

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE WEST LRT

Schedule 20
Dispute Resolution Procedure

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SCHEDULE 20

DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 Definitions

In this Schedule 20 [*Dispute Resolution Procedure*], unless the context indicates a contrary intention, terms which are defined in the Agreement (and not otherwise defined in this Schedule 20 [*Dispute Resolution Procedure*]) shall have meanings given to them in the Agreement and the following terms shall have the following meanings:

- (a) “**ADRIA**” has the meaning given in Section 2.5(b).
- (b) “**ADRIC**” has the meaning given in Section 2.8(a).
- (c) “**Appointed Referee**” has the meaning given in Section 2.5(b).
- (d) “**Arbitration Notice**” has the meaning given in Section 2.8.
- (e) “**Arbitrator**” has the meaning given in Section 2.8(b).
- (f) “**BAFO**” has the meaning given in Section 2.5(c)(iv).
- (g) “**BAFO Submission Date**” has the meaning given in Section 2.5(c)(iv).
- (h) “**Commencement Date**” has the meaning given in Section 2.5(b).
- (i) “**Commercial Referee Panel**” has the meaning given in Section 3.2(b).
- (j) “**Consolidated Proceeding**” has the meaning given in Section 4.2.
- (k) “**Dispute Notice**” has the meaning given in Section 2.2.
- (l) “**Dispute Resolution Procedure**” has the meaning given in Section 2.1.
- (m) “**FTRP Initiating Party**” has the meaning given in Section 2.5(b).
- (n) “**FTRP Receiving Party**” has the meaning given in Section 2.5(b).
- (o) “**Initial Meeting**” has the meaning given in Section 2.3.
- (p) “**Initial Submission**” has the meaning given in Section 2.5(c).
- (q) “**Initiating Party**” has the meaning given in Section 2.2.
- (r) “**Negotiation Period**” has the meaning given in Section 2.3.
- (s) “**Notice of Declination**” has the meaning given in Section 2.5(b).
- (t) “**Objection Notice**” has the meaning given in Section 2.5(b).
- (u) “**Project Agreement Arbitration**” has the meaning given in Section 4.4(a).

- (v) **“Rebuttal Submission”** has the meaning given in Section 2.5(c).
- (w) **“Receiving Party”** has the meaning given in Section 2.2.
- (x) **“Referee”** has the meaning given in Section 2.5(a).
- (y) **“Referee Agreement”** has the meaning given in Section 3.1.
- (z) **“Referee Appointment Notice”** has the meaning given in Section 2.5(b).
- (aa) **“Referee Notice”** has the meaning given in Section 2.5(a).
- (bb) **“Referee Selection Notice”** has the meaning given in Section 2.5(b).
- (cc) **“Response”** has the meaning given in Section 2.2.
- (dd) **“Selected Referee”** has the meaning given in Section 2.5(b).
- (ee) **“Standing Referees”** has the meaning given in Section 3.1.
- (ff) **“Surrebuttal Submission”** has the meaning given in Section 2.5(b).
- (gg) **“Technical Referee Panel”** has the meaning given in Section 3.2(a).
- (hh) **“Third Party Arbitration”** has the meaning given in Section 4.4(a).
- (ii) **“Third Party Litigation”** has the meaning given in Section 4.4(b).

2. DISPUTE RESOLUTION

2.1 Procedure

Unless both Parties otherwise agree, all Disputes shall be resolved in accordance with the provisions of this Schedule 20 [*Dispute Resolution Procedure*] (the **“Dispute Resolution Procedure”**). The Parties agree that at all times, both during and after the Term, each of them will make bona fide efforts to: (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in this Schedule 20 [*Dispute Resolution Procedure*].

2.2 Dispute Notice and Response

If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 2.1, either Party (the **“Initiating Party”**) may give a written notice to the other Party (the **“Dispute Notice”**) briefly setting out the nature of the Dispute, the remedy or relief sought and the grounds on which such remedy or relief is sought. Within five 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 response to the Dispute, including the remedy or relief sought by the Receiving Party and the grounds on which such remedy or relief is sought by the Receiving Party.

