

SCHEDULE 14
DISPUTE RESOLUTION PROCEDURE

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SCHEDULE 14 DISPUTE RESOLUTION PROCEDURE

1.1 Dispute Resolution

Except as expressly provided otherwise in this Agreement, including in this Schedule, or unless both parties otherwise agree in writing, any Dispute will be resolved in accordance with the provisions of the procedure (the "**Dispute Resolution Procedure**") as set out in this Schedule.

1.2 Dispute Resolution Procedure

The Dispute Resolution Procedure will consist of the following and will be applied in the order set out below:

- (a) unless expressly otherwise provided in this Agreement, the Dispute Resolution Procedure will be started by delivery of a written notice from one party to the other party (the "**Dispute Notice**") briefly setting out the facts alleged pertinent to the Dispute, the remedy or relief sought and the grounds on which such remedy or relief is sought;
- (b) the parties will then attempt to resolve the Dispute by negotiation under Section 1.3 of this Schedule;
- (c) if the parties are unable to resolve the Dispute by negotiation to their mutual satisfaction within the applicable time period as set by Section 1.3 of this Schedule, the parties will then appoint, and subject to the provisions hereof, obtain the decision or analysis of, a Referee, under Sections 1.4 of this Schedule;
- (d) if the parties are unable to resolve the Dispute in a final manner within 10 Business Days (or such longer period as the parties may agree in writing) following their receipt of the Referee's decision or analysis in respect of such Dispute or within 10 Business Days (or such longer period as the parties may agree in writing) of the date on which such decision or analysis ought to have been received, whichever will first occur, either party will be entitled to demand a Settlement Meeting under Section 1.5 of this Schedule; and
- (e) if all of the above fail to resolve the Dispute in a final manner to the mutual satisfaction of the parties, then and only then, either party will be entitled to commence litigation in respect of the outstanding Dispute.

1.3 Negotiation

Within 5 Business Days of one party receiving a Dispute Notice from the other, senior management representatives of the parties will meet and make reasonable good faith efforts to resolve the Dispute by amicable negotiations. The negotiations of the parties under this Section 1.3 will be without prejudice in any subsequent proceedings regarding the Dispute.

1.4 Referee

If the Dispute is not resolved pursuant to Section 1.3 of this Schedule to the mutual satisfaction of the parties within 15 Business Days (or such longer period as the parties may agree in writing) following the receipt of the Dispute Notice by the receiving party, either party may by notice to the other (a "Referee Notice"), request the appointment of a Referee, as provided under the terms of this Section 1.4, unless both parties waive this requirement in writing. A Referee will be appointed and will make every reasonable effort to render a decision on the Dispute in accordance with the provisions of this Section 1.4. The Referee will be appointed and participate in the resolution of the Dispute as follows:

- (a) within 15 Business Days of the delivery of a Referee Notice under this Section 1.4, each party will submit in writing to the other party, the names of no more than three (3) candidates for Referee who are independent of the parties and immediately available to perform the role of Referee in respect of the Dispute at hand. If a party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other party. In all cases, the appointed Referee will be independent of the parties and will maintain his independence throughout his assignment as Referee. If for any reason within 20 Business Days of the delivery of a Referee Notice, a Referee has not been appointed, then the Referee will be chosen by random selection from candidates proposed by the parties, each party nominating one candidate and the choice between them being made by a toss of a coin, the Concessionaire to make the toss and RAVCO the call. In the event that one party has not nominated any candidates within 20 Business Days of the delivery of a Referee Notice, then the other party shall nominate two candidates and the choice of the Referee shall be made between said two candidates on the basis of the coin toss mentioned in the immediately preceding sentence;
- (b) once a Referee has been appointed under Section 1.4(a) of this Schedule, the parties will enter into an agreement with the Referee to act as Referee generally in the form attached as Attachment "A" (the "Referee Agreement"), such agreement to be entered into no later than 5 Business Days after the Referee's appointment. The Referee's fees and expenses will be shared equally by RAVCO and the Concessionaire. RAVCO will pay the full amount of the Referee's fees and expenses on the day that such fees and expenses are due (including any advances on fees and expenses) in accordance with the Referee Agreement and Concessionaire will reimburse RAVCO, for Concessionaire's share of all such fees and expenses within 5 Business Days of receipt of a written demand from RAVCO, failing which RAVCO will be entitled to deduct the amount of Concessionaire's share of the Referee's fees and expenses from amounts otherwise due to Concessionaire under the provisions of this Agreement.
- (c) the Referee will conduct an impartial review of the Dispute in such manner as the Referee thinks fit, including carrying out on site inspections and interviews with any persons that the Referee thinks fit. The parties will comply with all

