

APPENDIX 20

DISPUTE RESOLUTION PROCEDURES

The Chief Executive Officer of the Owner (the “**CEO**”) is the officer charged with reviewing Petitions and making a final determination and order as referenced in D.R.M.C. § 5-17(d). Such authority, however, may be delegated by the CEO as provided in D.R.M.C. § 5-17(b). For all Disputes, the CEO hereby delegates her authority under D.R.M.C. § 5-17 as follows:

1. DESIGNATED SENIOR REPRESENTATIVES

- a. The Parties’ Authorized Representatives shall confer and otherwise use reasonable efforts to resolve any Dispute for a period of at least 15 Business Days (or such longer period as is mutually agreed by the Parties in writing).
- b. If the Parties succeed in resolving a Dispute following such referral to the Parties’ Authorized Representatives, they shall memorialize the resolution by executing a written memorandum or similar document in a form to be prepared by the Owner (unless the Owner otherwise delegates such preparation to Developer, in which case Developer shall prepare such memorandum or document) setting out the details of such resolution, and once agreed to by the Parties such document shall be considered a binding settlement agreement.
- c. If the Parties’ Authorized Representatives are unable to resolve the Dispute within such 15 Business Day period (or such longer period as is mutually agreed by the Parties), either Party may refer the Dispute for resolution by the Dispute Resolution Panel in accordance with this Appendix 20.

2. ADVISORY OPINIONS

- a. The Parties, acting jointly, may, at any time prior to formally referring a Dispute for resolution by the Dispute Resolution Panel pursuant to this Appendix 20, seek an advisory opinion regarding such Dispute from the Dispute Resolution Panel. The Parties shall do so by submitting a written request to the panel containing:
 - i A concise summary of the nature and background of the Dispute and of the facts relevant to the Dispute;
 - ii A statement of the question or issue on which the Parties are seeking an advisory opinion; and
 - iii Copies of any correspondence, reports or other documents to which the Parties wish to refer.
- b. Any advisory opinion shall:
 - i Be given in writing to the Parties (unless otherwise requested by both Parties);

- ii Be non-binding; and
 - iii Not prejudice any further resolution of such Dispute.
- c. Advisory opinions shall not be a Final Order.

3. TREATMENT OF SETTLEMENT NEGOTIATIONS AND SETTLEMENT AGREEMENTS AND ADVISORY OPINIONS

- a. (i) Statements made by the Parties, including by the Parties' Authorized Representatives, during any meetings or in any communications related to efforts to resolve a Dispute pursuant to Section 1 of this Appendix 20, and documents containing statements or opinions specifically prepared in connection with the same, shall be considered part of settlement negotiations, and (ii) any written request and supporting materials submitted to the Dispute Resolution Panel under Section 2(a) of this Appendix 20 and advisory opinions issued by the Dispute Resolution Panel under Section 2(b) of this Appendix 20, shall not be admissible as evidence in any proceeding between the Parties of any kind (including any subsequent referral to the Dispute Resolution Panel) without the mutual written consent of the Parties, provided that if a Party:

(A) Prepares demonstrative exhibits or summary exhibits of evidence; or

(B) Retains experts or other Persons employed in a professional capacity to provide expert opinions and/or reports, which opinions and/or reports are prepared for presentation to the Dispute Resolution Panel,

the Party may submit or otherwise use such work product in any subsequent proceeding.

4. DISPUTE RESOLUTION PANEL

- a. The Parties shall create a Dispute Resolution Panel in accordance with this Section 4. Subject to Section 1 of this Appendix 20, any Dispute may be referred by either Party for resolution by the Dispute Resolution Panel in accordance with Section 5 of this Appendix 20.
- b. The Dispute Resolution Panel shall consist of three individuals who shall be and remain independent of the Parties, impartial and without any conflict of interest or any appearance of a conflict of interest.
- c. No later than 15 Business Days following the issuance of NTP 1, and otherwise, if the Dispute Resolution Panel is not then in existence, no later than 15 Business Days after a Dispute is referred to the Dispute Resolution Panel, each Party shall appoint an individual to serve as a member of the Dispute Resolution Panel. Any person appointed pursuant to this Section 4.c shall have relevant experience on projects similar to the Project and expertise in relevant financial or commercial matters, design and construction (if during the Project Construction Period), or operations, maintenance and/or concessions management (if during the Project Operating Period).

- d. Not later than 10 Business Days following the appointment of the first two members of the Dispute Resolution Panel under Section 4.c of this Appendix 20, the Parties shall cause their respective appointees thereunder to jointly appoint a third individual (the “Chairperson”), who shall be a lawyer licensed and in good standing in any state in the United States and have relevant experience on projects similar to the Project. If the two members are unable to reach agreement on their selection of the Chairperson within such time period, then the Parties shall mutually agree on the third appointment. If the two members or the Parties are unable to agree on the appointment of the Chairperson, then the Dispute Resolution Panel shall be dissolved and replaced with a new Dispute Resolution Panel. Both Parties waive all rights to appeal the appointment decision of the Chairperson.
- e. Subject to the following, the costs and expenses payable to the members of the Dispute Resolution Panel shall be agreed by the Parties and, absent agreement, shared equally between the Parties. Responsibility for the fees of the members of the Dispute Resolution Panel incurred in connection with a Dispute referred to the panel shall be determined by the Dispute Resolution Panel and shall be aligned with the determination of the Dispute by the panel.
- f. In the event of death, resignation, disqualification, inability or refusal to act (including failure to comply with the dispute resolution process set forth below) by any member of the Dispute Resolution Panel (or, with respect to a member appointed by a Party, upon written notice by the Party to the other Party), the relevant Party or Parties, as the case may be, shall cause a new member of the panel to be appointed within 10 Business Days of such occurrence in accordance with the same procedures set forth in Section 4.c or 4.d, as applicable, of this Appendix 20 for the member being replaced.