2.3 Diligent Negotiation

Within three Business Days of the Initiating Party receiving a Response from the Receiving Party or, if a Response was not received, within five Business Days following receipt of the Dispute Notice by the Receiving Party, the Parties’ Representatives will meet (the **“Initial Meeting”**) and, in a diligent manner,

make bona fide efforts to resolve the Dispute on a without prejudice basis. The Parties will attempt to resolve the Dispute within five Business Days of the Initial Meeting or within such longer period as the Parties may mutually agree in writing (the “**Negotiation Period**”). Each Party’s Representative shall provide to the other, on a without prejudice basis, timely disclosure of all relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

2.4 Independent Certifier

If the Dispute is not resolved pursuant to Section 2.3 [*Diligent Negotiation*] to the mutual satisfaction of the Parties during the Negotiation Period, Disputes relating to the matters referred to in paragraphs (a) to (c) below shall be submitted by written notice provided by a Party to the other Party and to the Independent Certifier within five Business Days of the end of the Negotiation Period for independent determination by the Independent Certifier within such period as may be specified in the Agreement or, if no period is specified, within 10 Business Days after submission to the Independent Certifier:

- (a) Disputes that relate to completion of Construction Completion Deficiencies;
- (b) Disputes that are referred to in this Agreement for determination by the Independent Certifier; and
- (c) Disputes that relate to the Functions or any Functions Variations (as those terms are defined in the Independent Certifier Agreement).

Any determinations of the Independent Certifier pursuant to this Section 2.4 [*Independent Certifier*] are not binding on the Parties, and all Disputes in relation to such decisions shall be resolved pursuant to this Schedule 20 [*Dispute Resolution Procedure*]. For greater certainty, the foregoing is not intended to apply to determinations of the Independent Certifier that are final and binding on the Parties as set out elsewhere in this Agreement.

If neither Party submits one of the foregoing Disputes to the Independent Certifier within five Business Days of the end of the Negotiation Period, the Dispute Notice shall be deemed to have been withdrawn.

2.5 Fast Track Referee Process

- (a) If a Dispute (other than one to which Section 2.4 [*Independent Certifier*] applies) is not resolved pursuant to Section 2.3 [*Diligent Negotiation*] to the mutual satisfaction of the Parties during the Negotiation Period, either Party may, within five Business Days of the end of the Negotiation Period by written notice to the other (a “**Referee Notice**”), request the appointment of a single referee (“**Referee**”) in accordance with the provisions of this Section 2.5 [*Fast Track Referee Process*]. If neither Party requests the appointment of a Referee on or before the fifth Business Day following the end of the Negotiation Period, the Dispute Notice shall be deemed to have been withdrawn.
- (b) The Referee shall be appointed as an expert to resolve the Dispute and shall be appointed in the following manner:
 - (i) The Party that issues the Referee Notice (the “**FTRP Initiating Party**”) shall:
 - (A) designate in the Referee Notice whether such Referee should be drawn from the Technical Referee Panel or the Commercial Referee Panel, and
 - (B) identify a Standing Referee from the Technical Referee Panel or the Commercial Referee Panel (as applicable) that such Party proposes should be appointed as the Referee to resolve the Dispute.

