

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE WEST LRT

Schedule 6
Interface Agreement

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SCHEDULE 6
INTERFACE AGREEMENT

THIS AGREEMENT is dated as of .

AMONG:

THE CITY OF EDMONTON

("City")

AND:

[XX], a [XX], existing under the laws of the Province of [XX] ("**Project Co**")

AND:

[XX], a [XX], existing under the laws of [XX] ("**Operator**")

AND:

[XX], a [XX], existing under the laws of [XX] ("**LRV Supplier**")

WHEREAS:

- A. Project Co has entered into an agreement (the "**Project Agreement**") with the City, for the design, construction and financing of the Valley Line West LRT, defined as the "**Project Work**" in the Project Agreement.
- B. LRV Supplier has entered into a vehicle supply agreement (the "**LRV Contract**") with the City for the design, manufacture, supply and commissioning of the LRVs for the Valley Line West LRT (the "**LRV Services**");
- C. Operator has entered into an operation and maintenance contract (the "**Services Contract**") with the City for the provision of operations, maintenance and rehabilitation in relation to the Valley Line West LRT (the "**OM&R Services**");
- D. Project Co, Operator and LRV Supplier have agreed to cooperate in order to coordinate and integrate the conduct of certain of their activities to best meet the performance requirements of their respective obligations under the Project Agreement, the Services Contract and the LRV Contract in accordance with the terms of this Agreement; and
- E. This Agreement is entered into among the Parties as required by and in accordance with the Project Agreement, the LRV Contract and the Services Contract.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions - General

Unless defined or as otherwise provided herein, words and phrases used in this Agreement shall have the same meaning and shall be defined and interpreted in accordance with Schedule 1 *[Definitions and*

Interpretation] to the Project Agreement. Where the context of this Agreement so requires, the definitions from the Project Agreement will be read and interpreted with such changes as are necessary in order to carry out the intent and purpose of this Agreement and to facilitate the ability of the Parties to carry out and perform their mutual obligations to one another hereunder.

1.2 Definitions – Specific

“Agreement” means this interface agreement entered into among the City, Project Co, Operator and LRV Supplier, including all schedules, appendices and attachments thereto, as amended, supplemented or restated from time to time.

“Anticipated Delivery Date” means the date LRV Supplier reasonably expects to commence delivery of the LRVs to the Gerry Wright OMF pursuant to and in accordance with the LRV Contract.

“Chairman” has the meaning given to such term in Section 4.3(b).

“Change” means a variation, addition, reduction, substitution, modification, deletion, removal or other change to the whole or any part of:

- (a) the Design, Construction or the Design and Construction Requirements;
- (b) the OM&R Services; or
- (c) the LRV Services.

“City’s Representative” means the Person appointed by the City as the City’s Representative pursuant to the Project Agreement.

“City Person” means:

- (a) any elected official, officer, employee or agent of the City;
- (b) any representative, advisor (including any legal and financial advisor) of the City or subcontractor, consultant (of any tier) of the City in any such Person’s capacity as provider of services directly or indirectly to the City in connection with the Valley Line West LRT, excluding Project Co, Project Co Persons, Operator, Operator Persons, LRV Supplier and LRV Persons;
- (c) any invitee of the City or any of the City Persons referred to in (a) or (b) above who enters upon the Lands; or
- (d) any lessee or tenant of the City at any facility forming part of the Valley Line West LRT,

but does not include a Passenger.

“Confidential Information” has the meaning given to such term in Section 10.14 [*Confidential Information*].

“Contracts” means, collectively the Project Agreement, the Services Contract and the LRV Contract, and **“Contract”** means each such contract individually.

“Direct Losses” means all damages, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.

“Emergency” means any unplanned event within the Lands that:

- (a) causes or could imminently cause a material disruption to movement of LRVs;
- (b) presents an immediate or imminent threat to the integrity of any part of the System Infrastructure, to the Environment, to the Lands, to property immediately adjacent to the System Infrastructure or the Lands or to the safety of Passengers, Drivers or the traveling public;
- (c) has jeopardized the safety of Passengers, Drivers or the traveling public; or
- (d) is recognized or declared an emergency by the City or other Governmental Authority with authority to declare an emergency.

“Executive Panel” has the meaning given in Section 4.3(d).

“Functions” has the meaning given in Appendix 5A *[Functions]* to Appendix 5 *[Independent Performance Demonstration Certifier Agreement]*.

“Gerry Wright Lands” means the Gerry Wright OMF Site excluding Gerry Wright OMF Parcel A.

“IA Dispute” has the meaning given in Section 9.1 of this Agreement *[Dispute Resolution Procedure]*.

“IA Dispute Resolution Procedure” means the procedure for final resolution of all IA Disputes hereunder as set out in Appendix 1.

“IA Effective Date” means the date of this Agreement.

“Independent Performance Demonstration Certifier” or **“IPDC”** has the meaning given in Section 7.1 *[Appointment of IPDC]*.

“Independent Performance Demonstration Certifier Agreement” or **“IPDC Agreement”** has the meaning given in Section 7.1 *[Appointment of IPDC]*.

“Indirect Losses” means all loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, exemplary or punitive damages or any indirect or consequential loss of any nature but “Indirect Losses” does not include:

- (a) deductions, payment adjustments under or in connection with the Project Agreement, the Services Contract or the LRV Contract which reduce payments to the relevant Party; and
- (b) payments to a Party pursuant to its Contract,

which constitute Direct Losses.

“Interface Committee” has the meaning given to such term in Section 4.1 *[Establishment of Interface Committee]*.

“IPDC’s Representative” means the person appointed by the IPDC to represent the IPDC on the Performance Demonstration Committee.

“LRV Commissioning” means inspection and testing of the LRVs, including all components, systems and sub-systems, for the purpose of verifying the performance of the LRVs and confirming that the LRVs comply with the requirements and specifications contained in the LRV Contract.

“LRV Commissioning Plan” has the meaning given in Section 3.8(a).

“LRV Contract” has the meaning set out in Recital B.

“LRV Deficiencies” has the meaning given to “Deficiencies” in the LRV Contract.

“LRV Obligations” means the obligations of LRV Supplier to provide the LRV Services in accordance with and as contemplated in the LRV Contract.

“LRV Performance Demonstration” means the process established pursuant to the LRV Contract to verify LRV reliability and availability for revenue service.

“LRV Performance Demonstration Commencement Date” means the date on which LRV Performance Demonstration is required to commence pursuant to the LRV Contract.

“LRV Performance Demonstration Period” has the meaning ascribed to **“LRV Performance Demonstration Period”** in the LRV Contract.

“LRV Person” means:

- (a) any Person engaged by the LRV Supplier or any Subcontractor of LRV Supplier from time to time as may be permitted by the LRV Contract to procure or manage the provision of the LRV Services (or any of them);
- (b) in respect of each of the above, their Subcontractors of any tier, agents, employees, officers and directors; and
- (c) any invitee of the LRV Supplier or any of the LRV Persons referred to in (a) and (b) above who enters upon the Lands.

“LRV Protocol” has the meaning given in Section 3.3(a) of this Agreement.

“LRV Services” has the meaning set out in Recital B.

“LRV Set-Up Period” has the meaning given in Section 3.3(a) of this Agreement.

“LRV Supplier Infrastructure Integration Requirements” means those requirements set out in Section 9.4 [*LRV Supplier Integration Obligation*] of Schedule 3 [*Design and Manufacturing Protocols*] of the LRV Contract. **[NTD: For clarity, the sections of the LRV Contract referred to above shall be consistent with Section 7 – 1.4 of Part 7 [*LRV Integration Requirements*] of Schedule 5 [*D&C Performance Requirements*] to the Project Agreement.]**

“LRV Supplier Person” means:

- (a) any Person engaged by LRV Supplier or any Subcontractor of LRV Supplier, from time to time as may be permitted by LRV Supplier to perform or manage the provision of the LRV Services (or any of them);
- (b) in respect of each of the above, their Subcontractors of any tier, agents, employees, officers and directors; and
- (c) any invitee of LRV Supplier or any of the LRV Supplier Persons referred to in (a) and (b) above who enters upon the Lands.

“LRV Supplier’s Commissioning Representative” means the Person appointed by LRV Supplier as the Commissioning Representative pursuant to the LRV Contract.

“LRV Supplier’s Representative” means the Person appointed by LRV Supplier as LRV’s Representative pursuant to the LRV Contract.

“OMF OM&R Protocol” has the meaning given in Section 3.2(a) of this Agreement.

“OMF OM&R Set-Up Period” has the meaning given in Section 3.2(g) of this Agreement.

“OM&R Infrastructure Requirements” has the meaning given in Section 3.7(a) of this Agreement.

“OM&R LRV Interface Requirements” has the meaning given in Section 3.9(a) of this Agreement.

“OM&R Obligations” means the obligations of Operator to OM&R Services in accordance with and as contemplated in the Services Contract.

“OM&R Protocol” has the meaning given in Section 3.2(b) of this Agreement.

“OM&R Services” has the meaning set out in Recital C.

“Operator Infrastructure Integration Requirements” means:

- (a) coordinating with Project Co to permit Project Co to promptly correct Phase 1 Construction Deficiencies and perform Warranty Work in respect of the Phase 1 Infrastructure following the Phase 1 Construction Completion Date;
- (b) coordinating with Project Co to permit Project Co to promptly correct Construction Deficiencies and perform Warranty Work in respect of the Infrastructure following the Construction Completion Date;
- (c) coordinating with the LRV Supplier to permit LRV Supplier to commission the LRVs;
- (d) coordinating with Project Co to permit Project Co to undertake Infrastructure Performance Demonstration;
- (e) coordinating with the LRV Supplier to permit the LRV Supplier to undertake LRV Performance Demonstration in accordance with and as contemplated by the LRV Supply Contract; and
- (f) coordinating with Project Co after the ICS Integration Ready Date for the design, supply, integration, testing and commissioning of the ICS.

“Operator Person” means:

- (a) any Person engaged by Operator or any Subcontractor of Operator, from time to time as may be permitted by Operator to perform or manage the provision of the OM&R Services (or any of them);
- (b) in respect of each of the above, their Subcontractors of any tier, agents, employees, officers and directors; and
- (c) any invitee of Operator or any of Operator Persons referred to in (a) and (b) above who enters upon the Lands.

“Operator’s Representative” means the Person appointed by Operator as Operator’s Representative pursuant to the Services Contract.

“Parties” means each of the City, Project Co, LRV Supplier and Operator and **“Party”** means any one of them without specificity.

“PDC Parties” and **“PDC Party”** have the meanings given in Section 8.1 [*Performance Demonstration Committee*] of this Agreement.

“Performance Demonstration” means LRV Performance Demonstration and/or Infrastructure Performance Demonstration.

“Performance Demonstration Committee” has the meaning given in Section 8.1 [*Performance Demonstration Committee*] of this Agreement.

“Performance Demonstration Period” has the meaning given in Section 8.2 [*Performance Demonstration*] of this Agreement.

“Project Agreement Termination Date” has the meaning given to Termination Date in the Project Agreement.

“Project Co Commissioning” means inspection and testing of the Infrastructure, including all Equipment, components, systems and sub-systems, for the purpose of verifying the performance of the Infrastructure and confirming that the Infrastructure complies with the Design and Construction Requirements.

“Project Co Operator Commissioning Resource Plans” has the meaning given in Section 3.6 [*Project Co Commissioning Procedures*].

“Project Co Infrastructure Integration Requirements” means those requirements set out in Section 7 – 1.2 [*Project Co Integration Obligations*] of Part 7 [*LRV Integration Requirements*] of Schedule 5 [*D&C Performance Requirements*] to the Project Agreement.

“Project Co Person” means:

- (a) any Person engaged by Project Co or any Subcontractor of Project Co, from time to time as may be permitted by Project Co to procure or manage the provision of the Project Work (or any of them);
- (b) in respect of each of the above, their Subcontractors of any tier, agents, employees, officers and directors; and
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) and (b) above who enters upon the Lands.

“Project Co’s Commissioning Manager” means the Person appointed by Project Co as the Commissioning Manager pursuant to the Project Agreement.

“Project Co’s Representative” means the Person appointed by Project Co as Project Co’s Representative pursuant to the Project Agreement.

“Project Work” has the meaning set out in Recital A.

“Services Contract” has the meaning set out in Recital C.

“Service Readiness Date” has the meaning given in the Project Agreement.

“Subcontractor” means any subcontractor of a Party engaged by or through such Party and any subcontractor of any other subcontractor at any tier.

“System Infrastructure” means that portion of the Infrastructure which Operator is required to assume responsibility for pursuant to the Services Contract.

“System Ride Quality” has the meaning given in the Project Agreement.

“Train Delay” has the meaning given in the Project Agreement.

1.3 Interaction with Project Contracts – General Principles

- (a) To the extent of any conflict between:
 - (i) this Agreement and the Project Agreement, the Project Agreement shall, as between the City and Project Co, have precedence and prevail in respect of the obligations of the City and Project Co;
 - (ii) this Agreement and the Services Contract, the Services Contract shall, as between the City and Operator, have precedence and prevail in respect of the obligations of the City and Operator; and
 - (iii) this Agreement and the LRV Contract, the LRV Contract shall, as between the City and LRV Supplier, have precedence and prevail in respect of the obligations of the City and Operator.
- (b) Nothing in this Agreement shall derogate from:
 - (i) the obligations and liabilities of the City to Project Co and of Project Co to the City under the Project Agreement;
 - (ii) the obligations of the City to Operator and of Operator to the City under the Services Contract;
 - (iii) the obligations of the City to LRV Supplier and of LRV Supplier to the City under the LRV Contract; and
- (c) Nothing in this Agreement shall be construed as imposing an obligation:
 - (i) on Operator or LRV Supplier to perform any of the obligations of Project Co under the Project Agreement; or
 - (ii) on Project Co or LRV Supplier to perform any of the obligations of Operator under the Services Contract, or
 - (iii) on Project Co or Operator to perform any of the obligations of LRV Supplier under the LRV Contract.
- (d) Every right to claim compensation or indemnification or reimbursement under this Agreement shall be construed so that recovery is without duplication of any other amount recoverable under this Agreement, the Project Agreement, the Services Contract or the LRV Contract, as applicable.

- (e) Subject to Section 1.3(b), no Party shall be entitled to make any claim against any other Party for compensation, indemnification or reimbursement for circumstances described herein other than as expressly provided under this Agreement.

1.4 In Writing

Unless otherwise provided, any notice, certificate, consent, approval, determination, agreement or waiver which is required to be issued, made or given in terms of this Agreement shall be required to be issued, made or given in writing in accordance with Section 10.9 [Notices] of this Agreement.

1.5 Joint and Several Obligations

The obligations and liabilities of the individual members of any Party which is a joint venture under this Agreement are joint and several.

1.6 Appendices

The following Appendices are attached to and incorporated into this Agreement:

Appendix 1	-	IA Dispute Resolution Procedure
Appendix 2	-	Project Agreement
Appendix 3	-	Services Contract
Appendix 4	-	LRV Contract
Appendix 5	-	Independent Performance Demonstration Certifier Agreement
Appendix 5A	-	Functions

ARTICLE 2 GENERAL OBLIGATIONS

2.1 Purpose and Intent

The Parties wish to enter into this Agreement in order to commit to each other to work together cooperatively and act in good faith with each other to share information, prevent material adverse interference with their respective access rights and to effectively administer and determine any interaction and/or conflict between the Project Work, the OM&R Obligations and the LRV Obligations; and each Party recognizes the legitimate interests of the other Parties in effecting rational, economic and timely solutions to any conflict between the delivery of the Project Work, the satisfaction of the OM&R Obligations and the satisfaction of the LRV Obligations.

In the event of any IA Dispute as to the respective assignment of Project Co's scope in relation to the delivery of the Project Work, Operator's scope in relation to the delivery of the OM&R Obligations, or LRV Supplier's scope in relation to the delivery of the LRV Obligations, this Agreement provides for a means of resolution of such IA Disputes which shall be paramount to any other dispute resolution procedure specified in the Project Agreement, the Services Contract or the LRV Contract.

