City confirms its direction to incorporate the particular design, materials, goods or method of construction 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 financing costs, including up-front and commitment fees, 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 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 Payments payable by the City after the date on which the Project or the Project Requirements are reduced, deleted or removed.

1.6 Restrictions on Changes

Unless otherwise agreed to by the Parties, the City shall not at any time during the Term require, and Project Co may refuse to implement, a Change 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 result in a change in the essential nature of the Infrastructure; or

- (g) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to the Design or the Construction.

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then 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.

1.7 Effect On Schedule

Project Co shall use all reasonable efforts and Good Industry Practice to minimize the effect of a Change on the Construction Schedule and Key Dates and, subject to the foregoing and Sections 1.1 [Changes] and 2.3(b)(ii) of this Schedule, the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date and the Long Stop Date 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. Where, and to the extent, caused by a Change, any of Phase 1 Construction Completion is delayed beyond the Target Phase 1 Construction Completion Date, or the ICS Integration Ready Date is delayed beyond the Target ICS Integration Ready Date, or the Construction Completion is delayed until beyond the Target Construction Completion Date (in each case, as it was immediately prior to the current adjustment in accordance with this Section) (the “**Change Reference Date**”), subject to Project Co’s obligation to take reasonable steps consistent with Good Industry Practice to mitigate the delay and to mitigate its Direct Losses:

- (a) upon Phase 1 Construction Completion, the ICS Integration Ready Date or Construction Completion, as applicable, the City shall pay to Project Co its reasonable Direct Losses resulting from Phase 1 Construction Completion or the ICS Integration Ready Date or Construction Completion being delayed beyond the applicable Change Reference Date solely as a result of the Change and only to the extent that the delay is supported by a relevant Forensic Schedule Analysis as per the Agreement; and
- (b) to the extent the Direct Losses resulting from Phase 1 Construction Completion or the ICS Integration Ready Date or Construction Completion being delayed beyond the applicable Change Reference Date solely as a result of the Change can reasonably be determined prior to Phase 1 Construction Completion, the ICS Integration Ready Date or Construction Completion, as applicable, the City shall make advance payment to Project Co on account of such Direct Losses.

The Parties acknowledge that, pursuant to the terms of this Agreement, the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date and other Key Dates may be subject to multiple adjustments and that such adjustments may result in Target Phase 1 Construction Completion Date being later than the original Target Phase 1 Construction Completion Date, the ICS Integration Ready Date being later than the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date being later than the original Target Stony Plain Road Bridge Availability Date, or the Target Construction Completion Date being later than the original Target Construction Completion Date. As such, the Direct Losses, if any, resulting from each adjustment of the Target Phase 1 Construction Completion Date or the ICS Integration Ready Date or the Target Stony Plain Road Bridge Availability Date or the Target Construction Completion Date, as applicable, 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 shall 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 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 shall 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) It is Project Co’s responsibility to have conducted its own investigations, analysis and review of the Project, the Lands, the existing infrastructure, the Infrastructure and the Project Work and the risks assumed before submitting its Change Estimate.
- (b) 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 shall take to implement the proposed Change, in such detail as is reasonable and appropriate in all the circumstances;
 - (ii) any impact on achieving Construction Completion and any impact on Project Co’s Construction Schedule. Failure to provide this information with the Change Estimate will preclude Project Co from claiming amendments to the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date or any other Key Date due to the proposed Change, or making any other claims for changes to the Construction Schedule, including any ripple effects that may result;
 - (iii) any impact on the items listed in Table 7 [*Valued Items*] of Appendix 16A [*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 7 [*Valued Items*] of Appendix 16A [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*] due to the Change;