- (ii) If the Party receiving the Referee Notice (the “**FTRP Receiving Party**”) objects:
- (A) to the designation of the relevant Standing Referee panel from which the Referee should be drawn, or
 - (B) to the individual Standing Referee identified by the FTRP Initiating Party,
- that Party must provide written notice of such objection (an “**Objection Notice**”), with reasons, to the FTRP Initiating Party within 2 Business Days of receiving the Referee Notice.
- (iii) If the FTRP Receiving Party fails to provide an Objection Notice under Section 2.5(b)(ii) within two Business Days of receiving the Referee Notice, or if it delivers a notice expressly accepting the Standing Referee proposed by the FTRP Initiating Party in the Referee Notice, the Standing Referee designated by the FTRP Initiating Party shall, subject to Section 2.5(b)(v), be selected as the Referee and the FTRP Initiating Party shall provide immediate written notice to the Standing Referee (the “**Selected Referee**”) of his or her selection (a “**Referee Selection Notice**”) with a copy to the FTRP Receiving Party.
- (iv) If the FTRP Receiving Party provides an Objection Notice and the Parties fail to select another Standing Referee within three Business Days following delivery of such Objection Notice, then either Party may, within five Business Days from the expiry of the abovementioned three Business Day period apply to the ADR Institute of Alberta (“**ADRIA**”) for a referee to be promptly appointed under the “National Arbitration Rules” of the ADR Institute of Canada to act as the Referee in relation to the Dispute (the “**Appointed Referee**”). The FTRP Initiating Party shall provide written notice to the Appointed Referee of his or her appointment within two Business Days following such appointment (a “**Referee Appointment Notice**”). If neither Party applies to ADRIA as aforesaid for the appointment of a referee on or before the fifth Business Day from the expiry of the abovementioned three Business Day period, the Dispute Notice shall be deemed to have been withdrawn.
- (v) Within three Business Days of receipt of the Referee Selection Notice or the Referee Appointment Notice, the Selected Referee or the Appointed Referee, as applicable, shall provide written notice to each of the Parties either accepting his or her selection or appointment or advising the Parties that he or she is unable or unwilling to act as the Referee in respect of the relevant Dispute (a “**Notice of Declination**”). If the Parties receive a Notice of Declination from the Selected Referee, the FTRP Initiating Party shall issue a revised Referee Notice identifying a different Standing Referee from the Technical Referee Panel or the Commercial Referee Panel (as applicable) that such Party proposes should be appointed as the Referee to resolve the Dispute. The process outlined in this section 2.5(b) shall apply to this revised Referee Notice. If the Parties receive a Notice of Declination from all Standing Referees from the Technical Referee Panel or the Commercial Referee Panel (as applicable), then either Party may, within five Business Days from the receipt of the last Notice of Declination apply to ADRIA for the appointment of an Appointed Referee. The FTRP Initiating Party shall provide the Referee Appointment Notice within two Business Days following such appointment. If neither Party applies to ADRIA for the appointment of a referee on or before the fifth Business Day from receipt of the last Notice of Declination from Standing Referees from the applicable panel, the Dispute Notice shall be deemed to have been withdrawn.

- (vi) The Referee's selection or appointment shall be deemed to have been confirmed on the date (the "**Commencement Date**") that the Referee delivers to the Parties written notice pursuant to Section 2.5(b)(v) accepting his or her selection or appointment. Such notice shall include the Referee's email address for delivery of submissions and for delivery of the BAFO as provided herein.
- (c) *Submissions and Final Offer Proposal*
- (i) Within five Business Days of the Commencement Date, the FTRP Initiating Party shall deliver to both the Referee and the FTRP Receiving Party a written submission setting forth the FTRP Initiating Party's position in regards to the Dispute and the reasons supporting such position (the "**Initial Submission**"). If the FTRP Initiating Party fails to deliver its Initial Submission to the Referee and the FTRP Receiving Party within such five-Business Day period, the Dispute Notice shall be deemed to be withdrawn.
- (ii) Within five Business Days of the delivery to the Referee and the FTRP Receiving Party of the Initial Submission, the FTRP Receiving Party may deliver to the Referee and the FTRP Initiating Party a written submission (the "**Rebuttal Submission**") responding to the submissions contained in the Initial Submission. If the FTRP Receiving Party fails to deliver its Rebuttal Submission to the Referee and the FTRP Initiating Party within such five-Business Day period, the FTRP Receiving Party shall be deemed to have adopted the FTRP Initiating Party's Initial Submission.
- (iii) Notwithstanding Section 2.5(c)(ii) and Section 5.2, the FTRP Receiving Party may, within five Business Days of the delivery of the Initial Submission, on notice to the FTRP Initiating Party, apply to the Referee for, and the Referee may (in his or her discretion) make, a direction extending the time provided in Section 2.5(c)(ii) for the delivery of a Rebuttal Submission if the Initial Submission contains evidence (including expert evidence) that has not been previously communicated to the FTRP Receiving Party.
- (iv) The FTRP Initiating Party may, within two Business Days of the delivery of the Rebuttal Submission, on notice to the FTRP Receiving Party, apply to the Referee for, and the Referee may (in his or her discretion) by notice in writing grant, permission to the FTRP Initiating Party to deliver to the Referee and the FTRP Receiving Party a further submission ("**Surrebuttal Submission**") if the Rebuttal Submission contains evidence (including expert evidence) that has not previously been communicated to the FTRP Initiating Party. If the Referee grants permission to the FTRP Initiating Party to deliver a Surrebuttal Submission, such Surrebuttal Submission shall be delivered by the FTRP Initiating Party to the Referee and the FTRP Receiving Party no more than five Business Days following the grant of permission by the Referee.
- (v) Within three Business Days from the delivery to the Referee and the other Party of the Rebuttal Submission or the Surrebuttal Submission (if any) (the "**BAFO Submission Date**"), each Party must submit to the Referee its "best and final offer" (a "**BAFO**") for settlement of the Dispute. The BAFO shall be limited to the Party's offer and shall not contain any further submissions or elaboration of the Party's position. The Referee shall not deliver to either Party a copy of the other Party's BAFO.
- (vi) If a Party fails to submit a BAFO within the aforesaid three-Business Day period, that Party shall be deemed to have submitted the same BAFO as the other Party.