2.2 General Obligations of Cooperation

From and after the date of this Agreement, the Parties agree to cooperate to give effect to the purpose and intent of this Agreement and covenant as follows:

- (a) each of Project Co, Operator and LRV Supplier shall cause each of its Subcontractors, as applicable, to work cooperatively in carrying out their respective obligations under their respective subcontracts;

- (b) the Parties shall consult and cooperate with each other to facilitate performance of activities contemplated under their respective Contracts in a timely manner in accordance with the provisions thereof, and each of them shall take all reasonable steps not to unduly disrupt any other Party's performance of its obligations under its Contract or cause material adverse interference with any other Party's access rights under its Contract or this Agreement;
- (c) the Parties will, at all times, act reasonably and promptly in the performance of their respective obligations under their respective Contracts and this Agreement and they will exercise their respective rights and remedies, perform their respective obligations and use reasonable efforts to mitigate their respective Direct Losses under this Agreement in a commercially reasonable manner in order to carry out the provisions of this Agreement according to its spirit and intent;
- (d) subject to any confidentiality provisions contained in their respective Contracts or in this Agreement and at the request of another Party, each Party shall share with the requesting Party information in its possession or to which it has reasonable access to the extent reasonably required by the requesting Party for the performance by such Party of its obligations under its Contract;
- (e) each of Project Co, Operator and LRV Supplier undertakes not to unreasonably withhold or delay any approval, consent, agreement, information, action or response it is required to provide under its Contract or this Agreement and which is required by any other Party to the extent that the same is relevant to the discharge of any such Party's obligations under its Contract or this Agreement;
- (f) Project Co, LRV Supplier and Operator respectively agree not to interfere with, obstruct, impede or delay one another in the performance of their obligations under the Project Agreement and/or the LRV Contract and/or or the Services Contract, respectively, or in the performance of any obligations under this Agreement, provided that each of Project Co, LRV Supplier and Operator shall not be required to act in breach of its Contract and/or this Agreement;
- (g) Project Co, LRV Supplier and Operator shall ensure that their respective Subcontractors and employees work cooperatively in carrying out their respective obligations under the Project Agreement, the LRV Contract and the Services Contract provided that each of Project Co, LRV Supplier and Operator shall not be required to act in breach of its Contract;
- (h) None of the Parties shall knowingly permit any act or omission on either its part or the part of its Subcontractors or its directors, officers employees or agents to contribute to, cause or constitute a breach by any other Party of its Contract or any applicable permits, approvals or authorizations, or lead to any diminution or loss of any rights or entitlements on the part of any other Party under its Contract or any applicable permits, approvals or authorizations, provided that no Party shall be required to act in breach of its Contract or expend additional funds to comply with this Section 2.2(h);
- (i) Project Co shall remit to Operator and LRV Supplier all relevant quality management and environmental management records that relate to or otherwise affect Operator or LRV Supplier (as applicable), a list of all material suppliers used in the performance of the Project Work (and the names of other suppliers upon the reasonable request of Operator or LRV Supplier) and a copy of the maintenance and operational plans for the works performed or equipment supplied in the performance of the Project Work;

- (j) the Parties agree with one another that the provisions of this Agreement shall continue to apply notwithstanding any amendment to the Project Agreement, the Services Contract or the LRV Contract, provided that:
 - (i) Project Co and the City shall not initiate a Change or agree to any amendment to the Project Agreement that would reasonably be expected to:
 - (A) have a material adverse effect on Operator or its ability to perform the OM&R Obligations or result in a material increase in the cost to Operator of performing the OM&R Obligations without the prior written approval of Operator, which approval shall not be unreasonably withheld or delayed; or
 - (B) have a material adverse effect on LRV Supplier or its ability to perform the LRV Obligations or result in a material increase in the cost to the LRV Supplier of performing the LRV Obligations without the prior written approval of LRV Supplier, which approval shall not be unreasonably withheld or delayed;
 - (ii) Operator and the City shall not initiate a Change or agree to any amendment to the Services Contract that would reasonably be expected to :
 - (A) have a material adverse effect on Project Co or its ability to perform the Project Work or result in a material increase in the cost to Project Co of performing the Project Work without the prior written approval of Project Co, which approval shall not be unreasonably withheld or delayed; or
 - (B) have a material adverse effect on LRV Supplier or its ability to perform the LRV Obligations or result in a material increase in the cost to the LRV Supplier of performing the LRV Obligations without the prior written approval of LRV Supplier, which approval shall not be unreasonably withheld or delayed; and
 - (iii) LRV Supplier and the City shall not initiate a Change or agree to any amendment to the LRV Contract that would reasonably be expected to :
 - (A) have a material adverse effect on Project Co or its ability to perform the Project Work or result in a material increase in the cost to Project Co of performing the Project Work without the prior written approval of Project Co, which approval shall not be unreasonably withheld or delayed; or
 - (B) have a material adverse effect on Operator or its ability to perform the OM&R Obligations or result in a material increase in the cost to Operator of performing the OM&R Obligations without the prior written approval of Operator, which approval shall not be unreasonably withheld or delayed.

2.3 The Project Agreement, Services Contract and LRV Contract

- (a) Project Co and the City represent to Operator and LRV Supplier that attached hereto as Appendix 2 is a true copy of the Project Agreement as at the date of execution of this Agreement, except to the extent that Sensitive Information has been redacted.
- (b) Operator and the City represent to Project Co and LRV Supplier that attached hereto as Appendix 3 is a true copy of the Services Contract as at the date of execution of this Agreement, except to the extent that Sensitive Information has been redacted.

- (c) LRV Supplier and the City represent to Project Co and Operator that attached hereto as Appendix 4 is a true copy of the LRV Contract as at the date of execution of this Agreement, except to the extent that Sensitive Information has been redacted.
- (d) Operator acknowledges and agrees that it has reviewed the LRV Contract and shall be deemed to have notice of any variation thereof, of which it has previously been provided a copy.
- (e) Operator acknowledges and agrees that it has reviewed the Project Agreement and shall be deemed to have notice of any variation thereof, of which it has previously been provided a copy.
- (f) LRV Supplier acknowledges and agrees that it has reviewed the Services Contract and shall be deemed to have notice of any variation thereof, of which it has previously been provided a copy.
- (g) LRV Supplier acknowledges and agrees that it has reviewed the Project Agreement and shall be deemed to have notice of any variation thereof, of which it has previously been provided a copy.
- (h) Project Co acknowledges and agrees that it has reviewed the Services Contract and shall be deemed to have notice of any variation thereof, of which it has previously been provided a copy.
- (i) Project Co acknowledges and agrees that it has reviewed the LRV Contract and shall be deemed to have notice of any variation thereof, of which it has previously been provided a copy.

Operator's, LRV Supplier's and Project Co's acknowledgments under this Section 2.3 [*The Project Agreement, Services Contract and LRV Contract*] are made without prejudice to and shall not be construed against any Party in the event of an alleged breach of this Agreement by another Party, nor shall such acknowledgments be deemed a waiver by any Party of its right to assert claims for Direct Losses against another Party under this Agreement or be deemed to grant to any Party rights of third party beneficiaries under or pursuant to any other Party's Contract.

2.4 Changes

The City acknowledges that Project Co has not had the opportunity to review the final version of the Services Contract or the LRV Contract prior to the Financial Submission Date. Accordingly, the City acknowledges and agrees that, to the extent the provisions of the Services Contract and/or LRV Contract as finally determined cause Project Co to incur material additional costs or delays in performing its obligations under this Agreement, beyond what was reasonably foreseeable at the Financial Submission Date by an experienced contractor performing design and/or construction and/or other operations similar to those to be carried out by Project Co or any other Project Co Person in relation to the Project based on the scope of this Agreement and the provisions of the Project Agreement as at the Financial Submission Date, Project Co shall be entitled to require the City to issue a Change pursuant to Schedule 13 [*Changes*].

2.5 General Acknowledgments

The Parties acknowledge the following:

- (a) On Phase 1 Construction Completion, Operator shall assume responsibility for, and shall provide OM&R Services to and in respect of Gerry Wright OMF Stage 2;

- (b) From and following Construction Completion, the IPDC will require access to the Infrastructure, including Gerry Wright OMF Stage 2, and the LRVs to perform its obligations pursuant to the IPDC Agreement;
- (c) From and following Phase 1 Construction Completion, LRV Supplier will require access to Gerry Wright OMF Stage 1 for the purposes of deliveries of LRVs and to Gerry Wright OMF Stage 2 for LRV Commissioning;
- (d) From and following Phase 1 Construction Completion, Project Co will require access to Gerry Wright OMF Stage 2 for purposes of performing Warranty Work and rectification of Phase 1 Construction Completion Deficiencies;
- (e) From and following the ICS Integration Ready Date, Operator will require access to the Infrastructure and support from Project Co in connection with the installation and integration of the ICS and to facilitate the performance by Operator of its obligations under the Services Contract in relation to LRV Commissioning and Infrastructure Performance Demonstration;
- (f) On Construction Completion, Operator shall assume responsibility for, and shall provide OM&R Services to and in respect of the System Infrastructure, excluding Gerry Wright OMF Stage 2;
- (g) From and following Construction Completion, Project Co will require access to the System Infrastructure, excluding Gerry Wright OMF Stage 2, to perform Warranty Work and rectification of Construction Completion Deficiencies;
- (h) From and following the Infrastructure Performance Demonstration Commencement Date, Project Co will require access to the System Infrastructure for purposes of Infrastructure Performance Demonstration; and
- (i) From and following the LRV Performance Demonstration Commencement Date, LRV Supplier will require access to the System Infrastructure for purposes of LRV Performance Demonstration.

2.6 Defences

Each Party shall retain all rights, claims, defences, and limitations of liability possessed by such Party under the terms of its Contract and shall be able to assert any contractual defences available to it under its Contract against any other Party as if such Party was the City.

2.7 No Cross Default

Each Party acknowledges and agrees that any breach by any other Party of such Party's obligations under this Agreement will not constitute a breach of such Party's Contract except to the extent that such circumstances otherwise constitute a breach under such Contract.

2.8 Priority of Article 2

In the event of any inconsistency between the provisions of this Article 2 [*General Obligations*] and any other provisions of this Agreement (whether express or implied), the provisions of this Article 2 [*General Obligations*] shall prevail.

ARTICLE 3 SPECIFIC OBLIGATIONS

3.1 Performance Protocols

Without limiting the generality of Section 2.1 [*The Project Agreement, Services Contract and LRV Contract*], Project Co, LRV Supplier and Operator shall develop appropriate protocols to coordinate the performance of their respective obligations and activities.

3.2 Operator Protocols

- (a) Operator shall submit a draft protocol (the “**OMF OM&R Protocol**”) to Project Co no later than six (6) months prior to the Target Phase 1 Construction Completion Date for the granting to Operator of such non-exclusive access to the whole or parts of the Gerry Wright Lands, subject to Section 5.1 [*Operator Access*], as may be reasonably required in order to enable Operator to carry out the activities reasonably required to prepare for the performance of the OM&R Obligations in respect of the Gerry Wright OMF Stage 2 in accordance with the Services Contract.
- (b) Operator and the City shall submit a draft protocol (the “**ICS Protocol**”) to Project Co no later than six (6) months prior to the Target Construction Completion Date for the granting to Operator of non-exclusive access to certain parts of the Infrastructure and support from Project Co, subject to Section 5.1 [*Operator Access*], as may be reasonably required in order to enable Operator and the City to carry out activities reasonably required in connection with the installation of an Integrated Control System in accordance with the Services Contract and as contemplated in Section 13 of Schedule 4 [*Design and Construction Protocols*] to the Project Agreement.
- (c) Operator shall submit a draft protocol (the “**OM&R Protocol**”) to Project Co no later than six (6) months prior to the Target Construction Completion Date for the granting to Operator of non-exclusive access to the whole or parts of the Lands (other than Gerry Wright OMF Stage 2), subject to Section 5.1 [*Operator Access*], as may be reasonably required in order to enable Operator to carry out the activities reasonably required to prepare for the performance of the OM&R Obligations (other than those pertaining to the Gerry Wright OMF Stage 2) in accordance with the Services Contract.
- (d) Within ten (10) Business Days of receipt of the draft of each of the OMF OM&R Protocol and the OM&R Protocol (collectively, the “**Operator Protocols**”) and as subsequently required during the period prior to Phase 1 Construction Completion and Construction Completion (as applicable), Project Co and Operator shall (both acting fairly and reasonably) meet to seek to agree on the terms of or adjustments required to the Operator Protocols.
- (e) The terms of each of the Operator Protocols shall provide for Operator’s activities to be carried out in a manner that (and in the following order of priority) is designed:
 - (i) to ensure that Operator’s activities do not delay the progress or completion of the Project Work; and
 - (ii) to ensure that Operator is able to undertake the activities reasonably required to enable Operator to perform the OM&R Obligations in accordance with the Services Contract.
- (f) If Operator and Project Co are unable to agree on the terms of either of the Operator Protocols, the matter shall be referred to the Interface Committee and the Interface

Committee shall, as soon as reasonably practicable and acting reasonably, determine the terms of the Operator Protocols taking into account the provisions of Section 3.2(d) above. If the Interface Committee does not reach a decision within ten (10) Business Days of the referral to the Interface Committee, then a notice of IA Dispute in respect of the applicable Operator Protocol shall be issued and such IA Dispute shall be resolved in accordance with the IA Dispute Resolution Procedure.

- (g) Project Co shall provide Operator and any of its Subcontractors non-exclusive access to the Gerry Wright Lands as reasonably required in accordance with the OMF OM&R Protocol for a reasonable period of time prior to the Target Phase 1 Construction Completion Date to provide Operator sufficient time to conduct any necessary OM&R start-up procedures under the OMF OM&R Protocol (the access period specified herein being referred to as the “**OMF OM&R Set-Up Period**”).
- (h) In furtherance of the OM&R Protocol, Project Co shall provide Operator and any of its Subcontractors non-exclusive access to the Lands and the System Infrastructure in accordance with the OM&R Protocol for a reasonable period of time prior to the Target Construction Completion Date to provide Operator sufficient time to conduct any necessary OM&R start-up procedures under the OM&R Protocol (the access period specified herein being referred to as the “**OM&R Set-Up Period**”).
- (i) During the OMF OM&R Set-Up Period and the OM&R Set-Up Period (as applicable), Operator’s rights of non-exclusive access to the Gerry Wright Lands and the Lands (other than the Gerry Wright Lands), as applicable, shall be subject only to the terms of the Operator Protocols and Section 5.1 [*Operator Access*] of this Agreement and those restrictions established by Project Co, acting reasonably, relating to any Project Work required to any part of Gerry Wright OMF Parcel B or the Lands (other than the Gerry Wright Lands) for Project Co to achieve Phase 1 Construction Completion or Construction Completion (as applicable). Any such restrictions imposed by Project Co shall be limited to the specific area of the Gerry Wright Lands or the Lands (other than the Gerry Wright Lands) requiring Project Work and for such time period as Project Co or any Project Co Person is actively carrying out any Project Work in respect of the relevant area. Operator shall use all reasonable commercial efforts during the OMF OM&R Set-Up Period and the OM&R Set-Up Period to minimize any interference with the activities of Project Co and/or any Project Co Person.
- (j) Project Co acknowledges that, for a 180 day period Immediately following the Construction Completion Date, the City and Operator shall commence preparations for Service Readiness and Project Co confirms to and in favour of the City and Operator its obligations pursuant to Section 14.1 [*Project Co Involvement in Service Readiness*] of Schedule 4 [*Design and Construction Protocols*] to the Project Agreement.

3.3 LRV Protocol

- (a) LRV Supplier shall submit a draft protocol (the “**LRV Protocol**”) to Operator and Project Co (if the Anticipated Delivery Date is prior to the Phase 1 Construction Completion Date) no later than two (2) months prior to the Anticipated Delivery Date for the granting to LRV Supplier of non-exclusive access to the whole or parts of the Gerry Wright Lands, subject to Section 5.3 [*LRV Supplier Access*], in order to enable LRV Supplier to carry out the activities reasonably required to prepare for the delivery of the LRVs and the performance of the LRV Obligations in accordance with the LRV Contract.
- (b) Within ten (10) Business Days of receipt of the draft of the LRV Protocol and as subsequently required during the period prior to the Anticipated Delivery Date, LRV Supplier, Operator and Project Co (if applicable) shall (each Party acting fairly and

reasonably) meet to seek to agree on the terms of or adjustments required to the LRV Protocol.

- (c) The terms of the LRV Protocol will provide for LRV Supplier's activities to be carried out in a manner that (and in the following order of priority) is designed:
 - (i) to ensure that LRV Supplier's activities do not delay the progress or completion of the OM&R Obligations and/or the Project Work; and
 - (ii) to ensure that LRV Supplier is able to undertake the activities reasonably required to enable LRV Supplier to perform the LRV Obligations in accordance with the LRV Contract.
- (d) If LRV Supplier, Operator and Project Co (if applicable) are unable to agree on the terms of the LRV Protocol, the matter shall be referred to the Interface Committee and the Interface Committee shall, as soon as reasonably practicable and acting reasonably, determine the terms of the LRV Protocol taking into account the provisions of Section 3.3(c) above. If the Interface Committee does not reach a decision within ten (10) Business Days of the referral to the Interface Committee, then a notice of IA Dispute in respect of the LRV Protocol shall be issued and such IA Dispute shall be resolved in accordance with the IA Dispute Resolution Procedure.
- (e) In furtherance of the LRV Protocol, Operator or Project Co (as the case may be) shall provide LRV Supplier and any of its Subcontractors unrestricted access to Gerry Wright OMF Stage 2 for a reasonable period of time prior to and following the Anticipated Delivery Date to provide LRV Supplier sufficient time to conduct any necessary start-up procedures under the LRV Protocol (the access period specified herein being referred to as the "**LRV Set-Up Period**").
- (f) During the LRV Set-Up Period, LRV Supplier's rights of non-exclusive access to the Gerry Wright OMF shall be subject only to the terms of the LRV Protocol and Section 5.1 [*Operator Access*] of this Agreement and those restrictions established by the Operator or Project Co (as applicable), acting reasonably, relating to the performance of any OM&R Obligations or Project Work (as applicable) required to any part of Gerry Wright OMF Stage 2. Any such restrictions imposed by the Operator and/or Project Co will be limited to the specific area of the Gerry Wright Lands required in connection with the performance of any OM&R Obligations or requiring Project Work and for such time period as Operator or any of its Subcontractors or Project Co or any of its Subcontractors is actively performing any OM&R Obligations or carrying out any Project Work in respect of the relevant area. LRV Supplier shall use all reasonable commercial efforts during the LRV Set-Up Period to minimize any interference with the activities of Operator and/or any of its Subcontractors or Project Co and/or any Project Co Person.

3.4 Handover from Project Co to Operator

Operator and Project Co shall collaborate in connection with transition of custody, care, control and responsibility to Operator of:

- (a) the Gerry Wright Lands and Gerry Wright OMF Stage 2 upon Phase 1 Construction Completion; and
- (b) the Lands, excluding the Gerry Wright Lands, and the System Infrastructure, excluding Gerry Wright OMF Stage 2, upon Construction Completion.

Such collaboration shall include identification in a timely manner of any requirements reasonably necessary or desirable to facilitate an orderly transition.

3.5 Construction Schedule

Project Co shall keep Operator informed of all significant changes to the Construction Schedule, including changes to the Target Phase 1 Construction Completion Date and the Target Construction Completion Date.

3.6 Project Co Commissioning Procedures

- (a) No later than 180 days prior to the Target Phase 1 Construction Completion Date and the Target Construction Completion Date, respectively, Project Co shall prepare, and submit to Operator for its review and comment, a draft Phase 1 commissioning plan and a draft commissioning plan (as the case may be) (the Phase 1 commissioning plan and the commissioning plan being referred to herein, collectively, as the “**Project Co Operator Commissioning Resource Plans**” and individually as a “**Project Co Operator Commissioning Resource Plan**”) setting out those parts of the Project Co Commissioning that require Operator support, along with the anticipated roles and obligations of Project Co and Operator in relation to such Project Co Commissioning and target dates as stipulated in Schedule 4 [*Design and Construction Protocols*] to the Project Agreement.
- (b) Operator may provide comments to Project Co on each of the draft Project Co Operator Commissioning Resource Plans where such draft, in the opinion of Operator reasonably held, relates to or is reasonably likely to have an impact upon the carrying out by Operator of the OM&R Obligations. Notwithstanding the foregoing, Operator shall be obligated to provide comments on each draft Project Co Operator Commissioning Resource Plan within 5 Business Days of becoming aware that such draft is wholly or partly inconsistent with any requirement of the Services Contract.
- (c) Operator shall make all comments and provide all feedback on the drafts of the Project Co Operator Commissioning Resource Plans:
 - (i) by notice in writing to Project Co; and
 - (ii) in accordance with applicable timelines and periods set out in the Project Agreement as advised by Project Co, but allowing a reasonable period prior to the applicable deadline under the Project Agreement.