- (iv) any subcontractors required in addition to or in substitution for any existing Subcontractors;
 - (v) subject to Section 2.3(g), the estimated Change value has been determined on the basis of applicable costs and criteria described in Section 4.1 [*Cost Plus Percentage Valuation*];
 - (vi) any Project Approvals that are required to be obtained or amended that are attributable to the proposed Change and the estimated time for obtaining or amending same;
 - (vii) 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 City may reasonably require;
 - (viii) 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 costs;
 - (ix) 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;
 - (x) that Project Co has mitigated or will mitigate the schedule impact of the proposed Change;
 - (xi) a fulsome description of any potential impacts the proposed Change could have on meeting the Operability and Maintainability Parameters and that all efforts have been made to avoid or minimize those impacts;
 - (xii) any changes required to the Senior Financing Agreements;
 - (xiii) the value of the loss or reduction in benefits resulting from the proposed Change;
 - (xiv) an estimate of any impact on expected usage of Utilities for operating the Infrastructure, if applicable;
 - (xv) a description of any impact on the obligations of Project Co under any Project Contracts;
 - (xvi) a description of any actions that would be reasonably required by the City to implement the proposed Change; and
 - (xvii) the commercially reasonable efforts that Project Co will make to obtain the best value for money when procuring any work, services, financing (if necessary), supplies, materials or equipment required by the proposed Change in compliance with Good Industry Practice and 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, unless the Parties agree otherwise, 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 Phase 1 Construction

Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date, the Construction Payments or the items listed in Table 7 *[Valued Items]* of Appendix 16A *[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) 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 Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date, the Construction Payments, or the items listed in Table 7 *[Valued Items]* of Appendix 16A *[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 Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date, the Construction Payments, or the items listed in Table 7 *[Valued Items]* of Appendix 16A *[Payment and Payment Adjustment Inputs]* of Schedule 16 *[Payment Mechanism]*, then the Dispute shall be determined in accordance with the Dispute Resolution Procedure.
- (g) Notwithstanding Section 2.3(b)(v), the City may request, in its discretion, that the valuation of a proposed Change be determined on the basis of:
 - (i) unit prices acceptable to the City;
 - (ii) lump sum price acceptable to the City;
 - (iii) time and material using Force Account Rates as outlined in Section 4.2 *[Time and Material using Force Account Rates Valuation]*; or
 - (iv) a combination of any of the above and the cost plus percentage valuation basis as outlined in Section 4.1 *[Cost Plus Percentage Valuation]*.

In the event the City requests the valuation of a Change pursuant to this Section 2.3(g) and Project Co objects to such method of valuation, Project Co shall promptly notify the City in writing of its objection. Project Co and the City shall, as soon as practicable and, in any event, not more than 5 Business Days after Project Co delivers notice of its objection to the City, discuss and seek to agree on the method of valuation. If the Parties cannot agree on the method of valuation within 10 Business Days following delivery of the notice of objection, the City shall either:

- (v) withdraw the Change Enquiry by written notice to Project Co; or

- (vi) agree to value the Change on the basis set forth in Section 4.1 [*Cost Plus Percentage Valuation*], and

in the case of the City agreeing to value the Change on the basis set forth in Section 4.1 [*Cost Plus Percentage Valuation*], the period pursuant to Section 2.2 [*Delivery of Change Estimate*] for delivery by Project Co of the Change Estimate shall be extended by such period as has elapsed between the delivery of the original Change Enquiry and the City's agreement to value the Change on the basis set forth in Section 4.1 [*Cost Plus Percentage Valuation*].

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 while taking into consideration the approval process associated with the Change Order Confirmation within the City) after the date on which the Change Estimate, including if applicable, any adjustment to Project Co's Construction Schedule, the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Longstop Date, any Key Dates, the Construction Payments, or the items listed in Table 7 [*Valued Items*] of Appendix 16A [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*], was agreed to, the City shall 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 was agreed to, then the Change Enquiry shall be deemed to have been withdrawn and the Change process in this regard concluded.
- (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) if applicable, the Construction Schedule, the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date and any Key Dates will be adjusted in accordance with the terms of the Change Order Confirmation;
 - (iv) the items listed in Table 7 [*Valued Items*] of Appendix 16A [*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) if applicable, 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.