- (vii) The Parties may change, by agreement in writing, the time permitted for the delivery of the Initial Submission, the Rebuttal Submission, the Surrebuttal Submission or the BAFO.
- (viii) The Initial Submission, the Rebuttal Submission, the Surrebuttal Submission and the BAFO shall be in digital/electronic format and shall be delivered to the Referee and the other Party, where delivery to the other Party is specified in the above sections, by email or other electronic means.
- (ix) Upon request by the Referee, the Parties shall provide the Referee with paper copies of their respective Initial Submissions, Rebuttal Submissions, Surrebuttal Submissions and BAFOs.

2.6 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:

- (a) **Referee Review:** The Referee appointed pursuant to Section 2.5 [*Fast Track Referee Process*] shall conduct an impartial consideration of the relevant Dispute in such manner as the Referee thinks fit, including (in his or her sole discretion) carrying out on-site inspections and interviews with any persons that the Referee considers appropriate. In considering the Dispute, the Referee shall rely on the Dispute Notice, the Initial Submissions, the Rebuttal Submissions, the BAFOs and any advice or assistance provided by other professional persons or experts retained by the Referee as contemplated below. The Referee shall not be obligated to conduct his or her enquiries in the presence of the Parties or to receive further submissions from the Parties, except to the extent that the Referee considers appropriate, and may render his or her decision notwithstanding the failure of a Party to participate in any proceedings, hearings or enquiries. The Referee may from time to time request supplemental submissions from either Party or from both Parties, but such supplemental submissions will not modify any of the time periods 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. In considering the Dispute and rendering his decision, the Referee may also, with the prior written approval of both Parties, retain other professional persons or experts to provide assistance or advice to the Referee and the Referee shall pay due regard to any request by either Party for the Referee to retain such other professional persons or experts.
- (b) **Standard of Care:** The Referee shall 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.
- (c) **Disclosure of Conflicts:** The Referee shall disclose to the Parties, as soon as the Referee becomes aware of same, any conflict or potential conflict of interest that arises during the Referee's appointment.
- (d) **Referee's Decision:** The Referee will render his or her decision in writing, with detailed reasons, and shall provide a copy of the decision to each Party within 5 Business Days of the BAFO Submission Date or such later date as the Parties may agree in writing (the "**Referee Review Period**"). The Referee's decision (unless otherwise expressly agreed by the Parties in writing) shall be based on one Party's BAFO and shall not be based on or influenced by any matter or consideration other than may be contained in the successful Party's BAFO.

- (e) **Parties' Cooperation.** The Parties shall cooperate with the Referee and comply with all reasonable requests from the Referee for additional information, documents and access to personnel and the City Lands which the Referee considers necessary or desirable for his or her consideration of the Dispute.
- (f) **Referee's Decision Binding.** Subject to a right to require the Dispute to be arbitrated pursuant to Section 2.7 [*Commencement of Arbitration Proceedings*] within the time period specified therein, the Parties agree that the Referee's decision shall be final and binding on both Parties and shall not be subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process.
- (g) **Fees and Expenses.** One-half of all fees and expenses of a Referee appointed pursuant to Section 2.5 [*Fast Track Referee Process*] (including the fees and expenses of any professional persons or experts retained by the Referee pursuant to Section 2.6(a) [*Referee Review*], and, any retainer payable to Standing Referees pursuant to the terms of the applicable Referee Agreement (as it may be amended from time to time), shall be paid by each of the City and Project Co. The City shall pay the full amount of such fees and expenses on the day that such fees and expenses are due and payable and Project Co shall 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 shall be entitled to deduct the amount of Project Co's share of such fees and expenses from amounts otherwise due to Project Co under the provisions of this Agreement. Each Party shall otherwise bear all of its own fees and expenses in connection with the Fast Track Referee Process.
- (h) **No Liability for Referee.** The Parties hereby release and save harmless each Referee appointed pursuant to Section 2.5 [*Fast Track Referee Process*] from any liability arising from such Referee's actions, made in good faith and in accordance with the standard of care required under Section 2.6(b) [*Standard of Care*], 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) shall be an independent consultant and shall not, and shall not purport to be, a partner, joint venturer, or agent of either Party or otherwise related to either Party;
 - (ii) other than as may be expressly set out in this Agreement (including this Schedule 20 [*Dispute Resolution Procedure*]), shall have no authority to give any directions to the Parties or to the Parties' officers, employees, contractors, consultants, or agents; and
 - (iii) shall have 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 Section 2.5 [*Fast Track Referee Process*] shall be confidential and all information, data or documentation disclosed or delivered by either Party to the Referee as a result of or in connection with the Referee's duties as the Referee shall be treated as confidential and neither of the Parties nor the Referee shall, except as required by Applicable Law, disclose to any Person any such information, data or documentation unless the Parties otherwise agree in writing.
- (k) **Evidence in Arbitration.** Notwithstanding Section 2.6(j) [*Confidentiality*], the decision of the Referee and any and all documents, evidence, and submissions relating to a Dispute decided under Section 2.5 [*Fast Track Referee Process*] may be submitted as evidence or