Such comments shall be limited to addressing those aspects of the Project Co Operator Commissioning Resource Plans referred to in Section 3.6(b) or addressing whether any role allocated to Operator under either of the draft Project Co Operator Commissioning Resource Plans properly falls within the OM&R Obligations.

- (d) Project Co shall, within two (2) Business Days of receiving written notice from Operator in accordance with Section 3.6(c), discuss Operator’s comments on each of the draft Project Co Operator Commissioning Resource Plans set out in such notice and, within two (2) Business Days following such discussions, Project Co shall either:
 - (i) inform Operator that Operator’s comments were accepted as submitted, in which case Project Co shall deliver to Operator a revised version of the Project Co Operator Commissioning Resource Plans and the Project Co Operator Commissioning Resource Plans will be deemed settled and binding on the Parties with respect to the matters raised; or

- (ii) inform Operator that Operator's comments were rejected, providing written reasons therefor (which reasons may include any adverse impact on Project Co) and the following will apply:
 - (1) within two (2) Business Days after the delivery by Project Co of the notice under Section 3.6(d)(ii), Operator shall notify Project Co whether or not Operator considers that Operator's comments should be accepted; and
 - (2) if the Operator's notice referred to in (1) above states that Operator's comments should be accepted, then the dispute regarding the acceptance of Operator's comments shall be resolved under the IA Dispute Resolution Procedure and to the extent that it is determined under the IA Dispute Resolution Procedure that:
 - (A) Operator's comments are required to be incorporated into the relevant Project Co Operator Commissioning Resource Plan; or
 - (B) any role allocated to Operator under the relevant Project Co Operator Commissioning Resource Plan does not properly fall within the OM&R Obligations,

Project Co shall revise the relevant Project Co Commissioning Plan in accordance with the outcome of the IA Dispute Resolution Procedure and the matters in dispute will accordingly be deemed settled and binding on the Parties.

3.7 Inspection by Operator

The Parties agree to the following pre-Construction Completion cooperative procedures:

- (a) At least fifteen (15) days prior to scheduled commencement of the Project Co Commissioning Work on the Gerry Wright OMF Part B and the remaining Project Work, respectively, Operator shall be afforded the access and opportunity to inspect the relevant Infrastructure and to attend at and observe all Project Co Commissioning activities to satisfy itself that the Infrastructure will permit Operator to satisfy the OM&R Obligations (the "**OM&R Infrastructure Requirements**").
- (b) At least ten (10) days prior to the Phase 1 Construction Completion Date and the Construction Completion Date (as applicable), Operator shall notify the City and Project Co in writing whether its inspection has revealed any Deficiencies or non-compliance with the OM&R Infrastructure Requirements. Such written notice will set out any Deficiencies or non-compliance with the OM&R Infrastructure Requirements identified by Operator in the course of its inspection. Such notice will not constitute acceptance by Operator of the Infrastructure. If the City agrees that any of the items identified by Operator constitute Deficiencies, the City shall notify Project Co to that effect and Project Co will be required to correct or remedy same in accordance with Project Co's obligation to perform Warranty Work pursuant to the Project Agreement.
- (c) Under no circumstances shall Operator's actions under this Section 3.7 [*Inspection by Operator*] (including the failure to note Deficiencies or non-compliance with the OM&R Infrastructure Requirements) be construed to imply that Operator has assumed any obligation or liability with respect to the design, construction or commissioning of the Infrastructure, nor shall any such actions or failure to note deficiencies derogate from

Project Co's obligation to design, construct and commission the Infrastructure in accordance with the Project Requirements.

3.8 LRV Commissioning Procedures

- (a) No later than ninety (90) days prior to the Anticipated Delivery Date, LRV Supplier shall prepare, and submit to Operator for its review and comment, a draft commissioning plan (the "**LRV Commissioning Plan**") setting out those parts of the LRV Commissioning that require Operator support, along with the anticipated roles and obligations of LRV Supplier and Operator in relation to such LRV Commissioning Work and target dates as stipulated in the LRV Contract.
- (b) Operator may provide comments to LRV Supplier on the draft LRV Commissioning Plan where such draft, in the opinion of Operator reasonably held, relates to or is reasonably likely to have an impact upon the carrying out by Operator of the OM&R Obligations. Notwithstanding the foregoing, Operator shall be obligated to provide comments on the draft LRV Commissioning Plan if it becomes aware that such draft is wholly or partly inconsistent with any requirement of the Services Contract.
- (c) Operator shall make all comments and provide all feedback on the drafts of the LRV Commissioning Plan:
 - (i) by notice in writing to LRV Supplier; and
 - (ii) in accordance with applicable timelines and periods set out in the LRV Contract as advised by LRV Supplier, but allowing a reasonable period prior to the applicable deadline under the LRV Contract.

Such comments shall be limited to addressing those aspects of the LRV Commissioning Plan referred to in Section 3.8(b) or addressing whether any role allocated to Operator under the draft LRV Commissioning Plan properly falls within the OM&R Obligations.

- (d) LRV Supplier shall, within two (2) Business Days of receiving written notice from Operator in accordance with Section 3.8(c), discuss Operator's comments on the draft LRV Commissioning Plan and, within two (2) Business Days following such discussions, LRV Supplier shall either:
 - (i) inform Operator that Operator's comments were accepted as submitted, in which case LRV Supplier shall deliver to Operator a revised version of the LRV Commissioning Plan and the LRV Commissioning Plan will be deemed settled and binding on the Parties with respect to the matters raised; or
 - (ii) inform Operator that Operator's comments were rejected, providing written reasons therefor (which reasons may include any adverse impact on LRV Supplier) and the following will apply:
 - (1) within two (2) Business Days after the delivery by LRV Supplier of the notice under Section 3.8(d)(ii), Operator shall notify LRV Supplier whether or not Operator considers that its comments should be accepted; and
 - (2) if the Operator's notice referred to in (1) above states that Operator's comments should be accepted, then the dispute regarding the acceptance of Operator's comments shall be resolved under the IA Dispute Resolution Procedure and to the

extent that it is determined under the IA Dispute Resolution Procedure that:

- (A) Operator's comments are required to be incorporated into the LRV Commissioning Plan; or
- (B) any role allocated to Operator under the LRV Commissioning Plan does not properly fall within the OM&R Obligations,

LRV Supplier shall revise the LRV Commissioning Plan in accordance with the outcome of the IA Dispute Resolution Procedure and the matters in dispute will accordingly be deemed settled and binding on the Parties.

3.9 Inspection by Operator of LRVs

The Parties agree to the following LRV Commissioning cooperative procedures:

- (a) As part of the LRV Commissioning Work, Operator shall be afforded the access and opportunity to inspect the LRVs and to attend at and observe all LRV Commissioning activities to satisfy itself that the LRVs shall permit Operator to satisfy the OM&R Obligations (the "**OM&R LRV Interface Requirements**") and LRV Supplier shall provide such assistance to Operator in undertaking inspection of the LRVs as Operator may require, acting reasonably.
- (b) At least five (5) days following access and inspection of any LRVs, Operator shall notify the City and LRV Supplier in writing whether its inspection has revealed any LRV Deficiencies or failure to satisfy the OM&R LRV Interface Requirements in respect of such inspected LRVs. Such written notice will set out any LRV Deficiencies or failure to satisfy the OM&R LRV Interface Requirements identified by Operator in the course of its inspection. Such notice will not constitute acceptance by Operator of the LRVs. If the City agrees that any of the items identified by Operator constitute LRV Deficiencies, the City shall notify LRV Supplier to that effect and LRV Supplier shall be required to correct or remedy same in accordance with LRV Supplier's obligation to correct LRV Deficiencies pursuant to the requirements of the LRV Contract.
- (c) Under no circumstances shall Operator's actions under this Section 3.9 [*Inspection by Operator of LRVs*] (including the failure to note LRV Deficiencies or failure to satisfy the OM&R LRV Interface Requirements) be construed to imply that Operator has assumed any obligation or liability with respect to the design, manufacture or commissioning of the LRVs, nor shall any such actions or failure to note LRV Deficiencies derogate from LRV Supplier's obligation to design, manufacture and commission the LRVs in accordance with the LRV Requirements.

3.10 Deficiencies

Subject to Section 3.11(b) below, Project Co acknowledges and agrees that, as between Project Co and the City, Project Co shall be responsible for the rectification of all Deficiencies in respect of the Project Work or the Infrastructure during the Warranty Periods, subject to and in accordance with the terms of the Project Agreement; provided, however, that Project Co shall not be liable for any such Deficiency to the extent that such Deficiency is caused or contributed to by any act or omission of Operator or any Operator Person or of LRV Supplier or any LRV Supplier Person.

3.11 Deficiencies and Construction Latent Defects

- (a) If Operator becomes aware after the Phase 1 Construction Completion Date or the Construction Completion Date (as applicable) of any Deficiency or Construction Latent Defect, then:
 - (i) Operator shall continue to fulfill all of the OM&R Obligations in accordance with the terms of the Services Contract to the extent possible given the nature of the Deficiency or Construction Latent Defect; and
 - (ii) Operator shall use commercially reasonable efforts to mitigate the consequences arising from such Deficiency or Construction Latent Defect, to the extent that it is able to do so with temporary or permanent remedies.
- (b) Operator shall:
 - (i) in the case of an Emergency, promptly take all commercially reasonable and practicable corrective measures to rectify any Deficiency or Construction Latent Defect, at Project Co's expense, provided that if Operator performs corrective measures in an Emergency it shall notify Project Co of the occurrence of such Deficiency as soon as reasonably possible after its occurrence and give Project Co an opportunity to permanently repair or rectify the Deficiency; and
 - (ii) where a Deficiency has not resulted in or is otherwise not part of an Emergency, as soon as practicable but in any event within two (2) Business Days of discovery of such Deficiency, notify Project Co and the City of the occurrence of such Deficiency and request that Project Co immediately and diligently commence the repair or rectification of such Deficiency in accordance with Project Co's obligations under the Project Agreement.
- (c) If Project Co does not dispute whether a Deficiency exists, Project Co shall commence to correct, and shall correct, the Deficiency in accordance with its obligations under the Project Agreement and this Agreement:
 - (i) in the case of a Deficiency arising under Section 3.11(b)(i), no later than 24 hours following receipt of the notice from Operator referred to in Section 3.11(b)(i), Project Co shall rectify or, where rectification is not possible within such period, provide a rectification plan to Operator and the City setting forth the manner in which the Deficiency will be rectified within a reasonable period of time following such 24-hour period;
 - (ii) In the case of a Deficiency arising under Section 3.11(b)(ii), no later than 72 hours following receipt of the notice from Operator referred to in Section 3.11(b)(ii), Project Co shall commence diligent repair or rectification of the Deficiency or put forward a reasonable plan setting out the way in which the Deficiency will be promptly permanently repaired or rectified. If Project Co fails to perform its obligations under this clause (ii) and deductions or operating period payment adjustments have begun to accrue under the Services Contract (or would have begun to accrue but for works or services having been undertaken by or on behalf of Operator as a result of the Deficiency, which works or services are in excess of the level of works and services that Operator provides or causes to be provided to fulfill the OM&R Obligations under the Services Contract in the normal course) and which relate to the Deficiency in question, Operator may take commercially reasonable and practicable corrective measures to repair or rectify the Deficiency in question at the expense of Project Co.

- (d) If Project Co disputes whether an alleged Deficiency exists, or the nature or extent of Project Co's obligations in respect thereof under the Project Agreement or this Agreement, such dispute will constitute an IA Dispute and shall be resolved pursuant to the IA Dispute Resolution Procedure.
- (e) If Operator performs corrective work pursuant to Section 3.11(b)(i) or 3.11(b)(ii) and it is later determined under the IA Dispute Resolution Procedure that it was not responsible for performing such corrective work under the Services Contract or this Agreement, then, absent negligent performance of any corrective work by Operator, Operator's corrective work will not affect the validity of any Project Co warranty obligation or any product or equipment supplier warranty or any LRV warranties.

3.12 Consequences of a Deficiency

To the extent Operator incurs Direct Losses (including, without limitation, any costs of rectification of any Deficiency or Construction Latent Defect, deductions or operating period payment adjustments under the Services Contract or costs relating to the IA Dispute Resolution Procedure) as a result of any Deficiency or Construction Latent Defects for which Project Co is responsible under the Project Agreement and this Agreement, Project Co shall indemnify Operator for Direct Losses in accordance with Section 6.4(b). Notwithstanding anything else in this Agreement, Project Co's obligations under Section 3.11 and this Section 3.12 are derivative of its obligations under the Project Agreement and shall only apply if, for so long as, and to the extent that Project Co has an obligation pursuant to the Project Agreement to rectify the relevant Deficiency or Construction Latent Defect. The aggregate liability of Project Co under this Section 3.12, shall in all events be limited to [REDACTED].

3.13 Integration Requirements

Each of Project Co and Operator and LRV Supplier shall perform its respective obligations pursuant to (as applicable) the Project Co Infrastructure Integration Requirements, the Operator Infrastructure Integration Requirements and the LRV Supplier Infrastructure Integration Requirements.

3.14 Maintenance Log to be Made Available

Each of Operator and LRV Supplier shall maintain a log of maintenance and remedial services performed in respect of the System Infrastructure and LRVs which will be available for review from time to time by Project Co until this Agreement terminates pursuant to Section 6.2 [*Termination of Agreement*]. If Operator fails to comply with this Section 3.15 [*Maintenance Log to be Made Available*], the burden of proof with respect to the existence of a Deficiency shall rest with Operator.

3.15 Equipment and Spare Parts

Immediately prior to each of Phase 1 Construction Completion and Construction Completion, Project Co shall deliver to the Gerry Wright OMF Stage 2 such spare parts as are referred to in Section 5.6.6 of Schedule 4 [*Design and Construction Protocols*] to the Project Agreement, together with all relevant Quality Control documentation. Project Co shall provide to Operator, at the time or times stipulated in Section 5.6.6 of Schedule 4 [*Design and Construction Protocols*] to the Project Agreement prior to each of the Target Phase 1 Construction Completion Date and the Target Construction Completion Date, all relevant information regarding the size, weight, storage requirements and OEM part numbers pertaining to such spare parts. Upon delivery of same, the City, Operator and Project Co shall inspect such spare parts and Quality Control documentation and shall notify Project Co promptly following completion of such inspection as to whether any part numbers pertaining to such spare parts are incorrect or if the correct configuration is not included or any firmware or software is not installed. Forthwith following delivery of such notification by the City, Project Co shall rectify any of the matters identified in such notice as a condition of achieving Phase 1 Construction Completion or Construction Completion, as applicable, pursuant to the Project Agreement.

For certainty, Project Co shall not use any such spare parts to rectify Deficiencies unless Project Co replenishes the supply of spare parts so used.

3.16 Project Co Training

Project Co acknowledges its obligations pursuant to Section 10.1 *[Training Program]*, Section 10.2 *[Training Plan]*, Section 10.3 *[Training Documentation]*, Section 10.4 *[Instructional Aids]* and Section 10.5 *[Training Courses]* of Schedule 4 *[Design and Construction Protocols]* to the Project Agreement.

3.17 LRV Supplier Training

LRV Supplier shall provide such training to Operator as is required pursuant to the applicable provisions of the LRV Contract.

3.18 Operating and Maintenance Manuals

Project Co acknowledges its obligations pursuant to Section 10.6 *[Operating and Maintenance Manuals]* of Schedule 4 *[Design and Construction Protocols]* to the Project Agreement.

ARTICLE 4 INTERFACE COMMITTEE

4.1 Establishment of Interface Committee

The Parties agree to establish The Interface Committee within 30 days of the execution of this Agreement. The Interface Committee shall be constituted in accordance with the provisions of Section 3.1.2(d) of Schedule 4 *[Design and Construction Protocols]* to the Project Agreement and Section 4.3 *[Composition and Operating Procedures of the Interface Committee]* below, provided, however, that the Interface Committee shall have no authority to alter the respective rights or obligations of the Parties as set out in this Agreement, the Services Contract, the LRV Contract or the Project Agreement or any agreement delivered pursuant to or in connection with either of the foregoing agreements.

4.2 Purpose and Authority of Interface Committee

The Interface Committee is established for the purpose of providing effective dialogue between the Parties as to all issues and concerns relating to any conflict, areas of any potential conflict or other concerns as between the Parties with respect to their varying rights and obligations under this Agreement, the Project Agreement, the Services Contract and the LRV Contract. Unanimous decisions of the Interface Committee (unless inconsistent with the express terms or conditions of the Project Agreement, the Services Contract or the LRV Contract, as the case may be) shall be binding upon the Parties and shall be carried out by the affected Parties in the manner and within the time periods (if any) specified in such decisions.

4.3 Composition and Operating Procedures of the Interface Committee

- (a) The Interface Committee shall be comprised of four individuals, being one representative from each Party (each, a “**Representative**”). Each Party shall have the right to appoint a primary Representative and an alternate Representative, who shall serve on the Interface Committee when a primary Representative of such Party is unavailable by reason of sickness, injury, vacation or other reasonable cause. Each Party may (but need not) have both its primary and alternate Representatives attend any meeting of the Interface Committee, provided that, for the purposes of quorum under Section 4.3(h) and any actions or decisions to be taken at such meeting, only one Representative per Party shall be deemed to be present. For greater certainty, this Section 4.3 is not intended to apply to the resolution of any IA Disputes, which shall be determined in accordance with Section 9.1 *[IA Dispute Resolution]* and the IA Dispute Resolution Procedure.

