

SCHEDULE 6

DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule 6, in addition to the definitions set out in Section 1.1 of this Agreement, the following expressions have the following meanings (and, where applicable, their plurals have corresponding meanings):

“DBFOM Agreement Action” has the meaning given in Section 3.3;

“Dispute” means any dispute, controversy or claim 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, including, without limitation, this Schedule 6;

“Dispute Notice” means a written notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;

“Expert” means the person appointed pursuant to Section 2.4, which person will be impartial as between the parties, independent of the City and Project Co and qualified and experienced with respect to the design and construction of projects similar to the Project or with respect to the operation, maintenance and renewal of infrastructure similar to the Infrastructure in accordance with requirements similar to the O&M Requirements, as applicable;

“Initiating Party” has the meaning given in Section 2.5;

“Party Representative” has the meaning given in Section 2.2;

“Responding Party” has the meaning given in Section 2.5;

“Senior Executive” has the meaning given in Section 2.3; and

“Third Party Action” has the meaning given in Section 3.3.

2. DISPUTES

2.1 Dispute Resolution

Except as otherwise set out in this Agreement, any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out in this Schedule 6, which procedure shall be followed in the order set out below unless both parties agree otherwise in writing:

- (a) unless expressly provided otherwise in this Schedule 6 or any other provisions of this Agreement, the Dispute Resolution Procedure shall be started by delivery of a Dispute Notice by one party to the other;

- (b) the parties shall attempt to resolve the Dispute by a meeting of the Party Representatives under Section 2.2;
- (c) if the meeting of the Party Representatives does not result in resolution of the Dispute, the parties shall attempt to resolve the Dispute by a meeting of the Senior Executives under Section 2.3;
- (d) if the meeting of the Senior Executives does not result in resolution of the Dispute, the parties may engage and obtain the recommendation of an Expert under Section 2.4; and
- (e) if the Dispute is not resolved through the Expert's recommendation, either party may refer the Dispute to arbitration or litigation in accordance with the provisions of this Schedule 6.

2.2 Amicable Resolution by Party Representatives

On receipt of a Dispute Notice, the City Representative and the Project Co Representative (each, a **"Party Representative"** and, collectively, the **"Party Representatives"**) shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute.

Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other Party Representative to facilitate the resolution of the Dispute.

All discussions and negotiations held pursuant to this Section 2.2 are to be held on a without prejudice basis and will not be used by either party as evidence in any other proceeding. All information exchanged in connection with any discussions and negotiations held pursuant to this Section 2.2 shall be deemed Confidential Information.

2.3 Amicable Resolution by Senior Executives

If a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a party of the applicable Dispute Notice, then either Party Representative may, by written notice to the other, refer the Dispute to a senior executive who:

- (a) is in a position of authority above that of the City Representative or the Project Co Representative, as applicable; and
- (b) subject only to approval of the board of directors or similar governing body of the party, has full authority to resolve and settle the Dispute,

(each, a **"Senior Executive"** and, collectively, the **"Senior Executives"**). Once a Dispute is referred to them, the Senior Executives shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute.

Each Senior Executive shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other Senior Executive to facilitate the resolution of the Dispute.

All discussions and negotiations held pursuant to this Section 2.3 are to be held on a without prejudice basis and will not be used by either party as evidence in any other proceeding. All information exchanged in connection with any discussions and negotiations held pursuant to this Section 2.3 shall be deemed Confidential Information.

2.4 Expert Determination

Before proceeding to arbitration or litigation of a Dispute, the parties may obtain a recommendation on the Dispute from an Expert. The Expert's review will not be required as a prerequisite to arbitration or litigation where the matter in dispute has been previously considered by the Project Adjudicator or if the parties agree to waive the Expert's review.

If the parties agree on the Expert, the parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert. If the parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either party may apply to the Court of Queen's Bench of Saskatchewan to appoint the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the parties or, if either or both parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 6 for qualifications and experience of the Expert.

The Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed.

The Expert will participate in the Dispute as follows:

- (a) the Expert will conduct a review of the Dispute in the manner the Expert decides is most suitable, including on-site inspections and discussions with any persons;
- (b) the parties will comply with all reasonable requests from the Expert for additional information and documents which the Expert considers necessary for the review, provided that any information given to the Expert by a party will be given to the other party and all information disclosed in accordance with this Section 2.4(b) shall be deemed Confidential Information;
- (c) the Expert may, with the written approval of the parties, retain others to assist with the review;

- (d) the Expert will deliver to the parties a brief written recommendation on the Dispute within 10 Business Days of referral to the Expert or such longer period as agreed to in writing by both parties;
- (e) unless otherwise agreed by the parties, a recommendation of an Expert is not binding on the parties, and an Expert's review will be sought only for the purpose of assisting the parties to reach agreement with respect to the Dispute;
- (f) an Expert who has rendered a recommendation on a Dispute may not be retained by either party and may not be called by either party to give evidence with respect to the Dispute in any subsequent arbitration or court proceeding to resolve the Dispute, nor will either party refer to or enter into evidence the recommendation of the Expert in such proceeding, unless required by Applicable Law; and
- (g) the City and Project Co will agree to release and indemnify the Expert in respect of certain claims provided the Expert has acted in good faith and in accordance with the agreement among the parties.

Each party shall bear its own costs related to the process for resolution of a Dispute by an Expert. In addition, the costs of the Expert shall be borne equally by the parties.

2.5 Arbitration

If any Dispute which is the subject of a recommendation by the Expert is not resolved by agreement between the parties within 10 Business Days after receipt of the Expert's recommendation or the date the parties have agreed to waive the Expert's review, or if there is any dispute relating to the appointment of the Expert, then, subject to Section 2.6, either party may refer the Dispute to arbitration.