background information by either Party in arbitration proceedings relating to the same Dispute under Section 2.8 *[Arbitration]*.

2.7 Commencement of Arbitration Proceedings

If either:

- (a) the amount in Dispute is more than \$500,000 (index linked); or
- (b) the Dispute involves material and significant issues other than monetary claims by one Party against the other Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to a determination made by the Independent Certifier pursuant to Section 2.4 *[Independent Certifier]*,

such Party may, at any time up to 90 days following the issuance of the Referee's decision or the making of the Independent Certifier's determination (as applicable), commence proceedings to have the Dispute settled by arbitration under Section 2.8 *[Arbitration]*. 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 arbitration commenced under Section 2.8 *[Arbitration]* shall be decided on a *de novo* basis and shall not be, or considered to be, an appeal of the Referee's decision or of the Independent Certifier's determination (as applicable). 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 or determinations of, the Referee or the Independent Certifier (as applicable), and Section 2.6(k) *[Evidence in Arbitration]* shall apply to the arbitration of the Dispute.

2.8 Arbitration

If a Party is entitled under Section 2.7 *[Commencement of Arbitration Proceedings]* 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 2.8 *[Arbitration]* by giving the other Party notice (an "**Arbitration Notice**") of its intention to submit the Dispute to binding arbitration, which notice shall set out the name of 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.

If a Party issues an Arbitration Notice pursuant to this Section 2.8 *[Arbitration]*, the following procedure shall apply:

- (a) **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;
- (b) **Single Arbitrator:** A single arbitrator shall be selected (the selected arbitrator being referred to herein as the "**Arbitrator**") on a rotational basis based on the appointment procedure and protocol contemplated in Appendix 20B *[Appointment of Arbitrators]* of this Schedule 20 *[Dispute Resolution Procedure]*;
- (c) **Scope of Award:** The Arbitrator shall 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;

- (d) **Place/Language of Arbitration:** The place of arbitration shall be Edmonton and all meetings and hearings of the Arbitrator shall 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;
- (e) **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;
- (f) **Privacy/Legal Representation:** All meetings and hearings held in respect of the arbitration will be in private unless the Parties agree otherwise, and either Party may be represented at any meetings or hearings by legal counsel;
- (g) **Confidentiality:** The arbitration (including the Arbitrator's decision) 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 Lenders and such other persons as may be necessary to the conduct of the proceeding or as may be required by law;
- (h) **Arbitrator's Decision:** The Arbitrator shall 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;
- (i) **Arbitrator's Decision Binding:** The decision of the Arbitrator shall be final and binding on both Parties and shall not be subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Arbitrator's decision.; and
- (j) **Fees and Expenses:** Each Party shall pay one-half of the Arbitrator's fees and expenses, and shall bear all of its own fees and 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.

3. STANDING REFEREES

3.1 Appointment of Standing Referees

Four standing referees (collectively, the "**Standing Referees**") shall be appointed within 120 days following the Effective Date of this Agreement 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**").