- (b) The City Representative (the “**Chairman**”) shall chair the Interface Committee and shall be responsible to keep minutes of all decisions of the Interface Committee and circulate such minutes to the members of the Interface Committee within five (5) Business Days of the holding of each meeting.
- (c) One Representative of each Party shall make reasonable efforts to attend all meetings of the Interface Committee. If any Representative is routinely absent, he or she shall be replaced by the Party that appointed such Representative upon the request of the other Representatives.
- (d) All decisions of the Interface Committee shall be made by consensus of all Representatives present at a meeting of the Interface Committee. In the event that there is a lack of consensus on any matter which comes before the Interface Committee, such matter shall be referred to a panel of four senior executives, one appointed by each Party (the “**Executive Panel**”). The senior executives selected shall not be involved in the day to day management or operation of the Project. The Executive Panel shall also act by consensus and a decision of such panel shall be binding upon the Parties as if it were a decision of the Interface Committee.
- (e) The Interface Committee shall hold monthly meetings in Edmonton, Alberta (or at such locations as the Representatives may determine, until the Service Readiness Date, after which meetings shall be held on an as needed basis. Additional meetings of the Interface Committee may be held at the request of any Representative provided that at least five days prior notice in writing of such meeting shall be given to each other Representative unless the requirement for such notice is expressly waived in writing by such Representative or such other Representatives attend the meeting and do not object to the absence of the required notice. Unless otherwise agreed to by the Representatives, each such notice shall be accompanied by a written agenda setting out in reasonable detail the matters to be discussed at the meeting together with any relevant supporting materials.
- (f) Any Representative may participate in a meeting of the Interface Committee, and any senior executive may participate in a meeting of the Executive Panel, by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear and speak to each other, and a Representative or senior executive, as the case may be, participating in a meeting in such manner shall be deemed to be present in person at such meeting. Any decision made by the Executive Panel at such meeting shall be confirmed in writing by facsimile or electronic mail to all Parties. Any matter within the competence of the Interface Committee or the Executive Panel, as the case may be, that is agreed or consented to in writing by Representatives or senior executives, as applicable, of each of the Parties entitled to attend a meeting of the Interface Committee or Executive Panel, as the case may be, shall be binding upon the Interface Committee or the Executive Panel, as the case may be, and the Parties as if approved at a duly constituted meeting of the Interface Committee or Executive Panel, as the case may be.
- (g) Except as otherwise provided for in this Agreement, the Interface Committee shall have the authority, by consensus approval of all Representatives, to establish its own reasonable procedures for meetings, notices, minutes and all other matters necessary for its efficient operation. Minutes shall be kept of all meetings of the Interface Committee which shall be approved by the Chairman and circulated to all Representatives within 15 days of each meeting.
- (h) A quorum for a meeting of the Interface Committee shall be four Representatives, including one Representative of each Party. If a meeting is called and a quorum is not present, the meeting shall be adjourned for not less than 24 hours, with notice thereof to be provided as contemplated in Section 4.3(e). A quorum for a meeting of the Executive Panel will be

four (4) senior executives, one representing each Party. If the absence of the Representative of one party causes a quorum not to be present at three consecutive duly called meetings of either the Interface Committee or the Executive Panel, the fourth such duly called meeting will proceed with those Representatives who are present and will be deemed to have been duly constituted.

ARTICLE 5 ACCESS

5.1 Operator Access

- (a) To facilitate Operator and its activities with respect to any OM&R Obligations required to be performed by Operator and any Operator Person, including any Operator obligations in connection with Performance Demonstration or performance of the Operator Infrastructure Integration Requirements, each of Project Co and LRV Supplier (as the case may be) shall provide reasonable access to Operator and any Operator Person to perform the activities contemplated in the Operator Protocols. Without limiting the generality of the foregoing, from and after the date of this Agreement, Project Co and LRV Supplier shall, acting reasonably, accommodate requests from Operator to enter upon the Lands or to access the LRVs in order that Operator may sufficiently discharge its obligations under this Agreement (including, for greater certainty, its obligations as set out in the Operator Protocols) and any obligations set out in the Services Contract. For certainty and without limiting the generality of the foregoing:
 - (i) Project Co shall grant access to the relevant Infrastructure to the Operator prior to Construction Completion and shall provide support to the Operator from and after the ICS Integration Ready Date in order to enable the Operator to install the Integrated Control System in order that such system may be completed and installed within 180 days after Construction Completion; and
 - (ii) LRV Supplier shall grant access to the LRVs that have been delivered to the Gerry Wright OMF Stage 2 in order to enable Operator to provide support to LRV Supplier in connection with LRV Commissioning.

- (b) Neither Project Co nor Operator shall materially impede the ability of LRV Supplier or any LRV Supplier Person to carry out any of the activities contemplated in the LRV Supplier Protocols; provided, however, that, prior to each of Phase 1 Construction Completion and Construction Completion, Operator and all Operator Persons and LRV Supplier and all LRV Supplier Persons shall:
 - (i) at all times adhere to the directions, procedures and safety guidelines established by Project Co or any Project Co Person for Gerry Wright OMF Stage 2, the Lands, the Infrastructure and the Project; and
 - (ii) if required by Project Co or any Project Co Person, confine their activities to a specified location on Gerry Wright OMF Stage 2 or the Lands or remove themselves from Gerry Wright OMF Stage 2 or the Lands if, in the discretion of Project Co or any Project Co Person, acting reasonably, the presence of Operator or any Operator Persons and/or LRV Supplier or any LRV Supplier Persons, and/or their respective activities, are:
 - (A) materially interfering with the Construction or the ability of Project Co or any Project Co Person to achieve any Construction milestones under the Project Agreement;

- (B) delaying, impeding or interfering with the ability of Project Co or any Project Co Person to achieve Phase 1 Construction Completion or Construction Completion; or
 - (C) posing a threat to the safety of any Persons present on the Lands.
- (c) In the event that Project Co or any Project Co Person so confines or removes Operator or an Operator Person, Project Co shall provide Operator or such Operator Person with an alternate time to conduct such activities unless doing so would cause any of the events described in Sections 5.1(b)(ii)(A), (B) or (C) to occur.
- (d) If Operator suffers any Direct Losses as a result of Project Co's failure to provide access to Operator arising from a breach by Project Co of the Project Agreement or this Agreement (except for any denial of access contemplated in Section 5.1(b)), then Project Co shall be liable to Operator for such Direct Losses; provided always that Operator shall take commercially reasonable steps to mitigate such Direct Losses and any relief, payment or benefit received by Operator pursuant to the Services Contract or any insurance (in each case in relation to such Direct Losses) shall reduce such Direct Losses.

5.2 Project Co Access

- (a) To facilitate Project Co and its activities with respect to any work required to be completed by Project Co and any Project Co Person after Phase 1 Construction Completion or Construction Completion (as applicable), rectification of any Deficiency or Construction Latent Defect and/or Performance Demonstration or performance of the Project Co Infrastructure Integration Requirements, each of Operator and LRV Supplier (as the case may be) shall provide reasonable access to Project Co and any Project Co Person to perform the activities contemplated above. Without limiting the generality of the foregoing, from and after the Phase 1 Construction Completion Date, Operator and LRV Supplier shall, acting reasonably, accommodate requests from Project Co to enter upon Gerry Wright OMF Parcel B or to access the LRVs in order that Project Co may sufficiently discharge its obligations under this Agreement and any obligations set out in the Project Agreement. Neither Operator nor LRV Supplier shall materially impede the ability of Project Co or any Project Co Person to carry out any such activities; provided, however, that Project Co and Project Co Persons shall:
 - (i) at all times adhere to the directions, procedures and safety guidelines established by Operator or LRV Supplier (as applicable); and
 - (ii) if required by Operator, acting reasonably, confine their activities to a specified location at Gerry Wright OMF Stage 2 or on the Lands, or remove themselves from Gerry Wright OMF Stage 2 or the Lands if, in Operator's discretion, acting reasonably, the presence of Project Co or any Project Co Person, and/or their activities, are:
 - (A) material interfering with the OM&R Obligations; or
 - (B) posing a threat to the safety of any Persons present on the Lands.
- (b) In the event that Operator so confines or removes Project Co or a Project Co Person, Operator shall provide Project Co or such Project Co Person with an alternate time to conduct such activities, unless doing so would cause one of the events described in Sections 5.2(a)(ii)(A) or (B) to occur.

- (c) If Project Co suffers any Direct Losses as a result of Operator's or LRV Supplier's (as applicable) failure to provide access as set out in this Agreement (except for any denial of access contemplated in Section 5.2(a)(ii)), then Operator or LRV Supplier (as applicable) shall be liable to Project Co for such Direct Losses; provided, always that Project Co shall take commercially reasonable steps to mitigate such Direct Losses and any relief, payment or benefit received by Project Co pursuant to the Project Agreement or any insurance (in each case in relation to such Direct Losses) shall reduce such Direct Losses.

5.3 LRV Supplier Access

- (a) To facilitate LRV Supplier and its activities with respect to LRV Commissioning, Performance Demonstration and any work required to be completed by LRV Supplier and any LRV Supplier Person after delivery of LRVs, rectification of any LRV deficiencies or the undertaking by LRV Supplier of any warranty work in relation to the LRVs, each of Project Co and Operator (as the case may be) shall provide reasonable access to LRV Supplier and any LRV Supplier Person to perform the activities contemplated above. Without limiting the generality of the foregoing, from and after the date of this Agreement, Project Co and Operator shall, acting reasonably, accommodate requests from LRV Supplier to enter upon the Lands or to access the LRVs in order that LRV Supplier may sufficiently discharge its obligations under this Agreement (including, for greater certainty, its obligations as set out in the LRV Protocol) and any obligations set out in the LRV Contract. Neither Project Co nor Operator shall materially impede the ability of LRV Supplier or any LRV Supplier Person to carry out any such activities; provided, however, that LRV Supplier and LRV Supplier Persons shall:
 - (i) at all times adhere to the directions, procedures and safety guidelines established by Project Co or Operator (as applicable); and
 - (ii) if required by Project Co or Operator (as applicable), acting reasonably, confine their activities to a specified location at Gerry Wright OMF-B or on the Lands, or remove themselves from Gerry Wright OMF-B or the Lands if, in Project Co's Operator's (as applicable) discretion, acting reasonably, the presence of LRV Supplier or any LRV Supplier Person, and/or their activities, are:
 - (A) materially interfering with the Construction or the ability of Project Co or any Project Co Person to achieve any Construction milestones under the Project Agreement;
 - (B) delaying, impeding or interfering with the ability of Project Co or any Project Co Person to achieve Phase 1 Construction Completion or Construction Completion;
 - (C) materially interfering with the OM&R Obligations; or
 - (D) posing a threat to the safety of any Persons present on the Lands; or
 - (E) causing payment deductions under the Services Contract to accrue.

5.4 Health and Safety

- (a) Each of the Parties acknowledges and agrees that responsibility for safety upon the Lands shall be assumed as specified in the Project Agreement for Project Co and in the Services Contract for Operator. For the avoidance of doubt, Project Co shall be responsible for all obligations relating to safety upon Gerry Wright OMF Parcel B until Phase 1 Construction

Completion and upon the Lands (other than Gerry Wright OMF Parcel B) until Construction Completion.

- (b) Each of the Parties acknowledges and agrees that Project Co shall, during the time periods and in respect of the worksite(s) specified in Appendix 11A [*Prime Contractor Designation*] to Schedule 11 [*Construction Safety Requirements*] to the Project Agreement, perform or cause a Project Co Person to perform all of the obligations of the “Prime Contractor” and assume any and all liabilities of the “Prime Contractor” under the *Occupational Health and Safety Act* (Alberta) and all regulations thereto as required under Section 1.2 of Schedule 11 [*Construction Safety Requirements*] to the Project Agreement in respect of the worksite(s) specified in the ‘Worksite’ column in such Appendix.
- (c) Each of the Parties acknowledges and agrees that Operator shall:
 - (i) at all times following the Phase 1 Construction Completion Date, perform or cause an Operator Person to perform all of the obligations of the “Prime Contractor” and assume any and all liabilities of the “Prime Contractor” under the *Occupational Health and Safety Act* (Alberta) and all regulations thereto on Gerry Wright OMF Parcel B specified in and as required under the Services Contract; and
 - (ii) at all times following the Construction Completion Date, perform or cause an Operator Person to perform all of the obligations of the “Prime Contractor” and assume any and all liabilities of the “Prime Contractor” under the *Occupational Health and Safety Act* (Alberta) and all regulations thereto in respect of the worksite(s) on the Lands and on Gerry Wright OMF Parcel A specified in and as required under the Services Contract;
- (d) The rights of access granted pursuant to this Agreement shall be exercised by each of Project Co, Operator and LRV Supplier in a manner that is consistent with all safety rules applicable to: (i) Gerry Wright OMF Stage 2 or (ii) the Lands, respectively. Furthermore, each Party shall at all times avoid or minimize any disruption, hindrance or other impact with respect to the delivery of each other Party’s obligations under the Project Agreement, the Services Contract and the LRV Contract, as applicable. Each of Project Co and Operator shall deliver or cause to be delivered a copy of the health and safety manuals and procedures for its respective project upon the execution of this Agreement and as amended from time to time.
- (e) Project Co shall, and shall cause all Project Co Persons to, comply with the health and safety program and procedures of Operator, or the Operator Person performing the “Prime Contractor” obligations at all times following the Phase 1 Construction Completion Date on Gerry Wright OMF-B and at all times following the Construction Completion Date in respect of the worksite(s) on the Lands and on Gerry Wright OMF Parcel A, as the case may be, while performing work or other activities on such worksite(s).
- (f) Operator shall, and shall cause all Operator Persons to, comply at all times with the health and safety program and procedures of Project Co, or the Project Co Person performing the “Prime Contractor” obligations described in Section 5.4(b) of this Agreement, while performing work or other activities on such worksite(s).
- (g) LRV Supplier shall, and shall cause all LRV Supplier Persons to, comply with the health and safety program and procedures of Project Co, or the Project Co Person performing the “Prime Contractor” obligations at all times described in Section 5.4(b) of this Agreement, while performing work or other activities on such worksite(s)

- (h) LRV Supplier shall, and shall cause all LRV Supplier Persons to, comply with the health and safety program and procedures of Operator or the Operator Person performing the “Prime Contractor” obligations under the *Occupational Health and Safety Act (Alberta)* and all regulations thereto at all times following the Phase 1 Construction Completion Date on Gerry Wright OMF-B and at all times following the Construction Completion Date in respect of the worksite(s) on the Lands and on Gerry Wright OMF Parcel A, as the case may be, while performing work or other activities on such worksite(s).

ARTICLE 6 TERMINATION, INDEMNIFICATION AND LIABILITY

6.1 Effective Date

This Agreement will be effective on and from the date above first written.

6.2 Termination of Agreement

This Agreement will terminate and cease to have effect upon the earlier of:

- (a) the Project Agreement Termination Date, and
- (b) the later of (i) date that the Services Contract terminates in accordance with its terms, and (ii) the date that the LRV Contract terminates in accordance with its terms,

without prejudice to Section 10.17 *[Survival]* and without prejudice to the final determination of any IA Dispute which has not been finally determined at the date of termination or expiration of this Agreement.

6.3 Termination Without Prejudice

The termination of this Agreement shall be without prejudice to the rights and liabilities of the Parties which shall have accrued under this Agreement prior to the date of termination.

6.4 Liability and Indemnification

- (a) Operator shall indemnify and save harmless Project Co and Project Co Persons and LRV Supplier and LRV Supplier Persons (in this Section 6.4(a) collectively, the “**Indemnified Parties**” and individually an “**Indemnified Party**”) from and against any and all Direct Losses to the extent suffered, sustained, incurred by or brought against the Indemnified Parties as a result of, in respect of or arising directly or indirectly, out of, or in consequence of any breach of this Agreement by Operator, except to the extent that such Direct Losses are caused, or contributed to, by any negligent act or omission, fraud or wilful misconduct, of an Indemnified Party or any person for whom an Indemnified Party is in law responsible; provided that there shall be excluded from the indemnity given by Operator any liability for the occurrence of risks against which an Indemnified Party is bound to insure under the Project Agreement or the LRV Contract (as applicable), to the extent of the proceeds available or which would have been available but for a failure by such Indemnified Party to properly insure in accordance with the terms thereof (other than insurance proceeds that are unavailable due to any act or omission of Operator).
- (b) Project Co shall indemnify and save harmless Operator and Operator Persons and LRV Supplier and LRV Supplier Persons (in this Section 6.4(b) collectively, the “**Indemnified Parties**” and individually an “**Indemnified Party**”) from and against any and all Direct Losses to the extent suffered, sustained, incurred by or brought against the Indemnified Parties as a result of, in respect of or arising directly or indirectly, out of, or in consequence of any breach of this Agreement by Project Co, except to the extent that such Direct Losses

are caused, or contributed to, by any negligent act or omission, including fraud or wilful misconduct, of an Indemnified Party or any person for whom an Indemnified Party is in law responsible; provided that there shall be excluded from the indemnity given by Project Co any liability for the occurrence of risks against which an Indemnified Party is bound to insure under the Services Contract or the LRV Contract (as applicable), to the extent of the proceeds available or which would have been available but for a failure by such Indemnified Party to properly insure in accordance with the terms thereof (other than insurance proceeds that are unavailable due to any act or omission of Project Co).

- (c) LRV Supplier shall indemnify and save harmless Project Co and Project Co Persons and Operator and Operator Persons (in this Section 6.4(c) collectively, the “**Indemnified Parties**” and individually an “**Indemnified Party**”) from and against any and all Direct Losses to the extent suffered, sustained, incurred by or brought against the Indemnified Parties as a result of, in respect of or arising directly or indirectly, out of, or in consequence of any breach of this Agreement by LRV, except to the extent that such Direct Losses are caused, or contributed to, by any negligent act or omission, including fraud or wilful misconduct, of an Indemnified Party or any person for whom an Indemnified Party is in law responsible; provided that there shall be excluded from the indemnity given by LRV Supplier any liability for the occurrence of risks against which an Indemnified Party is bound to insure under the Project Agreement or the Services Contract (as applicable) to the extent of the proceeds available or which would have been available but for a failure by such Indemnified Party to properly insure in accordance with the terms thereof (other than insurance proceeds that are unavailable due to any act or omission of LRV Supplier).