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reasonable requests from the Referee for additional information, documents and access to personnel which the Referee considers necessary for the review. Any submission or documentation in respect of the Dispute provided to the Referee by a party will also be provided to the other party;

- (d) the Referee may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for him to retain such other professional persons or experts;
- (e) the Referee will not be obliged to conduct his enquiries in the presence of the parties or receive submissions from the parties, except to the extent that he thinks fit, and may render his decision notwithstanding the failure of a party to participate in the proceedings;
- (f) the Referee will render a brief, written, reasoned and impartial decision on the Dispute, with copies to both parties within 20 Business Days of the signing by the Referee and both parties of the Referee Agreement referred to in Section 1.4(b), or such longer period as agreed to in writing by both parties. The Referee's decision will be in the form of a proposed determination of the rights of the parties having regard to the Referee's understanding of the relevant contractual provisions, the applicable law and the facts as agreed by the parties or as best he is able to determine them;
- (g) each party acknowledges the value of having the Referee render a timely decision regarding the Dispute. If the Referee is unable to render his decision within the time set or as extended by mutual agreement of the parties, then the Referee will within such time provide to the parties such analysis of the Dispute as the Referee is able to make within that time and describe the further work the Referee recommends would be required in order to arrive at a reasoned decision;
- (h) subject to the provisions of Section 1.10 of this Schedule, a decision of a Referee is not binding on the parties but is intended to assist the parties to reach agreement with respect to the Dispute;
- (i) a person who has acted as a Referee under this Section 1.4 may be retained by either party, or both parties, to assist in any Settlement Meeting with respect to that Dispute. Neither party will be entitled to call a Referee to give evidence with respect to the Dispute in any subsequent proceedings, and neither party will be entitled to refer to or enter into evidence the decision of the Referee or anything contained therein in any such proceedings;
- (j) the parties will agree to release and save harmless the Referee from any liability arising from the Referee's actions, made in good faith, in carrying out the duties of the Referee as described in this Schedule or as may be described in the Referee Agreement referred to in Section 1.4(b);

- (k) the proceedings under this Section 1.4 will be confidential and all information, data or documentation disclosed or delivered by either party to the Referee as a result or in connection with his duties as Referee will be treated as confidential and neither the parties nor the Referee will, except as would be permitted under Section 26 of this Agreement, disclose to any Person any such information, data or documentation unless the parties otherwise agree in writing. Nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Referee;
- (l) the proceedings by or before a Referee will be without prejudice in any subsequent proceedings; and
- (m) should compliance with the Referee process under this Section 1.4 prove impracticable for any reason, a party not at fault for the failure in compliance, and which has made all reasonable effort to ensure compliance, may forthwith request a Settlement Meeting as though the requirements of this Section 1.4 had been fully satisfied.

1.5 Settlement Meeting

If the Dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Referee's decision or analysis pursuant to Sections 1.4 (or such longer period as the parties may agree in writing), or within 10 Business Days of the date on which the Referee's decision or analysis ought to have been received in accordance with the provisions of Sections 1.4 of this Agreement, then either party may give the other party a notice for a settlement meeting to be held under this Section (a "**Settlement Meeting**"). A Settlement Meeting will be a meeting of at least two senior representatives of each party who will meet to attempt in good faith to resolve the Dispute. If possible, at least one of the representatives of each party will be a person who has not previously been directly involved either in events leading to the Dispute or in prior negotiations concerning the Dispute. The procedure relating to the Settlement Meeting will be as follows:

- (a) the parties' representatives will convene the Settlement Meeting within 20 Business Days of delivery of such written notice for a Settlement Meeting (or such longer period as the parties may agree);
- (b) no party will be entitled to commence proceedings unless a Settlement Meeting has been held, or the other party has waived the holding of a Settlement Meeting or has refused or neglected to participate in a Settlement Meeting;
- (c) the proceedings of a Settlement Meeting will be without prejudice in any subsequent proceedings; and
- (d) with the agreement of both parties, the Settlement Meeting will be in the form of mediation conducted in accordance with the provisions of the British Columbia International Arbitration Centre's Mediation Rules of Procedure (the "**Mediation Rules**") at the date of this Agreement, as modified by the provisions of this

Schedule. Notwithstanding any provision to the contrary in the Mediation Rules, the parties will use their reasonable efforts to agree in writing on the appointment of a mediator within 20 Business Days of delivery of the written notice for a Settlement Meeting, failing which no mediator will be appointed and the Settlement Meeting will occur without the presence of a mediator.