- (d) Except in respect of Direct Losses payable by the City to Project Co pursuant to Section 1.7 *[Effect on Schedule]* of this Schedule 13 *[Changes]* or any compensation for which Project Co is entitled as a result of a Relief Event, a Limited Relief Event, Force Majeure Event or Designated Change in Law in accordance with this Agreement, the Change Order Confirmation represents the full and final obligation of the City for all costs and Construction Schedule adjustments associated with the scope covered in the Change Order Confirmation, including direct effects, indirect effects, ripple effects, effects associated with delays, productivity impacts, or any other subsequent impacts to Project Co of whatsoever nature or kind, regardless of whether known, expected, or foreseen or unforeseen at the time of issuance of the Change Order Confirmation. For certainty, the Change Order Confirmation shall not include any Direct Losses referenced in or payable pursuant to Section 1.7 *[Effect on Schedule]* of this Schedule 13 *[Changes]*.

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 within the time required; 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 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 proceed to 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 a specific schedule or other requirements, Project Co shall implement the Change in accordance with such requirements unless it is not 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, it may deliver a Dispute Notice to Project Co and the Parties shall 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 Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date, the Construction Payments or the items listed in Table 7 *[Valued Items]* of Appendix 16A *[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 shall issue a Change Order Confirmation;
- (d) as soon as practicable after the City has issued the Change Order Confirmation:
 - (i) the Parties shall do all acts and execute all documents necessary to implement the Change;
 - (ii) if applicable, the Construction Schedule, the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target Construction Completion Date, the Long Stop Date and any Key Dates will be adjusted in accordance with the terms of the Change Order Confirmation;
 - (iii) if applicable, the City shall pay Project Co for the Change in accordance with the terms of the Change Order Confirmation; and
 - (iv) if applicable, the items listed in Table 7 [*Valued Items*] and of Appendix 16A [*Payment and Payment Adjustment Inputs*] of Schedule 16 [*Payment Mechanism*] will be adjusted in accordance with the terms of the Change Order Confirmation; and
- (e) pending issuance of the Change Order Confirmation, the value of the work performed by Project Co pursuant to the Change Directive that is not the subject of a Dispute will be invoiced by Project Co and will be paid by the City in accordance with Section 3.9 [*Due Dates for Payments during the Construction Period*] of Schedule 16 [*Payment Mechanism*], as applicable, and all such amounts paid will be accounted for in determining the costs under Article 4 [*Valuation of Changes*] of this Schedule 13 [*Changes*].

4. VALUATION OF CHANGES

4.1 Cost Plus Percentage Valuation

Subject to Section 2.3(g), a Change and a Change Directive shall be valued on the following basis:

- (a) For the work performed by Project Co's own directly owned or employed forces or by a Project Co Person's directly owned or employed forces, that portion of the Change (the "**Project Forces Work**") shall be valued as follows (with all necessary supporting information):
 - (i) for all labour for construction directly involved in the Project Forces Work, the City shall pay the actual direct cost of labour of the Project Forces Work calculated based on the direct wages plus payments made to or on behalf of the workers for holiday pay, Workers Compensation Board assessments, Employment Insurance and Canada Pension Plan payments, and an additional 20% mark-up of the direct cost of labour for the Project Forces Work;
 - (ii) for each piece of equipment used directly in the Project Forces Work, including trucks, but excluding small tools ("small tools" means tools having a value of less than or equal to \$2,500), the City shall pay:
 - (A) for Project Co's equipment at the rates shown in the then current Equipment Rental Rates Guide and Membership Roster as issued by the

Alberta Roadbuilders and Heavy Construction Association or its successor publication or as otherwise agreed by the Parties plus an additional 20% mark-up; and