6.5 Maximum Liability

The maximum aggregate liability of each Party in respect of all claims under this Agreement (including any liability of any Party in respect of claims for indemnification under Section 6.4 [*Liability and Indemnification*] and any liability of Project Co under Section 3.12 [*Consequences of a Deficiency*]) shall not exceed [REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or receivable by any indemnifying Party and shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.

ARTICLE 7 INDEPENDENT PERFORMANCE DEMONSTRATION CERTIFIER

7.1 Appointment

Promptly but not less than six (6) months prior to the Target Construction Completion Date, Project Co, Operator, LRV Supplier and the City shall conduct a competitive procurement process to jointly appoint a Person (the “**Independent Performance Demonstration Certifier**” or “**IPDC**”) to provide Performance Demonstration certification and other services for the benefit of the Parties throughout the Performance Demonstration Period, and that shall:

- (a) be qualified and experienced with respect to the design, construction and assessment of light rail infrastructure similar to the Infrastructure;
- (b) have professional engineering expertise sufficient to execute the functions of the IPDC;
- (c) be qualified and experienced with respect to the design, manufacture, operation and assessment of light rail vehicles similar to the LRVs;
- (d) be qualified and experienced with respect to civil, mechanical, electrical and systems engineering and other relevant matters associated with performance demonstration

considerations of light rail projects similar to the Infrastructure using light rail vehicles similar to the LRVs; and

- (e) be independent from each of the Parties and any Affiliates of the Parties (including, if an Party is a partnership, each partner of such Party) (and who shall be impartial to the Parties).

The competitive procurement process shall be managed and administered by the City in accordance with its procurement policies. The other Parties shall cooperate and assist the City with the development of the procurement documents and evaluation criteria used to select the IPDC and shall participate in the evaluation of procurement responses.

The Parties shall enter into an agreement with the IPDC (the “**Independent Performance Demonstration Certifier Agreement**” or “**IPDC Agreement**”) substantially on the terms as set out in Appendix 5 [*Independent Performance Demonstration Certifier Agreement*].

No Party shall, without the prior written consent of the other Parties, enter into any agreement with the IPDC in connection with any aspect of the Project other than the Independent Performance Demonstration Certifier Agreement, and the Parties shall ensure that no Party Person enters into any separate agreement with the IPDC in connection with the Project.

7.2 IPDC Services

The services to be provided by the IPDC are described in the IPDC Agreement and specifically in Appendix 5A [*Functions*] to Appendix 5 [*Independent Performance Demonstration Certifier Agreement*].

7.3 Changes in Terms

Except as otherwise expressly provided in the IPDC Agreement, none of the Parties shall, without the other Parties’ prior approval (not to be unreasonably withheld or delayed):

- (a) waive, settle, compromise or otherwise prejudice any rights or claims which any other Party may from time to time have against the IPDC; or
- (b) vary the terms of the IPDC Agreement or the services performed, or to be performed, by the IPDC.

7.4 Performance of Obligations

Each of the Parties shall perform its respective obligations arising under, or in connection with, the IPDC Agreement.

7.5 Cooperation

The Parties agree to cooperate with each other in relation to all matters within the scope of, or in connection with, the IPDC and the IPDC Agreement. All instructions, inspection and meeting notices and representations issued or made by any of the Parties to the IPDC shall be simultaneously copied to the other Parties for information purposes, and in the case of inspections or meetings, all of the Parties shall be entitled to attend such inspections performed by, or meetings involving, the IPDC.

7.6 Appointment and Replacement

The Parties agree that the IPDC shall not provide any services or reports or other information to the Parties, or any other Person other than pursuant to the performance of the functions of the IPDC under this Agreement and the IPDC Agreement unless agreed to in writing by the Parties.

If, for any reason during the term of the Agreement, the IPDC's appointment has been terminated by the Parties, then, unless otherwise agreed, the Parties shall promptly conduct a competitive procurement process to jointly appoint a replacement IPDC. The competitive procurement process shall be conducted in accordance with the procedures set out in Section 7.1 [Appointment] of this Agreement and the Person appointed as a replacement IPDC shall satisfy the criteria set out in Sections 7.1(a) to (e) inclusive.

7.7 Permitted Access

The Parties shall grant the IPDC, or shall cause to be granted to the IPDC, access to the Gerry Wright OMF Site, the Lands, the Infrastructure and the LRVs as the IPDC reasonably requires in connection with the performance of the Functions and each of the Parties shall:

- (a) provide the IPDC with access to drawings, specifications, schedules, records, and other documents or data relating to the Infrastructure or LRVs, as applicable, including such information that is produced by or in the possession of any IA Person;
- (b) provide the IPDC with access to all plant, goods, products, commodities, materials, supplies, machinery, equipment, apparatus and other tangible property intended to form, or actually forming, part of the Infrastructure or the LRVs; and
- (c) permit the IPDC to attend all Performance Demonstration Committee meetings.

7.8 No Responsibility

Nothing in this Agreement or in the IPDC Agreement shall be interpreted as giving the IPDC any responsibility or authority for any aspect of the Project Work, the LRV Services or the OM&R Services or as relieving any Party of its responsibilities, as set out in this Agreement, or in any of the Project Agreement, the LRV Contract or the Services Contract.

7.9 Parties Not Relieved

None of the Parties shall be relieved from performing or observing its obligations, or from any other liabilities, under this Agreement as a result of the appointment or any act or omission of the IPDC.

7.10 Parties not Liable

On no account shall any of the Parties be liable to any other Party for any act or omission of the IPDC whether under or purportedly under a provision of this Agreement, the IPDC Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of any Party against or any obligation or liability of another Party which would have existed regardless of such act or omission.

ARTICLE 8 PERFORMANCE DEMONSTRATION

8.1 Performance Demonstration Committee

- (a) Not less than nine (9) months prior to the first scheduled Performance Demonstration activity, the City, the LRV Supplier, Operator, Project Co and the IPDC (collectively the "**PDC Parties**" and, individually, a "**PDC Party**") shall establish and maintain until the completion of the Performance Demonstration Period, a joint liaison committee (the "**Performance Demonstration Committee**") consisting of the Project Co Commissioning Manager, Project Co's Representative, the City's Representative, LRV Supplier's Commissioning Representative, LRV Supplier's Representative, Operator's

Representative, IPDC's Representative and such other members as the Performance Demonstration Committee may agree from time to time.

- (b) The Performance Demonstration Committee shall provide a formal forum for the PDC Parties to consult and cooperate in all matters relating to Performance Demonstration, including discussion, clarification, planning and coordination of Performance Demonstration and measurement of performance criteria.
- (c) The Performance Demonstration Committee shall meet at least once every four weeks or more frequently, as necessary. If any member of the Performance Demonstration Committee requests an additional meeting, the PDC Parties shall act reasonably in accommodating this request. Meetings of the Performance Demonstration Committee shall be convened on not less than two (2) Business Days' notice (which notice shall also identify the agenda items to be discussed at the meeting and include the then-current Performance Demonstration schedule), provided that, in the case of urgency, a meeting may be called at any time by any member on such notice as may be reasonable in the circumstances.
- (d) the City Representative shall chair the Performance Demonstration Committee throughout the Performance Demonstration Period and shall be responsible to keep minutes of all recommendations, action items and meetings of the Performance Demonstration Committee and circulate such minutes to the members of the Performance Demonstration Committee within five (5) Business Days of the holding of the meeting, including all relevant recommendations in respect of the action items;
- (e) each of Project Co, LRV Supplier and Operator shall submit to the members of the Performance Demonstration Committee all of the reports, data and other information that it is required to submit to the Performance Demonstration Committee pursuant to and in accordance with the Project Agreement, LRV Contract or the Services Contract, as applicable.

8.2 Performance Demonstration

- (a) The "**Performance Demonstration Period**" shall be a period commencing on the earlier of the Infrastructure Performance Demonstration Commencement Date and the LRV Performance Demonstration Commencement Date, and terminating on the later of:
 - (i) the termination or expiry of the Infrastructure Performance Demonstration Period under the Project Agreement; and
 - (ii) the termination of the LRV Performance Demonstration Period under the LRV Contract.
- (b) During the Infrastructure Performance Demonstration Period, Project Co shall comply with its obligations under Schedule 7 [*Performance Demonstration Requirements*] to the Project Agreement, including:
 - (i) identify and report any failures and incidents attributable to the Infrastructure;
 - (ii) provide all personnel and equipment necessary or required to conduct such monitoring activities where the required information cannot be obtained from Infrastructure sub-systems which will feed into the future ICS;
 - (iii) allow the City to witness any monitoring activities undertaken pursuant to Section 8.2(b) during the Infrastructure Performance Demonstration Period. Project Co

- shall keep an up-to-date Infrastructure Performance Demonstration activity schedule for the City's information; and
- (iv) identify and report to the members of the Performance Demonstration Committee any failures and incidents attributable to Project Co.
- (c) During the Performance Demonstration Period, Operator shall:
- (i) perform the OM&R Services;
 - (ii) record on-time performance;
 - (iii) identify all Train Delays and make the initial identification of the underlying root cause;
 - (iv) provide information from the ICS that is relevant to any failure or incident and is necessary to determine the underlying root cause;
 - (v) identify and report to the members of the Performance Demonstration Committee any failures and incidents attributable to Operator; and
 - (vi) provide all personnel (including LRV drivers) and equipment necessary or required to perform such services.
- (d) During the LRV Performance Demonstration Period, LRV Supplier shall:
- (i) monitor System Ride Quality in accordance with the requirements of the LRV Contract;
 - (ii) perform Internal Noise monitoring on the LRVs;
 - (iii) provide all personnel and equipment necessary or required to conduct such monitoring activities where the required information cannot be obtained from Infrastructure sub-systems which shall feed into the future ICS; and
 - (iv) identify and report to the members of the Performance Demonstration Committee any failures and incidents attributable to the LRVs.
- (e) Pursuant to the IPDC Agreement, the IPDC shall assign the underlying root causes of failures to the appropriate Performance Demonstration Party based on the information provided by all Performance Demonstration Parties to the Performance Demonstration Committee.

8.3 Release From Obligations

- (a) Notwithstanding the foregoing, upon completion of the termination or expiry of the Infrastructure Performance Demonstration Period under the Project Agreement, if it occurs prior to the termination or expiry of the Performance Demonstration Period, Project Co shall be released from all further obligations pursuant to this Article 8.
- (b) Notwithstanding the foregoing, upon completion of the termination or expiry of the LRV Performance Demonstration Period under the LRV Contract, if it occurs prior to the termination or expiry of the Performance Demonstration Period, the LRV Supplier shall be released from all further obligations pursuant to this Article 8.

**ARTICLE 9
DISPUTE RESOLUTION PROCEDURE**

9.1 IA Dispute Resolution

All disputes, controversies, or claims arising out of or relating to any provision of this Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Agreement (collectively and individually, an **“IA Dispute”**) shall be resolved in accordance with the procedure (the **“IA Dispute Resolution Procedure”**) set out in Appendix 1 [*IA Dispute Resolution Procedure*].

**ARTICLE 10
MISCELLANEOUS PROVISIONS**

10.1 Costs and Expenses

Except as otherwise provided herein or pursuant to the IA Dispute Resolution Procedure, each Party shall be responsible for the payment of its own costs and expenses in connection with this Agreement and all matters contemplated in this Agreement.

10.2 Payments

- (a) Any invoice issued pursuant to this Agreement shall be due for payment by the Party to whom it is addressed 30 days after the date of the invoice, unless otherwise specified in this Agreement or agreed to by the relevant Parties or (subject to Section 10.2(b) disputed in writing by the recipient.
- (b) If the recipient of an invoice issued pursuant to this Agreement disagrees with all or any portion of such invoice, the recipient shall make payment of the undisputed portion of the invoice in accordance with Section 10.2(a) and shall promptly notify the issuer of the invoice of the reasons for its disagreement with the balance of that invoice.

10.3 Interpretive Provisions

In this Agreement:

- (a) references to this Agreement include the Appendices and other attachments hereto;
- (b) references to **“hereunder”**, **“herein”** and **“hereof”** are to the provisions of this Agreement, and references to Articles and Sections herein refer to articles, sections, or Sections of this Agreement;
- (c) the headings of the Articles, Sections, Appendices and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof;
- (d) references to a **“Section”**, **“Subsection”** or **“Appendix”** mean and refer to the specified section, Section or appendix of or to this Agreement;
- (e) whenever the singular or masculine or neuter is used, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires;
- (f) where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.

- (g) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (h) provisions including the word “**agree**”, “**agreed**” or “**agreement**” require the agreement to be recorded in writing;
- (i) references to “including” and “includes” means “including, without limitation” and “includes, without limitation” respectively;
- (j) “**written**” or “**in writing**” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (k) “**day**” means a calendar day;
- (l) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred to or the regulations made pursuant thereto; and
- (m) unless otherwise expressly stated, references to dollars or \$ means Canadian dollars.

10.4 General Duty to Mitigate

Without limiting, and in addition to, all other obligations to mitigate required by this Agreement, at law or in equity, in all cases where a Party is entitled to receive from another Party any compensation, damages, indemnification or extension of time, the first mentioned Party will have a duty to mitigate its losses, damages, delay, or any other basis for such entitlement, as the case may be, and shall otherwise act in a commercially reasonable manner.

10.5 Interest

To the extent that any amount under this Agreement is due and payable, unless otherwise expressly provided for, interest shall accrue on such amount commencing thirty (30) days after such amount is due and payable at Prime plus 2% per annum calculated daily and compounded monthly until such amount is paid.

10.6 Entire Agreement

This Agreement (and the documents referred to in it) represents the entire agreement between Project Co, Operator and LRV Supplier and supersedes all prior negotiations, representations, agreements, and understandings, whether written or oral, unless the same have been incorporated into this Agreement by reference, with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by all Parties. As between Project Co, Operator and LRV Supplier, there are no representations, warranties, conditions or other agreements, whether direct or collateral, express or implied, that form a part of or affect this Agreement, or which induced any Party hereto to enter into this Agreement or on which reliance is placed by any Party hereto, except as specifically set out in this Agreement.

10.7 Severability

In case a provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. In such event, the Parties shall negotiate in good faith to amend this Agreement in order to implement its provisions and the intent of the Parties.




10.8 Successors and Permitted Assigns

Subject to Section 10.11 [Assignment], this Agreement shall enure for the benefit of and be binding on the respective successors and permitted assigns of any Party.




10.9 Notices

All notices and approvals required or permitted by this Agreement (including notices to Representatives) will be in writing and delivered personally or by courier or sent by electronic mail or facsimile to the addresses provided below or as further amended by notice of the Parties:

City:




LRT Expansion and Renewal, Integrated Infrastructure Services
City of Edmonton
MNP Tower 10235 - 101 Street
Edmonton, Alberta T5J 3G1
Attention: 
Fax: 
Email: 

With a copy to:

Law Branch, Office of the City Manager, City of Edmonton
9th Floor, Chancery Hall, #3 Sir Winston Churchill Square
Edmonton, Alberta T5J 2C3
Attention: 
Fax: 
Email: 




Project Co:



Attention: 
E-Mail: 
Facsimile: 




Operator:



Attention: 
E-Mail: 
Facsimile: 

LRV Supplier:



Attention: 
E-Mail: 
Facsimile: 

or at such other address, e-mail or facsimile number of which the Parties may, from time to time, notify one another. A notice will be deemed to have been sent and received on the next Business Day following the day it is delivered personally or by courier or on the next Business Day following the day on which transmission is confirmed, if by electronic mail or facsimile. A Party giving notice by facsimile shall retain the transmission confirmation slip and provide a copy of the same to the recipients of such notice upon

request. All notices given by a Party to another Party shall be accompanied by a concurrent notice to the same effect to the remaining Party.

10.10 Governing Law and Attornment

This Agreement and any IA Disputes arising hereunder shall be governed exclusively by the laws of the Province of Alberta and those of Canada applicable therein. To the extent that this Agreement contemplates or allows the involvement of any court, the Parties hereby irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

10.11 Assignment

Except as set out below, none of Project Co, Operator nor LRV Supplier shall assign, novate, or otherwise transfer its interest in this Agreement to any person except concurrently with an assignment, novation or transfer of the Project Agreement, the Services Contract or the LRV Contract (as applicable) to the same Person in accordance with the provisions of the applicable contract. With respect to assignment of the Project Agreement, the Services Contract or the LRV Contract (as applicable) and this Agreement to an Affiliate of Project Co, Operator or the LRV Supplier (as the case may be) in accordance with the applicable contract, the assigning Party agrees that it shall remain jointly and severally liable with the assignee for the performance of such contract and this Agreement.

Project Co's interest in this Agreement may be assigned, novated or otherwise transferred to the Lenders' Agent, the City or any replacement concessionaire approved by the City under the Project Agreement or permitted under the applicable Direct Lender Agreement, provided that there will be a concurrent assignment, novation or other transfer of the Project Agreement to the same person.

10.12 Further Assurances

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each of the Parties shall at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further action as may be reasonably requested by any other Party in order to give full effect to the intent and purpose of this Agreement.

10.13 Third Party Beneficiaries

It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injury or property damage pursuant to the terms or provisions of this Agreement.

