

SCHEDULE 7

DISPUTE RESOLUTION PROCEDURE

SECTION A GENERAL

A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 7 have the meanings set out in the Project Agreement, unless otherwise expressed in this Schedule 7.

A2. Definitions

A2.1 In this Schedule 7, the following terms shall have the following meanings:

- (a) **“Dispute”** means any disagreement, failure to agree or other dispute in respect of the application or interpretation of any provision of the Project Agreement;
- (b) **“Dispute Notice”** means a notice from one Party to the other Party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;
- (c) **“Initiating Party”** has the meaning given in Section B4.2;
- (d) **“Responding Party”** has the meaning given in Section B4.2; and
- (e) **“Settlement Meeting”** has the meaning set out in Section B2 of this Schedule 7.

SECTION B DISPUTES

B1. Dispute Resolution

B1.1 Except as set out in the Project Agreement or any other Schedule thereto, any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out in this Schedule 7, 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 7 or the Project 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 Settlement Meeting under Section B2 of this Schedule 7;
- (c) if the Settlement Meeting does not result in resolution of the Dispute, the Parties shall engage, and obtain the recommendation of the Independent Certifier; and
- (d) if the Dispute is not resolved through the Independent Certifier’s recommendation, either Party may refer the Dispute to arbitration.

B2. Settlement Meeting

- B2.1 In the event of a Dispute which is not resolved in the normal course of business, either Party may deliver a Dispute Notice to the other Party. Within five Business Days from the delivery of the Dispute Notice, or such longer period as agreed to in writing by both Parties, officials designated by the City and Project Co will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a “**Settlement Meeting**”). The Parties through their representatives will make all reasonable efforts to resolve the Dispute. If the Dispute is not resolved through the Settlement Meeting within 15 Business Days from delivery of the Dispute Notice, then the Dispute will be referred to the Independent Certifier.
- B2.2 All negotiations held pursuant to Section B2 of this Schedule 7 are to be held on a without prejudice basis and will not be used by either Party as evidence at any other proceeding. All information exchanged in connection with a Settlement Meeting shall be “Confidential Information” for purposes of the Project Agreement.

B3. Recommendation from Independent Certifier

- B3.1 Before proceeding to arbitration of the Dispute, the Parties shall obtain a recommendation on the Dispute from the Independent Certifier. The Independent Certifier’s review will not be required as a prerequisite to arbitration where the matter in dispute has been previously considered by the Independent Certifier in accordance with Schedule 5 - Review Procedure or if the Parties agree to waive the Independent Certifier’s review. The Independent Certifier will participate in the Dispute as follows:
- (a) the Independent Certifier will conduct a review of the Dispute in the manner the Independent Certifier decides is most suitable, including on-site inspections and discussions with any persons. The Parties will comply with all reasonable requests from the Independent Certifier for additional information and documents which the Independent Certifier considers necessary for the review. Any information given to the Independent Certifier by a Party will be given to the other Party. All information disclosed in accordance with this Section B3.1(a) shall be “Confidential Information” for purposes of the Project Agreement;
 - (b) the Independent Certifier may, with the written approval of the Parties, retain others to assist with the review;
 - (c) the Independent Certifier will deliver to the Parties a brief written recommendation on the Dispute within 10 Business Days of referral to the Independent Certifier or such longer period as agreed to in writing by both Parties;
 - (d) a recommendation of the Independent Certifier is not binding on the Parties, and the Independent Certifier’s review will be sought only for the purpose of assisting the Parties to reach agreement with respect to the Dispute;
 - (e) the Independent Certifier 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 Independent Certifier in such proceeding, unless required by Applicable Law or by a court of competent jurisdiction; and

- (f) the City and Project Co will agree to release and indemnify the Independent Certifier in respect of certain claims provided the Independent Certifier has acted in good faith and in accordance with the agreement among the Parties.

B4. Arbitration

B4.1 Either Party may refer to arbitration,

- (a) any Dispute which is the subject of a recommendation by the Independent Certifier;
 - (i) which is not resolved by agreement between the Parties within 10 Business Days after receipt of the Independent Certifier's recommendation or the date the Parties have agreed to waive the Independent Certifier's review; or
 - (ii) in respect of which the Independent Certifier fails to render a decision within the time required;
- (b) any dispute relating to the appointment of the Independent Certifier; or
- (c) any dispute relating to the scope of arbitration, or whether a dispute is properly referable to arbitration pursuant to Sections B4.1(a) or B4.1(b).

B4.2 A 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 Party entitled to participate in the arbitration proceedings (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 14 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 28 days of the receipt of the notice to arbitrate issued by the Initiating Party, then either Party may apply to the Court of Queen's Bench of Manitoba to have an arbitrator appointed. Each Party shall bear its own costs with respect to the application to the Court of Queen's Bench for Manitoba.

B4.3 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators. In selecting an arbitrator, the Parties and, as applicable, the Court of Queen's Bench for Manitoba, shall have regard to the education, training or experience to decide the matter in Dispute and shall use best efforts to select an arbitrator with at least 10 years' related experience.

B4.4 The arbitration shall be determined in accordance with the ADR Institute of Canada National Arbitration Rules that are in force at the time of the arbitration.

- B4.5 The arbitrator will have the authority to award any remedy or relief that a judge of the Court of Queen’s Bench for Manitoba could order or grant in accordance with the Project Agreement.
- B4.6 Nothing contained in this Schedule 7 will prevent the Parties from seeking interim protection from the courts of the Province of Manitoba, including seeking an interlocutory injunction where available pursuant to Applicable Law, if necessary to prevent irreparable harm to a Party.
- B4.7 Meetings and hearings will take place in the English language in the City of Winnipeg or another location in the Province of Manitoba specified by the City. The arbitrator shall proceed promptly to hear and determine the Dispute. Time shall be of the essence. 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.
- B4.8 The arbitration will be kept confidential and the existence of the proceedings and any element of it (including any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) will not be disclosed by the arbitrator, the Parties, their counsel or any person necessary to conduct the proceeding, except as may be lawfully required in judicial proceedings related to the arbitration or otherwise.
- B4.9 Notwithstanding Rule 36 of the National Arbitration Rules, the arbitrator shall not be entitled to retain its own expert(s).
- B4.10 The arbitrator shall 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, shall provide reasons as part of such decision. Costs may be awarded by the arbitrator in accordance with *The Arbitration Act* (Manitoba) unless the Parties have previously agreed on the basis for the appointment costs.
- B4.11 The decision of the arbitrator will be final and binding upon the Parties as to any matter or matters so submitted to arbitration and subject only to judicial review or an appeal in accordance with the provisions of *The Arbitration Act* (Manitoba).

B5. Strict Compliance with Time Limits

- B5.1 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 7 shall be strictly enforced.

B6. Performance of Obligations

- B6.1 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 and the OMR Services

as the case may be, and the performance of their respective obligations under the Project Agreement (including the City's obligation to make payments to Project Co in accordance with Schedule 14 – Payment Mechanism) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Project Agreement.