Subject to Section 2.6 and Section 4 of Schedule 5 (Design and Plan Certification Process and Review Procedure), either party may, within 5 Business Days after receipt of a Project Adjudicator's Conclusion, refer a Dispute related to a Project Adjudicator's Conclusion to arbitration.

A Dispute referred to arbitration shall be decided by a single arbitrator and *The Arbitration Act* (Saskatchewan) shall apply.

Arbitration proceedings shall be commenced by the party desiring arbitration (the "**Initiating Party**") giving written notice to the other party (the "**Responding Party**") specifying the matter to be arbitrated and submitting the names of three potential arbitrators that would be acceptable to the Initiating Party. Within 5 Business Days of receipt of such notice, the Responding Party shall either select one of the three potential arbitrators or submit the names of three potential arbitrators that would be acceptable to the Responding Party. If the parties are not able to agree on an arbitrator within 5 Business Days of receipt of the notice to arbitrate issued by the Initiating Party through the above or any other process or mechanism agreed to by the parties, then either party may apply to the Court of Queen's Bench of Saskatchewan to appoint the arbitrator. The parties will use their best efforts to select an arbitrator who is qualified by a

profession or occupation to decide the matter in dispute and have at least 10 years' related experience. The seat of the arbitration shall be Regina, Saskatchewan.

The arbitrator will have the authority to award any remedy or relief that a judge in the Province of Saskatchewan could order or grant.

Meetings and hearings of the arbitrator will take place in the City of Regina. Subject to the foregoing, the arbitrator may fix the date, time and place of meetings and hearings in the arbitration and will give all parties adequate notice of same. Subject to any adjournments which the arbitrator allows, the final hearing will be continued on successive Business Days until it is concluded. All meetings and hearings will 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 all of the other party's witnesses.

The arbitration will 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) will 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 will make and send a decision in writing not later than 15 Business Days after the conclusion of the hearing and, unless the parties agree otherwise, will set out reasons for the decision. Costs will be awarded in accordance with *The Arbitration Act* (Saskatchewan) unless the parties have previously agreed on the basis for the apportionment of costs.

The decision of the arbitrator will be final and binding on the parties and subject only to judicial review or an appeal in accordance with the provisions of *The Arbitration Act* (Saskatchewan).

2.6 Litigation

Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 2.5, if:

- (a) the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$500,000 (subject to annual indexing for inflation in the manner and at the times set out in Schedule 10 (Index Factor)) in the aggregate or \$150,000 (subject to annual indexing for inflation in the manner and at the times set out in Schedule 10 (Index Factor)) in any one year; or
- (b) the Dispute is considered by the City to involve material issues of public health or safety,

then the Responding Party may elect, within 30 days of receipt of the notice of arbitration, to require that the Dispute be referred to and resolved solely by litigation in the Court of Queen's Bench of Saskatchewan, and both parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Saskatchewan in respect of the Dispute.

If the Responding Party does not deliver a written notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in this Section 2.6, then, subject to a consolidation of proceedings pursuant to Section 3.3, that Dispute shall be resolved only by arbitration pursuant to Section 2.5.

3. MISCELLANEOUS

3.1 Strict Compliance with Time Limits

The parties agree that timely resolution of any Dispute is mutually beneficial and, in order to achieve timely resolution, the time limits as set out in this Schedule 6 shall be strictly enforced.

3.2 Consolidation of Construction Period Disputes

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

- (a) both parties otherwise agree;
- (b) the issue in the relevant Dispute arises in connection with the Review Procedure;
- (c) the issue in the relevant Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the parties;
- (d) the issue in the relevant Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
- (e) in respect of the relevant Dispute, the Dispute is consolidated with another disputes pursuant to Section 3.3,

all arbitral and litigation proceedings between the parties prior to Substantial Completion shall be stayed and consolidated into a single arbitration or litigation proceeding, as applicable, with the arbitration or litigation, as applicable, proceeding promptly and expeditiously after Substantial Completion.

3.3 Consolidation with Third Party Disputes

If either party is involved in an arbitration or litigation proceeding in the Province of Saskatchewan with a third party (“**Third Party Action**”) and if such Third Party Action involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the parties for which a Dispute Notice has been given, then any arbitration or litigation of the Dispute between the parties which includes those common factual, legal or damages issues (“**DBFOM Agreement Action**”) shall be stayed, consolidated or joined with the Third Party Action(s) but only if the City, Project Co and the third party all agree or, failing their agreement, if a court in the Province of Saskatchewan on application considers it just and convenient in all the circumstances that the DBFOM Agreement Action should be stayed or consolidated or joined with the Third Party Action.

Nothing in this Schedule 6 in any way limits either party's ability to make a third party claim against the other for contribution or indemnity in respect of the first party's liability or potential liability to a third party.

3.4 Continued Performance

Notwithstanding the existence of any Dispute, the City and Project Co will, to the extent not precluded by the matter in Dispute, continue with the Project, the Existing Facilities O&M and the O&M, as the case may be, and the performance of their respective obligations under this Agreement (including the City's obligation to make Monthly Payments to Project Co) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.

3.5 Project Co Documentation and Information

Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the Senior Executives pursuant to Sections 2.2 and 2.3, or by an Expert, the Project Adjudicator, an arbitrator or a court of competent jurisdiction, are made available in a timely manner to the City and the City Representative.

3.6 City Documentation and Information

The City shall ensure that any and all documents and other information in the possession or control of any City Party that are available to the City and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the Senior Executives pursuant to Sections 2.2 and 2.3, or by an Expert, the Project Adjudicator, an arbitrator or a court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.