10.14 Confidentiality

- (a) Each Party agrees, for itself and its respective directors, officers, employees and agents, to keep confidential and not to disclose to any person (save as hereinafter provided) any of the terms of this Agreement or any confidential or proprietary information (including documents, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports and other data, records, drawings and information) provided to or arising or acquired by it pursuant to the terms or performance of this Agreement (including any such documents or information supplied in the course of dispute resolution proceedings under Section 9.1 [*IA Dispute Resolution*]) (collectively, the “**Confidential Information**”).
- (b) Notwithstanding Section 10.14(a), and without prejudice to each Party's rights and obligations under the Project Agreement and/or the Services Contract relating to

Confidential Information thereunder, a Party may disclose the whole or any part of the Confidential Information:

- (i) to its parent company, directors, officers, employees, contractors, subcontractors, agents, or professional advisors to the extent necessary to enable it to perform (or to cause to be performed) or to protect or enforce any of its rights or obligations under this Agreement;
- (ii) when required to do so by applicable laws and regulations or by or pursuant to the rules or any order having the force of law of any court, association or agency of competent jurisdiction or any governmental agency;
- (iii) in the case of Project Co, to any bank, financial institution or other person from whom it is seeking or obtaining financing for its activities in relation to the Project;
- (iv) to the extent that the Confidential Information has, except as a result of breach of confidentiality by the disclosing party, become publicly available or generally known to the public at the time of such disclosure;
- (v) to the extent that the Confidential Information is already lawfully in the possession of the recipient or lawfully known to the recipient prior to such disclosure;
- (vi) to the extent that it has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to any other Party;
- (vii) in connection with all meetings and proceedings for the resolution of IA Disputes;
- (viii) to the extent required pursuant to the Project Agreement, the Services Contract or the LRV Contract;
- (ix) in the case of Project Co, to the parties to the Project-related documents (including the Lenders' Agent, the Senior Lenders and the Senior Lenders' technical adviser), provided that such parties acknowledge the confidentiality of such Confidential Information;
- (x) in the case of Operator, to its Subcontractors as reasonably necessary to meet its obligations under the Services Contract and this Agreement; or
- (xi) in the case of LRV Supplier and, to its Subcontractors as reasonably necessary to meet its obligations under the LRV Contract and this Agreement.

Each Party acknowledges that it is aware of Schedule 18 [*Freedom of Information and Privacy*] to the Project Agreement and that the *Freedom of Information and Protection of Privacy Act* (Alberta) may apply to this Agreement and to all contractual submissions and other documents and records relating to this Agreement. No action taken or required to be taken by any Party for the purpose of complying with such Act shall be considered a breach of any obligation under this Agreement.

10.15 Independent Legal Advice

The Parties have had the opportunity to take, and have taken, independent legal advice on this Agreement and no provision hereof is, therefore, to be construed *contra proferentem*.

10.16 Waiver

Except as otherwise provided in this Agreement, any waiver of any provision of this Agreement, or of any right or option under or pursuant to this Agreement, or of any breach of any provision of this Agreement, will only be effective if in writing signed by the waiving Party, and no waiver will be implied by indulgence, delay or other act, failure to act, omission or conduct. Any waiver will only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.

10.17 Survival

The Parties agree that Section 9.1 *[A Dispute Resolution]*, Section 10.1 *[Costs and Expenses]* and Section 10.14 *[Confidentiality]* of this Agreement will survive the termination of this Agreement.

10.18 Execution in Counterparts

This Agreement may be executed in counterparts, in which case the counterparts together shall constitute one agreement.

10.19 Facsimile and Electronic Delivery

To evidence the fact that it has executed this Agreement or any other document contemplated by or delivered under or in connection with this Agreement, a party may transmit a copy of its executed counterpart to the other parties by facsimile (fax) or by electronic transmission of a pdf and, unless the parties agree to some other date as the date of delivery, the transmitting party shall be deemed to have delivered this Agreement on the date it transmitted such counterpart by facsimile (fax) or by electronic transmission of a pdf or such later date as the transmitting party specifies in a written notice to the other parties given with or prior to the transmission of its executed counterpart. Furthermore:

- (a) any Party transmitting an executed counterpart of this Agreement or such other document by facsimile (fax) or electronic transmission of a pdf shall promptly thereafter deliver to the other Parties a counterpart bearing its original signature (but any failure or delay in so doing, shall not derogate in any way from the sufficiency or effectiveness of that Party having transmitted its executed counterpart by facsimile (fax) or electronic transmission of a pdf); and
- (b) the signature of an individual executing this Agreement (or any notice, certificate or other document contemplated by this Agreement) on behalf of a Party, if sent and received by electronic transmission of a pdf or facsimile (fax) transmission, will be deemed to be genuine in the absence of evidence to the contrary and thus effective in the hands of the recipient, and binding upon the individual whose signature it reproduces and upon the party on whose behalf that individual signed, for all purposes and with the same effect as if it were the original signature of that individual.

[signature pages follow]

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the day and year first above written:

CITY OF EDMONTON

Legally Reviewed and Approved
as to Form:

Law Branch - <*>

Approved as to Content:

LRT Expansion and Renewal - <*>

Per: _____
Name:
Title:

[PROJECT CO]

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

[OPERATOR]

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

[LRV SUPPLIER]

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

APPENDIX 1
IA DISPUTE RESOLUTION PROCEDURE

ARTICLE 1
GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Appendix have the definitions as set out in the Interface Agreement to which this Appendix is attached, unless expressed otherwise.

1.2 Section References

Unless otherwise provided, references to Section numbers are references to Sections in this Appendix.

1.3 Definitions

In this Appendix, the following expressions have the following meanings:

“IA Dispute Notice” means a notice from one Party to the other Parties providing details of an IA Dispute and invoking the IA Dispute Resolution Procedure in respect of that IA Dispute;

“Initiating Party” has the meaning given in Section 2.4;

“Referee” means the person appointed pursuant to Section 2.3 and performing the functions in respect to an IA Dispute, which person shall be independent, qualified and experienced in the subject matter of the IA Dispute;

“Responding Party” has the meaning given in Section 2.4; and

“Settlement Meeting” has the meaning given in Section 2.2.

ARTICLE 2
DISPUTES

2.1 IA Dispute Resolution

Any IA Dispute under the Agreement will be resolved in accordance with the IA Dispute Resolution Procedure set out in this Appendix, which procedure shall be followed in the order set out below unless all Parties agree otherwise in writing:

- (a) unless expressly provided otherwise in this Appendix, the IA Dispute Resolution Procedure shall be started by delivery of an IA Dispute Notice by one Party to the other Parties;
- (b) the Parties shall attempt to resolve the IA Dispute by a Settlement Meeting under Section 2.2;
- (c) if the Settlement Meeting does not result in resolution of the IA Dispute, the Parties shall engage, and obtain the decision of a Referee under Section 2.3; and
- (d) if the IA Dispute is not resolved through the Referee, either Party may refer the IA Dispute to arbitration.

Except as contemplated by this IA Dispute Resolution Procedure, no Party shall have the right to refer any IA Dispute for resolution by any other dispute resolution process.

2.2 Settlement Meeting

In the event of an IA Dispute which is not resolved in the normal course of business, a Party may deliver an IA Dispute Notice to the other relevant Parties. Within ten (10) Business Days from the delivery of the IA Dispute Notice, the Executive Panel, in accordance with Section 4.3 [*Composition and Operating Procedures of the Interface Committee*] of this Agreement shall meet at a mutually acceptable time and place to attempt to resolve the IA Dispute (a “**Settlement Meeting**”). The Parties through the Executive Panel shall make all reasonable efforts to resolve the IA Dispute and any Party may request that the Executive Panel engage a mediator to assist in connection therewith. If the IA Dispute is not resolved through the Settlement Meeting within 15 days from delivery of the IA Dispute Notice or any longer period mutually agreed by the Parties, then the IA Dispute may be referred by any party to the IA Dispute to a Referee in accordance with Section 2.3.

2.3 Referee Review Process

The Parties shall appoint a Referee to resolve any IA Disputes under this Agreement. Subject to completion of the process set out in Section 2.2, any Party can appoint the Referee and the appointment of the Referee will be deemed to be a joint appointment and will be irrevocable by each Party without the consent of the others. The appointment of the Referee will continue until the end of the term of the Agreement unless otherwise agreed to by the Parties. If the Referee resigns or dies or the Parties’ agreement with the Referee expires or is terminated before the end of the term of the Agreement, the Parties shall immediately appoint a replacement.

The fees and expenses of the Referee shall be set by the terms of the agreement between the Parties and the Referee. The Referee’s fees, disbursements and other costs, as agreed between the Parties and the Referee, shall be shared equally by the relevant Parties. Each Party shall bear its own costs and expenses in preparing submissions for and attending meetings with the Referee.

Before proceeding to arbitration of the IA Dispute, the Parties shall obtain a decision on the IA Dispute from the Referee. The Referee’s review will not be required if the Parties agree to waive the Referee’s review. The Referee shall participate in the IA Dispute as follows:

- (a) the Referee shall conduct a review of the IA Dispute in the manner the Referee decides is most suitable, including on-site inspections and discussions with any persons; provided, however, that each Party to the IA Dispute shall be entitled to provide a written submission to the Referee and a written response to each submission made by each other Party to the IA Dispute. The Parties shall comply with all reasonable requests from the Referee for additional information and documents which the Referee considers necessary for the review. Any information given to the Referee by a Party will be given to the other Parties. All information disclosed in accordance with this section shall be “Confidential Information” for purposes of the Agreement;
- (b) the Referee may, with the written approval of the Parties, retain others to assist with the review;
- (c) the Referee shall deliver to the Parties a brief written decision on the IA Dispute within ten (10) Business Days of referral to the Referee or such longer period as agreed to in writing by both Parties;
- (d) a decision of a Referee is not binding on the Parties, and a Referee’s review shall be sought only for the purpose of assisting the Parties to reach agreement with respect to the IA Dispute;
- (e) a Referee who has rendered a decision on an IA Dispute may not be retained by any Party and may not be called by any Party to give evidence with respect to the IA Dispute in any

subsequent arbitration or court proceeding to resolve the IA Dispute, nor shall any Party refer to or enter into evidence the decision of the Referee in such proceeding, unless required by applicable law or by a court of competent jurisdiction; and

- (f) the Parties shall agree to indemnify and save harmless the Referee from any liability arising from a review undertaken by the Referee.

2.4 Arbitration

If the IA Dispute is not completely resolved by agreement between the Parties within ten (10) Business Days after receipt of the Referee's decision, then any Party may refer the IA Dispute to arbitration. An IA Dispute referred to arbitration shall be decided by a single arbitrator. Arbitration proceedings shall be commenced by the Party desiring arbitration (the "**Initiating Party**") giving notice to the other Parties entitled to participate in the arbitration proceedings (the "**Responding Party**") specifying the matter to be arbitrated. The Parties shall agree on the arbitrator within ten (10) Business Days of the delivery of the Initiating Party's notice, failing which the Parties shall apply to the ADR Institute of Alberta ("**ADRIA**") for an arbitrator to be promptly appointed under the "National Arbitration Rules" of the ADR Institute of Canada ("**ADRIC**"). If none of the Parties applies to ADRIA as aforesaid for the appointment of an arbitrator on or before the fifth day following the delivery of the aforesaid notice from the Initiating Party, the referral of the IA Dispute to arbitration shall be deemed to have been withdrawn.

The arbitrator will have the authority to award any remedy or relief that a judge of a court of competent jurisdiction within the Province of Alberta could order or grant in accordance with the Agreement. The "National Arbitration Rules" of ADRIC will apply to the arbitration, as same may be modified by this Appendix 1.

Meetings and hearings of the arbitrator will take place in the City of Edmonton. Subject to the foregoing, the arbitrator may fix the date, time and place of meetings and hearings in the arbitration and shall give all Parties adequate notice of same. Subject to any adjournments which the arbitrator allows, the final hearing shall be continued on successive Business Days until it is concluded. All meetings and hearings shall be in private unless the Parties agree otherwise and both Parties are entitled to be represented at any meetings or hearings by legal counsel. Either Party may examine and re-examine all its own witnesses at the arbitration and may cross-examine any or all of the other Parties' witnesses.

The arbitration shall be kept confidential and the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) shall not be disclosed beyond the arbitrator, the Parties, their counsel and any person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

The arbitrator shall make and send a decision in writing not later than fifteen (15) Business Days after the conclusion of the hearing and, unless the Parties agree otherwise, shall set out reasons for the decision. Each Party shall pay its proportionate share 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 unless the Parties have previously agreed on the basis for the apportionment of costs.

The decision of the arbitrator shall be final and binding on the Parties and shall not be subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and each of the Parties expressly waives all rights of appeal in connection with the Arbitrator's decision.

**ARTICLE 3
STRICT COMPLIANCE WITH TIME LIMITS**

The Parties agree that timely resolution of any IA Dispute is mutually beneficial and, in order to achieve timely resolution, the time limits as set out in this Appendix shall be strictly enforced.

**ARTICLE 4
PERFORMANCE OF OBLIGATIONS**

Notwithstanding the existence of any IA Dispute, the Parties shall, to the extent not precluded by the matter in IA Dispute, continue with the Project and the performance of their respective obligations under the Agreement and their respective Contracts without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Agreement.

APPENDIX 2
PROJECT AGREEMENT

APPENDIX 3
SERVICES CONTRACT

APPENDIX 4
LRV CONTRACT

**APPENDIX 5
INDEPENDENT PERFORMANCE DEMONSTRATION CERTIFIER AGREEMENT**

THIS AGREEMENT is made as of the <*> day of <*>, 202<*>

AMONG:

THE CITY OF EDMONTON

("City")

AND:

[XX], a [XX], existing under the laws of the Province of [XX] ("Project Co")

AND:

[XX], a [XX], existing under the laws of [XX] ("Operator")

AND:

[XX], a [XX], existing under the laws of [XX] ("LRV Supplier")

AND:

<*>

(the "Independent Performance Demonstration Certifier" or "IPDC")

WHEREAS:

- A. the City, Project Co, LRV Supplier and Operator have entered into the Interface Agreement;
- B. the City, Project Co, LRV Supplier and Operator wish to appoint the IPDC, and the IPDC wishes to accept such appointment, to perform certain services in connection with the Interface Agreement; and
- C. the City, Project Co, LRV Supplier, Operator and the IPDC wish to enter into this Agreement in order to record the terms by which the IPDC will perform such services.

NOW THEREFORE in consideration of the mutual promises and agreements of the City, Project Co, LRV Supplier, Operator and the IPDC herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City, Project Co, LRV Supplier and Operator and the IPDC covenant and agree as follows:

1 DEFINITIONS

1.1 Definitions

In this Agreement including the recitals and Schedules, unless the context indicates a contrary intention, terms which are defined in the Interface Agreement (and not otherwise defined in this Agreement) will have the meanings given to them in the Interface Agreement and the following terms will have the following meanings:

"Affected IA Party" has the meaning given in Section 3.5(b) of this Agreement.

“Agreement” means this Independent Performance Demonstration Certifier Agreement entered into by the City, Project Co, Operator, LRV Supplier and the IPDC including all schedules, appendices and attachments thereto, as amended, supplemented or restated from time to time.

“Auditor” has the meaning given in Section 7.4(c) of this Agreement.

“Change in Control” has the meaning ascribed thereto in the Project Agreement.

“Chargeable Failures” has the meaning ascribed thereto in the Project Agreement.

“Failures” means failure of the Infrastructure or LRVs to comply with the Project Requirements, LRV Requirements and/or Performance Demonstration requirements, including Chargeable Failures, Non-Chargeable failures, Service Affecting Failures and Non-Service Affecting Failures.

“Fee” means the fees payable by the IA Parties to the IPDC for the Functions, as such fees are specified and made payable in Appendix <*> [Fee] of this Agreement.

“FOIP Act” has the meaning given in Section 11.5(a) of this Agreement.

“Functions” means:

- (a) all of the responsibilities and obligations conferred on the IPDC under this Agreement, including the functions described in Schedule 1 [Functions] of this Agreement; and
- (b) all other things or tasks which the IPDC is required to do to comply with its obligations under this Agreement.

“Functions Change” means any change to the Functions;

“Functions Change Order” has the meaning given in Section 8.3(c) of this Agreement.

“Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyrights, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names;

“Infrastructure Performance Demonstration” means performance demonstration of the Infrastructure pursuant to and in accordance with the Project Agreement;

“Interface Agreement” means the Agreement titled “Interface Agreement” and made between the IA Parties as of the <*> day of <*>, 202<*> with respect to the coordination, cooperation and interface by and among the IA Parties in relation to certain matters, including Performance Demonstration;

“IA Parties” means the City, Project Co, LRV Supplier and Operator, collectively, and **“IA Party”** means any one of them individually;

“IA Party Persons” means any one or more of a City Person, LRV Person and Project Co Person;

“LRV Performance Demonstration” means performance demonstration of the LRVs pursuant to and in accordance with the LRV Contract;

“LRV Contract” means that certain agreement titled “LRV Contract” and made between the City and LRV Supplier as of <*> day of <*>, 202<*> with respect to the design, manufacturing, supply and commissioning of light rail vehicles for VLW LRT.

“Non-Chargeable Failures” has the meaning ascribed thereto in the Project Agreement.

“Non-Service Affecting Failures” has the meaning ascribed thereto in the Project Agreement.

“Performance Demonstration” means Infrastructure Performance Demonstration and LRV Performance Demonstration, collectively;

“Performance Demonstration Completion Certificate” means the certificate issued by the IPDC:

- (a) to Project Co to certify successful completion of Infrastructure Performance Demonstration pursuant to the Project Agreement; or
- (b) to LRV Supplier to certify successful completion of LRV Performance Demonstration pursuant to the LRV Contract.

“Performance Demonstration Material” means all material:

- (a) provided to the IPDC that is created by or required to be created by any IA Party, whether pursuant to this Interface Agreement, this Agreement or its Relevant Contract; and
- (b) provided by or created by or required to be created by the IPDC as part of or for the purpose of performing the Functions,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

“Project Agreement” means that certain agreement entitled “Project Agreement” and made between the City and Project Co as of the 22nd day of December, 2020 with respect to: (i) the design, construction, financing, testing and commissioning of the Infrastructure; and (ii) other ancillary work and services, as the same may be amended, supplemented or replaced from time to time;

“Relevant Contract” means:

- (a) as it relates to Project Co, the Project Agreement;
- (b) as it relates to LRV Supplier, the LRV Contract; and
- (c) as it relates to Operator, the Services Contract.

“Service Affecting Failures” has the meaning ascribed thereto in the Project Agreement.

“Services Contract” means that certain agreement titled “Services Contract” and made between the City and the Operator as of <*> day of <*>, 202<*> with respect to the operations, maintenance and rehabilitation of the VLW LRT.

“Substitute” has the meaning ascribed to such term in Section 3.10(c)(iii) of this Agreement.

“VLW LRT” comprises the Project Work, the LRV Services and the OM&R Services collectively.