- (B) for third party equipment rental accounts, at the rates invoiced by the third party plus a 20% mark-up, provided these rates were approved in writing by the City prior to the commencement of the Change work;
 - (iii) for all materials purchased by Project Co solely to perform or incorporate into the Project Forces Work, the City shall pay the amount shown on the original material supplier's invoices, plus an additional 15% mark-up;
 - (iv) for supervision required directly of the Project Forces Work, Project Co shall be paid the actual cost of the superintendent's or foreman's wages to meet Project Co's obligations pursuant to this Agreement, including statutory payments made to them or on their behalf for holiday pay, Workers' Compensation Board assessments, Employment Insurance and Canada Pension Plan, plus an additional 20% mark-up of the total cost of the superintendent's or foreman's wages for the Project Forces Work. If the supervisory personnel are also engaged on work other than the Project Forces Work, only that portion attributable to the Project Forces Work shall be paid by the City;
 - (v) for all design, engineering, quality control, quality assurance, and inspection services directly involved in the Project Forces Work, an amount equal to 10% of the sum of the amounts, excluding the specified mark-ups, determined in Sections 4.1(a)(i) to (iv) inclusive of this Schedule 13 *[Changes]*. For greater certainty, this 10% is for all design and engineering work required to perform the Change, no additional design and engineering costs shall be applied unless otherwise agreed to by the City; and
 - (vi) for Changes that are limited to the Design and do not involve Construction, they shall be quantified on a time and materials basis to a maximum upset limit using the relevant year's "Rate Guide" issued by the Consulting Engineers of Alberta.
- (b) for Project Co's work (including without limitation direct costs, indirect costs, overhead and profit) on the Project Forces Work performed by Subcontractors, an amount equal to a 10% mark-up of the sum of the amounts determined, excluding specified mark-ups, in Sections 4.1(a)(i) and (iv) of this Schedule 13 *[Changes]*; and
 - (c) the mark-ups specified in this Section 4.1(a) of this Schedule shall only be applied once and are not duplicated for every tier of Project Forces Work performed by Subcontractors. For greater certainty, mark-ups are not to be applied on top of mark-ups on any Project Forces Work.

4.2 Time and Material using Force Account Rates Valuation

If, pursuant to Section 2.3(g) of this Schedule 13 *[Changes]*, the Parties have agreed to value a Change on the basis of time and material using Force Account Rates, the following shall apply:

- (a) The Force Account Rates for regular and overtime labour and equipment reflected in Appendix 13A *[Force Account Rates]* will apply for Changes that are to be valued using time and materials.
- (b) The Force Account Rates shall be consistent with industry average actual wages for the various labour categories to be employed on the Project, plus the payroll burden and an

overhead markup allowance of 15% (excluding payroll burdens) and a profit markup of 10% (excluding payroll burdens) which profit markup will be added in parallel to the overhead component and not on top on the overhead component. The payroll burden shall consist of the payments that Project Co is required to make to Canada Pension Plan, Employment Insurance, Workers' Compensation, employee pension plans (if any), vacation allowance, medical benefits and any additional burdens required or imposed by any applicable union or labour organization collective agreements and any other payments required by law. If requested, Project Co shall provide a detailed breakdown of the proposed Force Account Rates showing clearly how the makeup on each of the rates conforms to this requirement. The City may audit the rates for compliance.

- (c) For all Subcontractor Work, third party and materials, a 10% markup will be applied to cover all of Project Co costs.

4.3 Dispute Resolution of Valuation

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, any such dispute shall be determined by the Dispute Resolution Procedure, applying the criteria set out in Section 2.3(b) of this Schedule 13 *[Changes]* and having regard to the manner in which value is to be determined pursuant to Section 2.3(b)(v) or, in the event that the Parties have agreed on an alternative method of valuation pursuant to Section 2.3(g), the applicable agreed method of valuation.

4.4 Contemporary Records

For any determination of Direct Losses under Section 1.7 *[Effect on Schedule]* or valuation of Changes pursuant to this Schedule 13 *[Changes]*, Project Co shall provide to the City appropriate contemporary records to substantiate the Direct Losses or valuation, as applicable.

