

SCHEDULE 7

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, Build, Finance and Operate Southeast Stoney Trail, Calgary (the "**DBFO Agreement**") between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise.

1.2 Section References

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 DBFO 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;

"**Referee**" means the person appointed pursuant to Section 2.2, or as otherwise specified herein, and performing the functions in respect to a Dispute, which person will be independent of the parties, impartial as between the parties, and qualified and experienced with respect to the design and construction of projects in the Province of Alberta similar to the Project, and with respect to the operation, maintenance and rehabilitation of projects in the Province of Alberta similar to the New Infrastructure in accordance with requirements similar to the O&M Requirements;

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

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

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2. DISPUTES

2.1 Dispute Resolution

Except as set out in the DBFO 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 DBFO 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 recommendation of a Referee under Section 2.4; and
- (d) if the Dispute is not resolved through the Referee's recommendation, either party may refer the Dispute to arbitration.

2.2 Appointment of the Referee

Within two years from signing of the DBFO Agreement, the Province and the Contractor will appoint and enter into a written agreement with a person acceptable to both as Referee to whom resolution of Disputes (other than Disputes that fall within the mandate of the Project Adjudicator appointed under Schedule 5 (Design and Plan Certification Process and Review Procedure)) may be referred for immediate interim resolution. Notwithstanding the two year deadline in the foregoing sentence, either party can shorten such deadline on written notice to the other party to a date that is at least 21 days after delivery of such written notice.

In the event that the parties cannot agree upon an acceptable person as the Referee within the time period provided, the Referee shall be determined by arbitration pursuant to Section 2.5. The person appointed must be impartial as between the parties, 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, and with respect to the operation, maintenance and rehabilitation of projects in the Province of Alberta similar to the New Infrastructure in accordance with requirements similar to the O&M Requirements.

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 other. The appointment of the Referee will continue until the end of the Term unless otherwise agreed to by the parties. If the Referee resigns, dies, or becomes incapable of fulfilling the role of the Referee, or

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the parties' agreement with the Referee expires or is terminated before the end of the Term, 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, 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 Referee.

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 Referee 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 Referee

Before proceeding to arbitration of the Dispute, the parties shall obtain a recommendation on the Dispute from a Referee. The Referee's review will not be required as a prerequisite to arbitration where the matter in dispute has been previously considered by the Project Adjudicator appointed under Schedule 5 (Design and Plan Certification Process and Review Procedure) or if the parties agree to waive the Referee's review. The Referee will participate in the Dispute as follows:

- (a) the Referee will conduct a review of the Dispute in the manner the Referee decides is most suitable, including on-site inspections and discussions with any persons. The parties will 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 party. All information disclosed in accordance with this section shall be "Confidential Information" for purposes of the DBFO Agreement;
- (b) the Referee may, with the written approval of the parties, retain others to assist with the review;
- (c) the Referee will deliver to the parties a brief written recommendation on the Dispute within 10 Business Days of referral to the Referee or such longer period as agreed to in writing by both parties;

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- (d) a recommendation of a Referee is not binding on the parties, and a Referee's review will be sought only for the purpose of assisting the parties to reach agreement with respect to the Dispute;
- (e) a Referee 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 Referee in such proceeding, unless required by applicable law or by a court of competent jurisdiction; and
- (f) the Province and the Contractor will agree to release and indemnify the Referee in respect of certain claims provided the Referee has acted in good faith and in accordance with the agreement among the parties.

2.5 Arbitration

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

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

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 seven 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 14 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 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 Edmonton, Alberta.

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 DBFO 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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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 O&M as the case may be, and the performance of their respective obligations under the DBFO 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 DBFO Agreement.