

SCHEDULE 6

DISPUTE RESOLUTION PROCEDURE

1. GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Design and Build Anthony Henday Drive and Stony Plain Road/100 Avenue Interchange, City of Edmonton, Alberta, Canada (the "DB Agreement") between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise.

1.2 DB Agreement and Section References

This Schedule is referenced in sections 1.1, 1.3, 5.5, 5.7 and 5.15 of the DB Agreement. Unless otherwise provided, references to Section numbers are references to Sections in this Schedule.

1.3 Definitions

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

"**Dispute**" means any disagreement, failure to agree or other dispute in respect of the application or interpretation of any provision of the DB Agreement;

"**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;

"**Initiating Party**" has the meaning given in Section 2.5;

"**Project Adjudicator**" means the person appointed pursuant to Section 2.2 and performing the functions in respect of a Dispute, which person will be independent, qualified and experienced with respect to the design and construction of projects in the Province of Alberta similar to the Project;

"**Responding Party**" has the meaning given in Section 2.5;

"**Settlement Meeting**" has the meaning given in Section 2.3.

2. DISPUTES

2.1 Dispute Resolution

Except as set out in the DB Agreement or any other Schedule thereto, any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out in this Schedule, 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 or the DB 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 2.3;
- (c) if the Settlement Meeting does not result in resolution of the Dispute, the parties shall engage, and obtain the decision of a Project Adjudicator under Section 2.4; and
- (d) if the Dispute is not resolved through the Project Adjudicator, either party may refer the Dispute to arbitration.

2.2 Appointment of the Project Adjudicator

Within 30 days from signing of the DB Agreement, the Province and the Contractor will appoint and enter into a written agreement with a person acceptable to both as Project Adjudicator to whom resolution of Disputes may be referred for immediate interim resolution.

In the event that the parties cannot agree upon an acceptable person as the Project Adjudicator within the time period provided, the Project Adjudicator shall be determined by arbitration pursuant to Section 2.5. The person appointed must be independent of the Province and the Contractor and qualified and experienced with respect to the design and construction of projects in the Province of Alberta similar to the Project.

The appointment of the Project Adjudicator will be deemed to be a joint appointment and will be irrevocable by each party without the consent of the other. The appointment of the Project Adjudicator will continue until the end of the Term unless otherwise agreed to by the parties. If the Project Adjudicator resigns, dies, or becomes incapable of fulfilling the role of the Project Adjudicator, or the parties' agreement with the Project Adjudicator expires or is terminated before the end of the Term, the parties shall immediately appoint a replacement.

The fees and expenses of the Project Adjudicator shall be set by the terms of the agreement between the parties and the Project Adjudicator. The Project Adjudicator's

fees, disbursements and other costs, as agreed between the parties and the Project Adjudicator, will be shared equally by the Province and the Contractor. Each party shall bear its own costs and expenses in preparing submissions for and attending meetings with the Project Adjudicator.

In the event that a disagreement requiring resolution by the Project Adjudicator arises prior to either the parties appointing a Project Adjudicator or the determination of the Project Adjudicator by arbitration, neither party's position nor access to either the Project Adjudicator's procedure set out in Section 2.4 or to a remedy will be prejudiced. Upon the Project Adjudicator being appointed or named, as the case may be, the disagreement requiring the Project Adjudicator's participation, if still unresolved, will proceed in accordance with Section 2.4.

2.3 Settlement Meeting

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, officials designated by the Province and the Contractor 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 days from delivery of the Dispute Notice, then the Dispute will be referred to a Project Adjudicator in accordance with Section 2.4.

All negotiations held pursuant to Section 2.3 are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding.

2.4 Project Adjudicator

Before proceeding to arbitration of the Dispute, the parties shall obtain a decision on the Dispute from a Project Adjudicator. The Project Adjudicator's review will not be required as a prerequisite to arbitration if the parties agree to waive the Project Adjudicator's review. The Project Adjudicator will participate in the Dispute as follows:

- (a) the Project Adjudicator will conduct a review of the Dispute in the manner the Project Adjudicator decides is most suitable, including on-site inspections and discussions with any persons. The parties will comply with all reasonable requests from the Project Adjudicator for additional information and documents which the Project Adjudicator considers necessary for the review. Any information given to the Project Adjudicator by a party will be given to the other party. All information disclosed in accordance with this Section shall be "Confidential Information" for purposes of the DB Agreement;
- (b) the Project Adjudicator may, with the written approval of the parties, retain others to assist with the review;

- (c) the Project Adjudicator will deliver to the parties a brief written decision on the Dispute within 10 Business Days of referral to the Project Adjudicator or such longer period as agreed to in writing by both parties;
- (d) a decision of a Project Adjudicator is not binding on the parties, and a Project Adjudicator's review will be sought only for the purpose of assisting the parties to reach agreement with respect to the Dispute;
- (e) a Project Adjudicator who has rendered a decision 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 decision of the Project Adjudicator in such proceeding, unless required by applicable law or by a court of competent jurisdiction; and
- (f) the parties will agree to indemnify and save harmless the Project Adjudicator from any liability arising from a review undertaken by the Project Adjudicator.

2.5 Arbitration

If the Dispute is not completely resolved by agreement between the parties within 10 Business Days after receipt of the Project Adjudicator's decision or the Project Adjudicator fails to render a decision within the time required or the parties have agreed to waive the Project Adjudicator's review, then either party may refer the Dispute to arbitration. 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 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 Alberta to have the arbitrator appointed. 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 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 DB Agreement.

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

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DRAFT: JANUARY 9, 2009

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* (Alberta) 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* (Alberta).

3. 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 shall be strictly enforced.

4. Performance of Obligations

Notwithstanding the existence of any Dispute, the Province and the Contractor will, to the extent not precluded by the matter in Dispute, continue with the Project, and the performance of their respective obligations under the DB Agreement (including the Province's obligation to make Payments to the Contractor) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the DB Agreement.