3.2 Standing Referee Panels

The panels of Standing Referees shall consist of:

- (a) two qualified individuals, to be appointed for resolution of Disputes relating to geotechnical, engineering, design, construction and other technical matters, including, without limitation, Disputes relating to matters contemplated in Schedule 4 [*Design and Construction Protocols*]; Schedule 5 [*D&C Performance Requirements*] and Schedule 7 [*Performance Demonstration Requirements*] (the "**Technical Referee Panel**"); and

- (b) two qualified individuals, to be appointed for resolution of all Disputes not relating to matters described in Section 3.2(a), including, without limitation, Disputes in respect of the interpretation, breach, validity or enforcement of rights, obligations or remedies under this Agreement (the "**Commercial Referee Panel**");

3.3 No Conflicts

Subject to Section 3.4 [*Termination*], each Standing Referee shall be appointed for the duration of the Term and shall be reasonably available to act as the Referee at any time during the Term. No Standing Referee shall act as a Referee in respect of any Dispute in which he or she may have a conflict of interest in so acting, including being financially, or otherwise in any way, interested in the conduct of the Project Work or in the business affairs of the City, Project Co or any consultant, subconsultant or subcontractor of any of them and each Standing Referee shall disclose to each of the Parties, as soon as the Standing Referee becomes aware of, any conflict or potential conflict of interest that may prevent or disqualify the Standing Referee from acting as a Referee in respect of a Dispute.

3.4 Termination

Each Standing Referee's appointment may be terminated, 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 of the Referee Agreement by the Standing Referee that has not been rectified within 7 days following receipt by the Standing Referee of notice of such breach; or
- (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.

Following termination of a Standing Referee, the Parties shall appoint a replacement Standing Referee in accordance with the requirements of Section 3.2 [*Standing Referee Panels*] within 5 Business Days of such termination.

4. CONSOLIDATION OF PROCEEDINGS

4.1 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.

4.2 Consolidation

For all Disputes that arise prior to Construction Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or

- (c) the issue in a particular Dispute is such that waiting until after Construction Completion to resolve the Dispute would cause material harm to one of the Parties; or
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Construction Completion,
- (e) with respect to a particular Dispute, the Dispute is consolidated with any Third Party Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 4.4 [*Consolidation with Third Party Disputes*],

all arbitration proceedings between the Parties prior to Construction Completion shall be stayed and consolidated into a single arbitration proceeding (the "**Consolidated Proceeding**"), with the arbitration proceeding promptly and expeditiously after Construction Completion.

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.

4.3 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 Arbitrator 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 Arbitrator for the Consolidated Proceeding in accordance with Section 2.8 [*Arbitration*].

4.4 Consolidation with Third Party Disputes

- (a) Subject to Section 4.4(d), if either Party is involved in an arbitration in the Province of Alberta with a third party (a "**Third Party Arbitration**"), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (a "**Project Agreement Arbitration**") shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if the City, Project Co and the other parties all agree or, failing their agreement, if a court in the Province of Alberta on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.
- (b) Subject to Section 4.4(d), if either Party is involved in litigation in the Province of Alberta with a third party ("**Third Party Litigation**") and if:
 - (i) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
 - (ii) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Alberta having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and the Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and

the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in the Province of Alberta such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

- (c) In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.
- (d) Sections 4.4(a) and 4.4(b) only apply:
 - (i) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
 - (ii) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

5. GENERAL

5.1 Other Remedies

Neither Party may initiate a proceeding in a court of competent jurisdiction, whether before or after a Dispute has been initiated by a Dispute Notice, in respect of any aspect of the Dispute, including 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.

5.2 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, shall be strictly complied with and enforced.

5.3 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 this Schedule 20 [*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. If Project Co fails to comply with the City's direction within 5 Business Days from the issuance thereof, the City shall

be entitled to engage others to perform the work activities specified in such direction at the risk and cost of Project Co and the City may deduct any cost incurred from any payment or payments to Project Co under this Agreement. Such City direction shall be without prejudice to Project Co's rights to claim compensation or other relief as an element or aspect of the resolution of the relevant Dispute or as a Relief Event pursuant to Section 11.1.1 [*Relief Events*] 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*] shall limit the City's right to require a Change in circumstances where the Dispute is determined in favour of Project Co.

5.4 Other Project Contracts

Project Co shall ensure that each Project 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. Specifically, but without limitation, Project Co shall ensure that each 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 an identical roster of Standing Referees as provided in Section 3.1 [*Appointment of Standing Referees*] and Section 3.2 [*Standing Referee Panels*]);
- (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 4 [*Consolidation of Proceedings*];

Project Co shall also cause each Project Co Person to abide by, comply with, and enforce the terms of this Section 5.4 [*Other Project Contracts*] for any Dispute in which the City is a party or a participant.