5. MODIFICATIONS TO PROCESSES AND PROCEDURES

5.1 Agreement to Modified Process

Nothing in this Schedule 13 *[Changes]* shall limit the ability of the Parties to agree to modify, simplify or waive some or all of the processes and procedures outlined in this Schedule in respect of Changes, provided any such modification, simplification or waiver shall be in writing.

5.2 Design Development Changes

Where, in connection with the design development procedure described in Schedule 4 *[Design and Construction Protocols]*, the Parties agree to utilize an alternate procedure for agreeing on and tracking Changes that:

- (a) on an individual basis, have an estimated value of less than \$2,000,000, including "no cost" Changes;
- (b) on a cumulative basis, have an estimated value of less than \$40,000,000, including "no cost" Changes; and
- (c) do not result in a change in the Target Phase 1 Construction Completion Date, the Target ICS Integration Ready Date, the Target Stony Plain Road Bridge Availability Date, the Target ICS Integration Ready Date, the Target Construction Completion Date or any other Key Date

(each a "**Design Development Change**"),

the Parties may, on an individual Change basis, agree to utilize the process set out in Section 5.3 [*Design Development Change Process*], rather than the processes set out in Section 2 [*Change Enquiry Process*] or Section 3 [*Change Directive Process*] of this Schedule 13 [*Changes*].

5.3 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 shall meet as soon as practicable to discuss the proposed Design Development Change.

Where:

- (a) the proposed Design Development Change meets the requirements of Section 5.2 [*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 deliver a copy of the Design Development Change Record to the City's Representative.

5.4 City Consideration of Design Development Change

Within 5 Business Days after receipt of a Design Development Change Record, the City's Representative will either confirm the Design Development Change or object to the Design Development Change Record on the basis that it is not an accurate representation of the Parties' agreement. If the City objects to the Design Development Change Record, the Parties 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:

- (a) the City shall 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
- (b) 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 5.4 [*City Consideration of Design Development Change*] must be delivered concurrently to the Parties' Representatives in writing.

Where the City confirms the Design Development Change Record or, 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 by the Parties.

5.5 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.

5.6 Implementation

Following the issuance of a Design Development Change Record Confirmation, the Parties shall promptly proceed to implement the applicable Design Development Change on the terms set out in the applicable Design Development Change Record Confirmation.

5.7 Reconciliation

No later than the 10th 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**”).

5.8 Design Development Change Register

Within 30 days following the Construction Completion Date, the City shall 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.

5.9 No Dispute

The Parties agree that a failure to reach agreement with respect to a potential Design Development Change pursuant to the procedure set out in this Section 5 [*Modifications to Processes and Procedures*] shall not constitute a Dispute and shall not be referred for resolution pursuant to 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 Payments or the overall cost to the City of the Infrastructure or the operation or Maintenance of the Infrastructure 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 shall:

- (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, impacts on operations or Maintenance, including Utility usage during operations, and the comparative advantages of each to Project Co and the City;
- (e) indicate whether a lump sum payment by the City or a variation to the Construction 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 the 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 shall 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 in respect of 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 shall, within 15 Business Days, evaluate and consider the potential Innovation Proposal, including any proposal for 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 shall evaluate and consider an Innovation Proposal, taking into account all relevant issues, including whether:

- (a) a change in the Construction Payments will occur;
- (b) the Innovation Proposal affects the Quality or delivery of the Infrastructure or the operation and/or Maintenance of the Infrastructure, including Utility usage during operations;
- (c) the Innovation Proposal will interfere in the relationship of the City with any third parties;
- (d) the financial strength of Project Co is sufficient to deliver the changed Infrastructure;
- (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 accept or implement any Innovation Proposal. An Innovation Proposal that is Accepted by the City shall 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; or
- (b) any other benefit,

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

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