1.6 Litigation

If within 7 Business Days of the commencement of the Settlement Meeting (or such longer period as the parties may agree in writing), a Dispute is not finally settled by agreement to the mutual satisfaction of the parties, or if either party fails or refuses to participate in the Settlement Meeting requested by a party pursuant to the provisions of Section 1.5 of this Schedule then:

- (a) either party will be entitled to bring an action in respect of the Dispute in the courts of British Columbia and for purposes of certainty, the provisions of Section 29.18 of this Agreement will apply to such litigation; and
- (b) the scope of any such action will not be limited strictly to the terms of the Dispute Notice in respect of the Dispute, but may extend to any matter that is directly related to the Dispute described in the Dispute Notice.

1.7 Other Remedies

Nothing contained in this Schedule 14 will preclude a party from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining an effective emergency or provisional remedy to protect its rights that may be necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and restraining orders, whether before or after the Dispute has been submitted to Litigation under the provisions of this Schedule.

1.8 Strict Compliance with Time Limits

The parties agree that timely resolution of any Disputes is mutually beneficial and the time limits set out in this Schedule 14 will therefore be strictly enforced, unless otherwise amended in writing by the parties.

1.9 Municipal Access Agreement Disputes

The parties hereby acknowledge and agree that:

- (a) pursuant to the Assignment Agreements between the parties (copies of which are attached as Appendices "A" and "B" to Schedule 7 of this Agreement), RAVCO has assigned to the Concessionaire, certain rights and obligations RAVCO received from the Cities under each of the Municipal Access Agreements,
- (b) each Municipal Access Agreement includes the provisions of Article 12 which set out a procedure for the resolution of "Disputes" as defined in said Municipal

Access Agreements that differs from the Dispute Resolution Procedure set out in this Schedule; and

- (c) a Dispute as defined in this Agreement might arise which involves one of the Cities and which also falls concurrently within the definition of "Dispute" under a Municipal Access Agreement.

Accordingly, to avoid a conflict between the provisions of this Schedule 14 and the dispute resolution provisions of any Municipal Access Agreement, if and only to the extent any Dispute is, in accordance with the provisions of one of the Municipal Access Agreements, subject to the dispute procedure as described in that Access Agreement, then the parties hereby agree that such procedure will apply in lieu and to the exclusion of the provisions of the Dispute Resolution Procedure set out in this Schedule, but for greater certainty, to the extent there is no such conflict, the Dispute Resolution Procedure set out herein will apply.

1.10 Interim Decision

If a Dispute occurs that:

- (a) arises after the Service Commencement Date;
- (b) arises from a claim for a total aggregate amount not exceeding \$100,000 (nominal) by Operator with respect to Operation and Maintenance; and
- (c) directly involves no parties other than RAVCO, the Concessionaire and Operator;

then pending final resolution of that Dispute pursuant to the Dispute Resolution Procedure, the decision of a Referee rendered pursuant to Section 1.4(f) of the Dispute Resolution Procedure in respect of that Dispute will be accepted by RAVCO and the Concessionaire as an interim decision, binding on the parties unless and until a party brings an action under Section 1.6 of this Schedule and obtains a decision of a court. For certainty nothing in this Section 1.10 amends any provision of Section 1.4 of this Schedule, including Section 1.4(i).

Letter Agreement with Referee

"(Name and Address of Referee)

Contract: RAV Concession Agreement dated March 29, 2005

BETWEEN:

(Name and address of Referee)

(the "Referee")

AND:

RAV PROJECT MANAGEMENT LTD

(the "Owner")

AND:

INTRANSIT BC LIMITED PARTNERSHIP

(the "Concessionaire")

We write to confirm your appointment as a Referee under the above Contract. The terms of your appointment are as contained in Section 1.6 of Schedule 14 to the Agreement.

We confirm our agreement for you to review the Dispute(s) described in the Dispute Notice in accordance with the provisions of the Agreement, and to perform the functions of a Referee as described in the Section 1.6 of Schedule 14. A copy of the Agreement and related materials, will be forwarded to you shortly.

We confirm that your daily/hourly rate for fees is \$_____. In addition to your invoiced fees, RAVCO will pay any and all reasonable disbursements incurred in providing your services.

Please submit your invoices on a monthly basis directly to RAVCO's Representative. RAVCO will make payment within 30 calendar days of receipt.

Please confirm your agreement to the terms as set out in this letter by signing a copy of the enclosed letter and returning it to RAVCO's Representative.

Yours truly,

Authorized Signatory of RAVCO

Date

Authorized Signatory of the Concessionaire

Date

Referee.

Date"