5.5 No Disruption to Project

It is the intent of the City and Project Co that no Dispute shall 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 commercially reasonable 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.

5.6 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

THIS AGREEMENT is made as of the <*> day of <*>, <*>

AMONG:

The City of Edmonton

(the “City”)

AND:

Marigold Infrastructure Partners Limited Partnership

(“Project Co”)

AND:

<*>

(the “**Standing Referee**”)

This Agreement confirms the appointment of the Standing Referee under the Project Agreement dated December 22, 2020 between the City and Project Co (the “**Project Agreement**”). The terms of this appointment are as contained in Schedule 20 [*Dispute Resolution Procedure*] to the Project Agreement, which terms are incorporated by reference in this Referee Agreement.

The Referee confirms that the Referee:

- (i) has 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 the Referee may be appointed and has reviewed a copy of the Project Agreement and related materials, including Schedule 20 [*Dispute Resolution Procedure*] to the Project Agreement;
- (ii) has reviewed Schedule “B” - Project Agreement Party List and confirms that the Referee is not in a conflict of interest, including being financially, or otherwise in any way, interested in the conduct of the Project Work or in the business affairs of the City, Project Co, or with respect to any of the parties noted in the list.
- (iii) accepts the appointment as, and agrees 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;
- (iv) agrees to be bound by the terms and conditions set out in Schedule 20 [*Dispute Resolution Procedure*] of the Project Agreement as applicable and acknowledges that those terms and conditions are incorporated by reference in this Referee Agreement;
- (v) will keep reasonably well informed of the progress and status of the Project not less than quarterly by reviewing monthly reports forwarded by the City; and
- (vi) agrees that additional parties may join this Referee Agreement without any additional standby retainer fee payable where such parties are party to a Consolidated Proceeding as defined in Schedule 20 [*Dispute Resolution Procedure*] of the Project Agreement.

Compensation for the Referee will consist of and be limited to:

- (a) an annual standby retainer fee of \$[.] for keeping informed on the state of the Project payable in two equal installments semi-annually in arrears.”; and
- (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.

Invoices should be submitted as follows:

- (a) refer to the purchase order number;
- (b) list the number of work-days or work-hours spent and the various rates used to calculate the invoice;
- (c) if applicable, provide all necessary details to allow for the calculations of Non-Resident Withholding Tax as stipulated under the applicable Canada Revenue Agency’s guidelines;
- (d) show the GST as a separate amount; and
- (e) addressed to:

[REDACTED]

Notices given pursuant to the terms of this Referee Agreement shall be sufficiently given:

- (a) in case of notice to the City, if such notice is sent by e-mail, prepaid registered mail, or personally delivered to the following address:

[REDACTED]

With a copy to:

[REDACTED]

- (b) in case of notice to Project Co, if such notice is sent by e-mail, prepaid registered mail, or personally delivered, to the following address:

[REDACTED]

[REDACTED]

With a copy to:

[REDACTED]

- (c) and, in case of notice to the Referee, if such notice is sent by e-mail, prepaid registered mail, or personally delivered, to the following address:

<*>

Either party may, at any time, give notice in writing to the other of any change of address of the party giving such notice and, from and after giving of such notice, the address herein specified shall be deemed to be the address of the party for the giving of notice hereunder.

Termination of this Referee Agreement is subject to the provisions of Schedule 20 [Dispute Resolution Procedure] of the Project Agreement.

This Referee Agreement is not assignable. This Referee Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

[signature pages follow]

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.

CITY OF EDMONTON

Legally Reviewed and Approved
as to Form:

_____, Barrister & Solicitor
Legal Services

Approved as to Content:

_____, Valley Line Director,
LRT Expansion & Renewal

_____, Branch Manager,
LRT Expansion & Renewal

_____, Branch Manager,
Corporate Procurement and Supply Services

Per: _____
Name: _____
Title: Acting Deputy City Manager,
Integrated Infrastructure Services

**MARIGOLD INFRASTRUCTURE PARTNERS
LIMITED PARTNERSHIP, by its general partner,
MARIGOLD INFRASTRUCTURE PARTNERS INC.**

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

[INSERT SIGNATURE BLOCK FOR REFEREE]

APPENDIX 20B

APPOINTMENT OF ARBITRATORS

Within 20 days after receipt of a notice to arbitrate pursuant to Section 2.8 [*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.

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