2 INTERPRETATION

2.1 Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the

construction or interpretation of this Agreement. The word “**including**” will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to “**Section**” and “**Schedule**” is to a Section of, and a Schedule to this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words imparting the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Edmonton, Alberta;
- (e) all references to amounts of money mean lawful currency of Canada; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with Canadian GAAP consistently applied.

2.2 Obligations and Exercise of Rights by the IA Parties

The obligations of the IA Parties under this Agreement will be several. Except as specifically provided for in this Agreement, the rights of the IA Parties under this Agreement will be jointly exercised by each of the IA Parties.

3 ROLE OF THE INDEPENDENT PERFORMANCE DEMONSTRATION CERTIFIER

3.1 Engagement

The IA Parties hereby appoint the IPDC, and the IPDC hereby accepts such appointment, to carry out the Functions in accordance with this Agreement. The IPDC shall perform the Functions in accordance with this Agreement.

3.2 Acknowledgement by IPDC

The IPDC hereby acknowledges in favour of the IA Parties that it has received a copy of each of the Interface Agreement, the Project Agreement, the LRV Contract and the Services Contract.

3.3 Standard of Care

The IPDC shall exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the VLW LRT.

3.4 Duty of Independent Judgment

In exercising the Functions, the IPDC shall act:

- (a) impartially, honestly and independently;
- (b) reasonably and professionally;
- (c) in accordance with Good Industry Practice;

- (d) in a timely manner;
 - (i) in accordance with the times prescribed in this Agreement or the Interface Agreement, as applicable; and
 - (ii) where no times are prescribed, within five (5) Business Days or such earlier time so as to enable the IA Parties to perform their respective obligations under the Interface Agreement.

Although the IPDC should take account of any opinions or representations made by the IA Parties, the IPDC shall not be bound to comply with any opinions or representations made by any of them in connection with any matter on which the IPDC is required to exercise its professional judgment.

3.5 Decisions Binding

The IA Parties acknowledge that:

- (a) The IPDC's decisions will be final and binding on the IA Parties in respect of the determination of responsibility for Failures of the Infrastructure or LRVs, as the case may be, whether in relation to Project Co or LRV Supplier, and for certainty, but without limitation, including:
 - (i) determinations in respect of the matters set out in Section 3.4 of Schedule 7 [*Performance Demonstration Requirements*] to the Project Agreement; and
 - (ii) **[NTD: To be completed in a corresponding manner in relation to the LRV Contract, when available].**
- (b) Notwithstanding Section 3.5(a) above, a determination by the IPDC not to certify completion of Performance Demonstration and or/failure to issue a Performance Demonstration Completion Certificate may be disputed by the IA Party affected by such determination (an "**Affected IA Party**") without requiring the consent or involvement of the other IA Parties and, for certainty, any such dispute shall be subject to and resolved pursuant to the Affected IA Party's Relevant Contract.

3.6 Authority to Act

The IPDC:

- (a) is an independent consultant and is not, and shall not purport to be, a partner, joint venturer or agent of any IA Party;
- (b) other than as may be expressly set out in the Interface Agreement, has no authority to give any directions to an IA Party or its officers, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Interface Agreement, nor to discharge or release an IA Party from any of its obligations under the Interface Agreement unless jointly agreed in writing by the IA Parties.

3.7 Knowledge of the IA Parties' Requirements

The IPDC represents, warrants and covenants that:

- (a) it has and shall be deemed to have informed itself fully of the requirements of the Interface Agreement;
- (b) it shall inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (c) without limiting Sections 3.7(a) or 3.7(b), it has and shall be deemed to have informed itself fully of all time limits and other requirements for any Function which the IPDC carries out under the Interface Agreement and this Agreement;
- (d) it has and shall be deemed to have informed itself fully of the nature of the work necessary for the performance of the Functions and the locations of, means of access to, and facilities available for, performance of the Functions, including restrictions on any such access or protocols that are required; and
- (e) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.8 Coordination by IPDC

The IPDC shall:

- (a) fully cooperate with the IA Parties;
- (b) carefully coordinate the Functions with the work and services performed by the IA Parties;
- (c) without limiting its obligations under Sections 3.4 [*Duty of Independent Judgment*] and 3.8(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the IA Parties;
- (d) provide copies to all IA Parties of all reports, communications, certificates and other documentation that it provides to any IA Party; and
- (e) without limiting Section 3.8(d), provide copies of any inspection and meeting notices:
 - (i) received by the IPDC, to the IA Parties forthwith upon receipt thereof; or
 - (ii) issued by the IPDC, simultaneously to all IA Parties,

so as to enable the IA Parties a reasonable opportunity to attend such inspections or meetings involving the IPDC.

3.9 Conflict of Interest

The IPDC warrants that:

- (a) at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement; and
- (b) if, during the term of this Agreement, any such conflict of interest or risk of conflict of interest arises, the IPDC shall notify the IA Parties immediately in writing of that conflict of interest or risk of conflict of interest and take such steps as may be required by each of the IA Parties to avoid or mitigate that conflict of interest or risk.

The IPDC covenants not to enter into any agreement or relationship which could reasonably be expected to result in a conflict of interest in the performance of its obligations under this Agreement.

3.10 IPDC Personnel

- (a) Subject to Sections 3.10(b) and 3.10(c), the IPDC shall use the partners, directors or employees described in Appendix <*> [IPDC Personnel] of this Agreement in connection with the performance of the Functions and such persons' services will be available for so long as may be necessary to ensure the proper performance by the IPDC of the Functions. Such persons shall have full authority to act on behalf of the IPDC for all purposes in connection with this Agreement.
- (b) None of the persons listed in Appendix <*> [IPDC Personnel] shall be removed or replaced unless he/she ceases to work as a partner in, or director or employee of, the IPDC or he/she is unable to work because of death or illness. The IPDC will promptly notify the IA Parties of any such circumstances and shall be responsible for finding a replacement who shall previously have been approved in writing by the IA Parties.
- (c) Where the IPDC considers that the partners, directors or employees described in Appendix <*> [IPDC Personnel] of this Agreement do not possess all of the experience or expertise necessary for the proper performance of the Functions, the IPDC shall provide prompt written notice to the IA Parties detailing:
 - (i) the specific Functions for which the partners, directors or employees described in Appendix <*> [IPDC Personnel] of this Agreement do not possess the necessary experience or expertise;
 - (ii) the specific experience or expertise required for the proper performance of the applicable Functions; and
 - (iii) the persons or firms proposed to be retained by the IPDC (each a "Substitute"), including details of their relevant expertise and experience, the terms of their proposed engagement and the Substitute's proposed compensation terms, if the Substitute is not a partner, director or employee of the IPDC.
- (d) The IPDC shall not engage the services of a Substitute without first obtaining the written approval of the IA Parties, such approval not to be unreasonably withheld. The IPDC agrees that:
 - (i) the terms of this Agreement shall in all events be binding upon the IPDC regardless of the existence of any inconsistent or contrary terms in any agreement between the IPDC and any Substitute whether or not and without regard to the fact that the IA Parties may have directly or indirectly had notice of any such inconsistent term;

- (ii) the IPDC shall require each Substitute to comply with the terms and conditions of this Agreement to the extent applicable to the specific Functions performed by the Substitute; and
- (iii) the IPDC is responsible and liable for the Functions performed by, and for the acts and omissions of, each Substitute and its personnel to the same degree as if the Functions were performed by, or the acts or omissions were those of, the IPDC or its partners, directors or employees.

No agreement between the IPDC and a Substitute creates any contractual or other legal relationship between any of the IA Parties and the Substitute.

4 ROLE OF THE IA PARTIES

4.1 Assistance

Each of the IA Parties shall cooperate with and provide reasonable assistance to the IPDC to familiarize the IPDC with all necessary aspects of the Project to enable the IPDC to carry out its obligations under this Agreement.

4.2 Instructions in Writing

All instructions to the IPDC by the IA Parties shall be given by all IA Parties, in writing, which may be provided by counterpart signature.

4.3 Information and Services

Each of the IA Parties shall make available to the IPDC, as soon as practicable from time to time, all information, documents and particulars in its possession which are necessary for the IPDC to perform the Functions, including such information, documents and particulars required in order for the IPDC to:

- (a) determine the cause of Failures and allocate responsibility for such Failures to the Infrastructure or LRVs, as applicable; and
- (b) determine whether or not the criteria for a Performance Demonstration Completion Certificate have been achieved,

and shall provide copies of all such information, documents and particulars to the other IA Parties.

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the IPDC to perform the Functions and have not been provided by the IA Parties, as the case may be, then:

- (a) the IPDC shall give notice in writing to the relevant IA Party, as the case may be, of the details of the information, documents or particulars required, demonstrating the need and the reasons why they are required; and
- (b) the relevant IA Party, as the case may be, shall arrange for the required information, documents or particulars to be provided to the IPDC as soon as reasonably practicable.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to the IA Parties, the IPDC (and any person authorized by it) may enter the Gerry Wright OMF and/or the Lands and inspect the Infrastructure and the LRVs and the location of any

work in progress at any reasonable time in connection with the exercise or proposed exercise of rights or obligations under this Agreement, subject to:

- (a) observance of the reasonable rules of the IA Parties as to safety and security for the Lands, the Infrastructure and the LRVs;
- (b) not causing unreasonable delay to the carrying out of the Performance Demonstration by reason of its presence at Gerry Wright OMF-B, the Lands, the Infrastructure or the LRVs; and
- (c) not causing any damage to the Infrastructure or the LRVs.

4.6 IA Parties Not Relieved

No IA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Interface Agreement as a result of the appointment of, or any act or omission of, the IPDC.

4.7 PA Parties Not Liable

On no account shall an IA Party be liable to another IA Party for any act or omission of the IPDC whether under or purportedly under a provision of the Interface Agreement, this Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of any IA Party against or any obligation or liability of any IA Party to any other IA Party which would have existed regardless of such act or omission.

5 SUSPENSION

5.1 Notice

The Functions (or any part) may be suspended at any time by the IA Parties:

- (a) if the IPDC fails to comply with its obligations under this Agreement, immediately by the IA Parties giving joint notice in writing to the IPDC; or
- (b) in any other case, by the IA Parties giving seven days joint notice in writing to the IPDC.

5.2 Costs of Suspension

The IPDC shall have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under this Section 5.2 [*Costs of Suspension*].

5.3 Recommencement

The IPDC shall immediately recommence the carrying out of the Functions (or any part) on receipt of a joint written notice from the IA Parties requiring it to do so.

6 INSURANCE AND LIABILITY

6.1 IPDC's Insurance

- (a) The IPDC shall, at its cost, obtain and maintain:
 - (i) commercial general liability insurance covering the services and operations of the IPDC for bodily injury and/or property damage with policy limits of not less than

five million dollars (\$5,000,000.00) per occurrence and a deductible not more than \$5,000 per occurrence for property damage; and

- (ii) professional liability insurance with policy limits of not less than five million dollars (\$5,000,000) per claim and in the aggregate, a deductible not more than \$25,000 per claim and covering liability which the IPDC might incur as a result of breach by it of its obligations owed in a professional capacity to the IA Parties, or any of them, under or in connection with this Agreement or the provision of services or the performance of the Functions hereunder.

(b) The IPDC shall:

- (i) ensure that each of the insurance policies described in Section 6.1(a) is in a form and with insurers and on terms acceptable to each of the IA Parties;
- (ii) ensure that each of the insurance policies required to be taken out by the IPDC under Section 6.1(a):
 - (A) is obtained and maintained with reputable and qualified insurers licensed in Alberta; and
 - (B) contains an endorsement to the effect that the insurer will not effect any material adverse change or amendment to the policy or any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to each of the IA Parties;
- (iii) ensure that the commercial general liability insurance policy required under Section 6.1(a) contains a cross liability and severability of interest clause and may be primary and non-contributory with any similar insurance coverage (primary or excess) maintained by any of the IA Parties;
- (iv) be responsible for the payment of all premium and deductible amounts relating to the insurance policies;
- (v) maintain in force the commercial general liability insurance as required under Section 6.1(a) from the date of this Agreement until the expiry or termination of this Agreement;
- (vi) maintain in force the professional liability insurance required under Section 6.1(a) from the date of this Agreement until 36 months after the expiry or termination of this Agreement;
- (vii) endorse the commercial general liability insurance to include each of the IA Parties as additional insureds;
- (viii) endorse the commercial general liability insurance to include a waiver of subrogation in favor of the IA Parties;
- (ix) provide copies of each of the insurance policies described in Section 6.1(a) to each of the IA Parties upon request; and
- (x) provide evidence of renewal of each of the insurance policies described in Section 6.1(a) to each of the IA Parties not less than 30 days prior to the expiry dates of the policies. At the option of the IA Parties, evidence of insurance may be provided by an insurance certificate issued by the IPDC's insurance broker.

6.2 Workers' Compensation Insurance

The IPDC shall, at its own cost and at all times during the term of this Agreement, insure its liability (including its common law liability) as required under any applicable workers' compensation statute or regulation in relation to its employees engaged in the Functions.

7 PAYMENT FOR SERVICES

7.1 Fee

- (a) In consideration of the IPDC performing the Functions in accordance with this Agreement, the IA Parties shall pay the IPDC the Fee in accordance with the provisions of Section 7.2 *[Payment of Fee]*.
- (b) The Fee shall include all taxes (except for Goods and Services Tax), disbursements and expenses (including accommodation, car rental, equipment and travel expenses), overheads and profit to perform the Functions.

7.2 Payment of Fee

- (a) Until the earlier of (i) the Infrastructure Performance Demonstration Completion Date; and (ii) the Infrastructure Performance Demonstration Longstop Date, each of the IA Parties shall pay its share of the Fee to the IPDC in accordance with the payment process and schedule specified in Appendix <*> *[Fee]* and which shall be invoiced by the IPDC separately (as to each IA Party's share of the Fee) to each of the IA Parties.
- (b) Following the earlier of (i) the Infrastructure Performance Demonstration Completion Date; and (ii) the Infrastructure Performance Demonstration Longstop Date, Project Co shall cease to be obligated to pay any portion of the Fee to the IPDC and the remaining IA Parties shall each be liable for the Fee on a proportionate basis.
- (c) The obligation of the IA Parties to each pay its proportionate share of the Fee to the IPDC is several (not joint and several) and no IA Party shall have any liability whatsoever for the non-payment by any other IA Party of any fees or costs payable by such other IA Party under this Agreement.
- (d) Each of the IA Parties acknowledges and agrees that if any amount due and payable by an IA Party to the IPDC is outstanding, the IPDC shall not have any obligation to the IA Parties to make any certification under the Interface Agreement.

7.3 Non-Resident Withholding Tax

- (a) Before paying the IPDC, the IA Parties shall determine if a non-resident withholding tax is applicable. If required, the IA Parties shall withhold and remit the withholding tax to the relevant government authority. This remission is considered payment in accordance with this Section 7 *[Payment for Services]* of this Agreement and the amount of the withholding tax remitted will constitute a payment to the IPDC.

7.4 Audit Rights

- (a) The IA Parties, jointly or severally, may audit all Performance Demonstration Material, including all financial and related records associated with the Functions provided pursuant to this Agreement.

- (b) The IPDC shall at all times during the term of this Agreement and for a period of seven years following the termination of this Agreement pursuant to Section 9 *[Term and Termination]* keep and maintain in accordance with Canadian GAAP, all Performance Demonstration Material.
- (c) The IPDC shall at all reasonable times make Performance Demonstration Material available for inspection and review by an auditor appointed by one or more of the IA Parties (the “**Auditor**”), and shall provide such copies or extracts requested by the Auditor.
- (d) The Auditor may at all reasonable times without prior notice, initiate a financial or operational audit and the IPDC shall facilitate access to property and cooperate fully with the Auditor or any person performing duties for the Auditor.
- (e) The Auditor may in the Auditor’s discretion appoint experts, professionals and others including without limitation, quantity surveyors, accountants, engineers, scientists, lawyers, actuaries, tradesmen, appraisers or insurance personnel to provide services to the Auditor for any audit authorized by the terms of this Agreement.
- (f) The IPDC must expressly include the provisions of this Section 7.4 *[Audit Rights]* in any agreement entered into by the IPDC (including any agreement entered into with a Substitute) relating to its rights, duties or obligations under this Agreement.
- (g) Costs of any audits conducted under the authority of this Section 7.4 *[Audit Rights]* shall be borne by the IA Party or IA Parties that initiated the applicable audit.
- (h) Nothing in this Section shall be construed so as to restrict, limit, revoke, or abridge any other express or implied rights, powers, or obligations that any of the IA Parties may have in law or equity.

8 FUNCTIONS CHANGES

8.1 Notice of Functions Change

- (a) If the IPDC believes, other than a “**Functions Change Order**” under Section 8.3 *[Functions Change Procedure]*, that any direction of the IA Parties constitutes or involves a Functions Change it shall:
 - (i) within seven days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the IA Parties that it considers that the direction constitutes or involves a Functions Change;
 - (ii) within 21 days after giving the notice under Section 8.1(a)(i), submit a written claim to each of the IA Parties which includes detailed particulars of the claim, the amount of the claim and how it was calculated; and
 - (iii) the Functions Change procedure contemplated in Section 8.3 *[Functions Change Procedure]* shall be initiated by the IA Parties and the Fee shall be adjusted in accordance with Section 8.4 *[Cost of Functions Change]*.
- (b) Regardless of whether the IPDC considers that such a direction constitutes or involves a Functions Change, the IPDC shall continue to perform the Functions in accordance with this Agreement and all directions of the IA Parties, including any direction in respect of which notice has been given under this Section.

8.2 No Adjustment

If the IPDC fails to comply with Section 8.1 [*Notice of Functions Change*], the Fee shall not be adjusted as a result of the relevant direction.

8.3 Functions Change Procedure

- (a) The IA Parties may jointly issue a document titled “Functions Change Price Request” to the IPDC which will set out details of a proposed Functions Change which the IA Parties are considering.
- (b) Within seven days after the receipt of a “Functions Change Price Request”, the IPDC shall provide each of the IA Parties with a written notice in which the IPDC sets out the effect which the proposed Functions Change will have on the Fee.
- (c) Each of the IA Parties may then jointly direct the IPDC to carry out a Functions Change by written document titled “Functions Change Order” which will state either that:
 - (i) the Fee is adjusted as set out in the IPDC’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 8.4 [*Cost of Functions Change*].

8.4 Cost of Functions Change

- (a) Subject to Section 8.2 [*No Adjustment*], the Fee shall be adjusted for all Functions Changes carried out by the IPDC by:
 - (i) the amount (if any) stated in the “Functions Change Order” in accordance with Section 8.3(c);
 - (ii) if Section 8.4(a)(i) is not applicable, an amount determined pursuant to the fee schedule for Functions Changes in Appendix <*> [*Fee*]; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the IA Parties and the IPDC or, failing agreement, determined by the IA Parties jointly, acting reasonably.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

9 TERM AND TERMINATION

9.1 Term

Subject to earlier termination, this Agreement shall commence on the date of this Agreement and continue in full force until the earlier of: (a) the date on which all of the Functions have been performed in full by the IPDC; and (b) such other date, if any, on which termination of this Agreement takes effect in accordance with its terms (the “**Term**”).

9.2 Notice of Breach

If the IPDC commits a breach of this Agreement, the IA Parties may, acting jointly, give written notice to the IPDC:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice, being a period not less than seven days from the date of service of the notice.

9.3 Termination for Breach

If the IPDC fails to rectify the breach within the period specified in the notice issued under Section 9.2 [*Notice of Breach*], the IA Parties may, without prejudice to any other rights of the IA Parties or any of them, jointly terminate this Agreement immediately.

9.4 Termination for Financial Difficulty

The IA Parties may, without prejudice to any other rights of the IA Parties or any of them, jointly terminate this Agreement immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the IA Parties, may result in or have resulted in the insolvency of the IPDC or the control of the IPDC passing to another Person; or
- (b) the IPDC has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

9.5 Termination for Convenience

Notwithstanding anything to the contrary in this Agreement, the IA Parties may at any time jointly terminate this Agreement upon 30 days' prior written notice to the IPDC.

9.6 IPDC's Rights upon Termination for Convenience

Upon a termination under Section 9.5 [*Termination for Convenience*], the IPDC shall:

- (a) be entitled to be reimbursed by the IA Parties for the value of the Functions performed by it to the date of termination; and
- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (i) the lost opportunity to earn a profit in respect of the Functions not performed from and after the date of termination; and
 - (ii) any lost opportunity to recover overheads from the turnover which would have been generated under this Agreement but for it being terminated.

9.7 Procedure upon Termination

Upon completion of the IPDC's engagement under this Agreement or earlier termination of this Agreement (whether under Sections 9.3, 9.4 or 9.5 of this Agreement or otherwise) the IPDC shall:

- (a) cooperate with the IA Parties;
- (b) deliver to the IA Parties all Performance Demonstration Material and all other information concerning the VLW LRT held or prepared by the IPDC; and
- (c) as and when required by the IA Parties, meet with them and with such other Persons nominated by them with a view to providing them with sufficient information to enable the IA Parties to perform their obligations in respect of Performance Demonstration.

9.8 Effect of Termination

Except as otherwise expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of IA Parties to recover damages from the IPDC).

9.9 Survival

Termination of this Agreement will not affect the continuing rights and obligations of the IA Parties and the IPDC under Sections 6, 9.6, 9.7, 9.8, 11.5, 11.9, 11.10 of this Agreement and this Section 9.9 *[Survival]* or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10 INDEMNITY

10.1 Indemnity

The IPDC shall indemnify and save harmless the IA Parties, and each of them, and their respective employees, agents, officers and directors from and against any and all losses incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach by the IPDC, its employees, agents, officers or directors or any Person for whom it is responsible at law of any representation, warranty, covenant, term, duty or obligation of the IPDC set out in or arising under this Agreement or the Interface Agreement; or
- (b) any act or omission of the IPDC, its employees, agents, officers or directors or any Person for whom it is responsible at law in connection with the subject matter of this Agreement.

11 GENERAL

11.1 Entire Agreement

This Agreement and the Interface Agreement constitute the entire agreement between the IA Parties and the IPDC and supersede all communications, arrangements and agreements, either oral or written, made or entered into prior to the date of this Agreement between the IA Parties and the IPDC with respect to the subject matter of this Agreement.

11.2 Negation of Employment

- (a) The IPDC, its officers, employees, servants and agents and any other persons engaged by the IPDC in the performance of the Functions shall not by virtue of this Agreement or

the performance of the Functions become or be deemed to be in the service or employment of the IA Parties (or any IA Party) for any purpose.

- (b) The IPDC shall be responsible for all matters requisite as employer or otherwise in relation to its officers, employees, servants and agents and other persons who are engaged by the IPDC.

11.3 Compliance with Laws

- (a) The IPDC shall comply with all relevant federal, provincial and municipal legislation, codes, bylaws, regulations and orders applicable to the Functions. Where there are two or more laws, bylaws, regulations or codes applicable to the Functions, the more restrictive of those shall apply and shall be complied with by the IPDC.
- (b) If the IPDC performs any Functions contrary to any applicable laws, bylaws, regulations, codes or orders of any authority having jurisdiction, the IPDC shall be responsible for and shall correct any breaches or violations thereof and shall bear all resulting costs, expenses, penalties and damages. If either, or both, of the IA Parties is required to do anything or take any steps or pay any sums to rectify such noncompliance, the IA Parties, or the applicable IA Party(ies), may set off the cost of any such rectifications from any amounts owed to the IPDC. Such action shall not be deemed to be a waiver of any action that the IA Parties may pursue to collect any rectification amounts paid that exceed amounts owed to the IPDC.

11.4 Waiver

Failure by any IA Party or the IPDC to enforce a provision of this Agreement shall not be construed as a waiver by that IA Party or the IPDC of any right in respect of that provision or any other provision of this Agreement.

11.5 Freedom of Information and Protection of Privacy

- (a) The IPDC acknowledges and agrees that for the purposes of the Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25 (“**FOIP Act**”), the City’s employees include any person who performs a service for the City including an appointee, volunteer, student, or under a contract or agency relationship with the City, and the IPDC is therefore, pursuant to the FOIP Act, deemed to be a City employee for the purposes of the FOIP Act. The IPDC acknowledges and agrees that the FOIP Act applies to all information and records within the IPDC’s custody or control that are collected or created for the purposes of this Agreement.
- (b) After receipt of a FOIP request under the FOIP Act, the IPDC shall provide to each of the IA Parties any Performance Demonstration Material within seven calendar days of notification by the City of such request.




11.6 Notices

Any document which is to be or may be issued or given to or served upon any of the IA Parties or the IPDC under this Agreement will be deemed to have been sufficiently issued or given to or served if it is:




- (a) delivered or sent by commercial courier, upon receipt; or
- (b) sent by e-mail or fax, upon confirmation of a successful transmission by a transmission report received by the sender,

to the addresses set out below:

(c) if to the City:

LRT Expansion and Renewal, Integrated Infrastructure Services
City of Edmonton
MNP Tower 10235 - 101 Street
Edmonton, Alberta T5J 3G1
Attention: 
Fax: 
Email: 

With a copy to:

Law Branch, Office of the City Manager, City of Edmonton
9th Floor, Chancery Hall, #3 Sir Winston Churchill Square
Edmonton, Alberta T5J 2C3
Attention: 
Fax: 
Email: 

(d) if to Project Co:



With a copy to:



(e) if to Operator:



With a copy to:



(f) if to LRV Supplier:



With a copy to:



(g) if to the IPDC:



Any party may change its address for notice by notice given to the other parties in accordance with this Section.

11.7 Transfer and Assignment

- (a) The IPDC:
 - (i) shall not assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of the IA Parties, which each IA Party may give or withhold in its absolute discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the IPDC from any obligation or liability under this Agreement.
- (b) For the purposes of this Section, an assignment shall be deemed to have occurred where there is a Change in Control of the IPDC after the date of this Agreement.
- (c) Each of the IA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement in accordance with the terms of the Interface Agreement.

11.8 Governing Laws and Attornment

This 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 without regard to conflicts of law principles that would apply a different body of law, and each of the IA Parties and the IPDC hereby irrevocably submits and attorns to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this Agreement.

11.9 Confidentiality

- (a) The IPDC shall ensure that:
 - (i) neither it nor any of its officers, directors, employees, servants, Substitutes or agents discloses, or otherwise makes public, any Performance Demonstration Material or any other information or material acquired in connection with or during the performance of the Functions without the prior written approval of the IA Parties; and
 - (ii) no Performance Demonstration Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Agreement.
- (b) The IA Parties may at any time require the IPDC to give and to arrange for its officers, directors, employees, servants, Substitutes and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the IA Parties, relating to the non-disclosure of confidential information, in which case the IPDC shall promptly arrange for such agreements to be executed and delivered.

11.10 Performance Demonstration Material

- (a) The IA Parties and the IPDC agree that the IPDC does not and shall not have any rights, including any Intellectual Property, in any Performance Demonstration Material provided to the IPDC or created or required to be created by any IA Party.
- (b) All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the IPDC as part of, or for the purposes of performing

the Functions, is hereby assigned jointly to the IA Parties on creation. In addition, to the extent that copyright may subsist in such Performance Demonstration Material so created by the IPDC, the IPDC hereby waives all past, present and future moral rights therein and the IPDC shall ensure that any agent, Substitute or employee of the IPDC shall have waived all such moral rights.

- (c) The IPDC shall do all such things and execute all such documents as reasonably requested by any of the IA Parties in order to confirm or perfect the assignment of Intellectual Property in the Performance Demonstration Material referred to in Section 11.10(b).

11.11 Time of the Essence

Time is of the essence of this Agreement and of the transactions contemplated by this Agreement.

11.12 Amendment

No change or modification of this Agreement shall be valid unless it is in writing and signed by each party to this Agreement.

11.13 Severability

If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

11.14 Enurement

Subject to the restrictions on transfer contained in this Agreement, this Agreement shall enure to the benefit of and be binding on the parties and their respective successors and assigns.

11.15 Counterparts

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by electronic transmission of a pdf copy shall constitute good delivery.

11.16 Choice of Language

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.

[signature pages follow]

IN WITNESS WHEREOF the City, Project Co, Operator, LRV Supplier and the IPDC have executed this Agreement.

Legally Reviewed and Approved
as to Form:

Law Branch - <*>

Approved as to Content:

LRT Expansion and Renewal - <*>

CITY OF EDMONTON

Per: _____
Name:
Title:

[PROJECT CO]

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

[OPERATOR]

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

[LRV SUPPLIER]

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

**[INDEPENDENT PERFORMANCE
DEMONSTRATION CERTIFIER]**

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

APPENDIX 5A FUNCTIONS

The IPDC shall, subject to the provisions of the Interface Agreement, provide the services as set out below. In the event of a conflict between any provision of this Agreement, including this Appendix 5A and a provision of the Interface Agreement, the Interface Agreement shall prevail.

1. General

1.1 The IPDC shall do everything expressed in, or reasonably to be implied from, the Interface Agreement, the Project Agreement and the LRV Contract as the functions of the IPDC.

1.2 Without limiting the other provisions of this Agreement and the Interface Agreement, and without prejudice to the generality of Section 1 [*General*] of this Appendix, in order for the IPDC to perform in accordance with the standards required of the IPDC under this Agreement, the IPDC shall, amongst other things, provide the following services and perform the following functions:

(a) throughout the term of the Agreement, the IPDC shall:

- (i) consult with any IA Party Persons;
- (ii) conduct inspections of the Infrastructure;
- (iii) attend at and observe Project Co Commissioning and LRV Supplier commissioning activities; and
- (iv) conduct inspections of the LRVs,

as the IPDC determines is required for purposes of the performance of the IPDC's functions under the Interface Agreement;

(b) the IPDC's Representative shall chair the Performance Demonstration Committee throughout the term of this Agreement and shall be responsible to keep minutes of all recommendations, action items and meetings of the Performance Demonstration Committee and circulate such minutes to each of the members of the Performance Demonstration Committee within five (5) Business Days of the holding of the meeting, including all relevant recommendations or the action items;

(c) assign the underlying root causes of Failures to the appropriate IA Party based on the information provided by IA Parties involved in Performance Demonstration; and

(d) act as an arbiter when disputes arise in identifying the underlying root causes of Failures.

2. Completion of Infrastructure Performance Demonstration

2.1 Review by the IPDC

Upon delivery by Project Co to the IPDC of:

- (a) an application for a Certificate of Infrastructure Performance Demonstration Completion pursuant to Section 4.2 [*Application for Certificate of Infrastructure Performance Demonstration Completion*] of Schedule 7 [*Performance Demonstration Requirements*] to the Project Agreement; and

- (b) all relevant supporting documentation in accordance with Schedule 7 [Performance Demonstration Requirements] to confirm that all conditions precedent as described in Section 4.1 [Conditions Precedent to Completion of Infrastructure Performance Demonstration] of Schedule 7 [Performance Demonstration Requirements] to the Project Agreement have been satisfied,

the IPDC shall review all such supporting documentation to determine whether all conditions precedent as described in Section 4.1 [Conditions Precedent to Completion of Infrastructure Performance Demonstration] of Schedule 7 [Performance Demonstration Requirements] to the Project Agreement have been satisfied.

2.2 Certification of Infrastructure Performance Demonstration Completion

No longer than ten (10) Business Days after the submission of the documents pursuant to Section 4.3 [Review by the IPDC] of Schedule 7 [Performance Demonstration Requirements] to the Project Agreement, the IPDC shall either:

- (a) issue the Certificate of Infrastructure Performance Demonstration Completion, (the “**Certificate of Infrastructure Performance Demonstration Completion**”), stating the date, to Project Co; or
- (b) notify Project Co of its decision not to issue the Certificate of Infrastructure Performance Demonstration Completion and state the reasons in detail for such decision.

Any dispute in connection with or arising out of failure of the IPDC to issue the Certificate of Infrastructure Performance Demonstration Completion shall, unless otherwise agreed in writing by the Parties, be resolved in accordance with Schedule 20 [Dispute Resolution Procedure] to the Project Agreement.

2.3 Completion of Further Measures for Infrastructure Performance Demonstration Completion

In the event the IPDC delivers a notice under Section 4.4 of Schedule 7 [Performance Demonstration Requirements] to the Project Agreement, subject to Section 3.2(a) of Schedule 7 [Performance Demonstration Requirements] to the Project Agreement, Project Co may at any time thereafter submit such additional documentation as necessary or appropriate to remove the cause of the IPDC’s refusal to issue the Certificate of Infrastructure Performance Demonstration Completion. Upon submission of such additional documentation, the IPDC shall review such documentation and the provisions of Section 4.4 [Certification of Infrastructure Performance Demonstration Completion] and Section 4.5 [Completion of Further Measures for Infrastructure Performance Demonstration Completion] of Schedule 7 [Performance Demonstration Requirements] to the Project Agreement, inclusive, shall thereafter apply to additional documentation *mutatis mutandis*.

3 Completion of LRV Performance Demonstration

3.1 Review by the IPDC

Upon delivery by LRV Supplier to the IPDC of:

- (a) an application for a Certificate of LRV Performance Demonstration Completion pursuant to Section <*> of Schedule <*> to the LRV Contract; and
- (b) all relevant supporting documentation in accordance with the LRV Contract to confirm that all conditions precedent as described in the LRV Contract have been satisfied,

the IPDC shall review all such supporting documentation to determine whether all conditions precedent as described in the LRV Contract have been satisfied.

3.2 Certification of LRV Performance Demonstration Completion

No longer than ten (10) Business Days after the submission of the documents pursuant to the LRV Contract, the IPDC shall either:

- (a) issue the Certificate of LRV Performance Demonstration Completion, (the “**Certificate of LRV Performance Demonstration Completion**”), stating the date, to LRV Supplier; or
- (b) notify LRV Supplier of its decision not to issue the Certificate of LRV Performance Demonstration Completion and state the reasons in detail for such decision.

Any dispute in connection with or arising out of failure of the IPDC to issue the Certificate of LRV Performance Demonstration Completion shall, unless otherwise agreed in writing by the Parties, be resolved in accordance with Schedule <*> to the LRV Contract.

3.3 Completion of Further Measures for LRV Performance Demonstration Completion

In the event the IPDC delivers a notice under the LRV Contract, subject to the applicable provisions of the LRV Contract, LRV Supplier may at any time thereafter submit such additional documentation as necessary or appropriate to remove the cause of the IPDC’s refusal to issue the Certificate of LRV Performance Demonstration Completion. Upon submission of such additional documentation, the IPDC shall review such documentation and the relevant provisions of the LRV Contract, inclusive, shall thereafter apply to additional documentation *mutatis mutandis*.


**APPENDIX 5B
INDEPENDENT PERFORMANCE DEMONSTRATION CERTIFIER FEE**

[Note: To be developed having reference to the Independent Performance Demonstration Certifier's proposal.]

Total fixed fee and hourly rates shall be all-inclusive and, without any limitation, shall include all taxes (except for GST), overhead and profit, all labour and materials, insurance costs, travel, hospitality, incidental expenses, disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law.

The Independent Performance Demonstration Certifier shall not be reimbursed for any disbursements or any travel, hospitality or incidental expenses. For greater certainty, disbursements and any travel, hospitality and incidental expenses shall not appear on invoices to the IA Parties.

The Fee shall be paid monthly in arrears within 30 days of invoice submission, subject to the IA Parties' receipt of invoices describing the Functions performed for the relevant period, which invoices shall be in form and substance satisfactory to the IA Parties.

Fee = 

The total amount of the Fee invoiced at any time by the Independent Performance Demonstration Certifier shall be shared by the IA Parties on the following basis:

(a) City share of Fee invoice, "CSF" shall be:

$$\text{CSF} = \text{total invoice amount} \times (\text{Fee} - \$300,000) / \text{Fee}$$

(b) Project Co, Operator and LRV Supplier shares of Fee invoice, "OSF" shall each be:

$$\text{OSF} = (\text{total invoice amount} - \text{CSF}) / 3$$

Any additional fees, exceeding the Fee, payable to the Independent Performance Demonstration Certifier as a consequence of any Functions Variation(s), shall be paid by the IA Parties in equal shares, and shall be shown as a separate line item on each applicable invoice.

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