5. DISPUTE RESOLUTION PROCESS

- a. If a Dispute remains unresolved following completion of the steps set forth in Section 1 of this Appendix 20, either Party may refer the Dispute to the Dispute Resolution Panel by, and on the date of, service of a notice of reference to the Dispute Resolution Panel by the referring Party upon the other Party. Such service of notice shall include:
 - i. An initial concise summary of the nature and background of the Dispute, of the facts relevant to the Dispute and of the issues to be decided;
 - ii. An initial statement of the relief (including any compensation) which the referring Party is seeking; and
 - iii. Any reasonable request for the Dispute Resolution Panel to consider, or not consider, such Dispute together with any other previously or simultaneously submitted Dispute.
- b. A copy of such notice of reference shall also be served by the referring Party upon the Chairperson of the Dispute Resolution Panel. Each Party shall be

entitled within 10 Business Days following the notice of reference, to deliver to the Dispute Resolution Panel:

- i A concise summary of the nature and background of the Dispute, of the facts relevant to the Dispute and of the issues to be decided;
 - ii If applicable, a statement of the relief (including any compensation) which such Party is seeking;
 - iii Copies of correspondence, reports and such other documents to which the Party wishes to refer or upon which it relies; and
 - iv Any reasonable request for the Dispute Resolution Panel to consider, or not consider, such Dispute together with any other previously or simultaneously submitted Dispute.
- c. Each Party shall promptly deliver such other information as the Dispute Resolution Panel may from time to time reasonably require for the purposes of resolving the Dispute.
- d. Subject to the following, the Dispute Resolution Panel may fix its own rules of procedure, either generally or on an ad hoc basis, and shall notify the Parties of such rules of procedure in writing:
- i Within 5 Business Days after referral of the Dispute, either Party may request a scheduling conference with the Chairperson of the Dispute Resolution Panel to discuss procedural matters including discovery, use of experts and hearing dates;
 - ii If neither Party requests a scheduling conference within such 5 Business Days, the Dispute Resolution Panel will convene a hearing unless the Parties agree in writing that the Dispute Resolution Panel shall determine the Dispute on a documents-only basis;
 - iii The Parties shall promptly supply evidence at the request of the Chairperson may order the evidence of a witness to be presented in written form by way of a signed statement and may order the production of any drawing, certificate, specification, report, study, written information and data and any other document (including a record of such document in digital form) (or copies thereof) in the possession of either Party; and
 - iv The Chairperson may request any samples of materials to be taken and analyzed or tests to be made on site by experts; and
 - v Normally, no depositions, interrogatories, document requests, or requests for admission are allowed. However, the Chairperson has the discretion to allow discovery that is proportional to the needs of resolving the Dispute, upon consideration of the following factors: the importance of the issues at stake in the action, the amount in controversy, and the importance of the discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit.

- e. Unless the Dispute Resolution Panel decides otherwise, the Chairperson shall fix the date, time and place of any hearing (which shall be in City and County of Denver) before the Dispute Resolution Panel and the rules of procedure of the hearing, identify the Dispute(s) (or relevant parts thereof) to be considered at such hearing (taking into consideration any Party's request made pursuant to this Appendix 20) and shall require the attendance of the Parties. The Parties agree to make every effort to complete the hearing within 15 Business Days after referral of the Dispute to the Dispute Resolution Panel. If the hearing cannot be completed within such 15 Business Days, the Parties will schedule a scheduling conference with the Chairperson within the 15 Business Day period. Each Party may appear before the Dispute Resolution Panel pro se or represented by counsel.
- f. In determining any Dispute referred to it, the Dispute Resolution Panel shall act fairly and impartially as between the Parties, giving each Party a reasonable opportunity of presenting its case and responding to the case of the other Party, and shall adopt procedures appropriate to the circumstances of the particular case avoiding unnecessary delay, so as to provide a fair and expeditious means for determination of the Dispute.
- g. No later than 15 Business Days after the hearing is completed, the Dispute Resolution Panel shall issue a written opinion determining the issues stated in the Dispute. The Dispute Resolution Panel may award damages pursuant to Colorado law, subject to any limitations expressly set forth in the Agreement. The written opinion shall state the facts, evidence and law the Dispute Resolution Panel relied upon to reach the determination made.
- h. The Dispute Resolution Panel's opinion shall be considered a final order of the manager and may be reviewed under Rule 106(a)(4) of the state rules of civil procedure by Developer or by the Owner.
- i. Within 10 Business Days of being notified of such decision, Developer shall notify the Owner if it intends to appeal such decision (in whole or in part), and the Owner shall, within 10 Business Days after receipt of Developer's notification, likewise notify Developer if it intends to appeal such decision (in whole or in part).
- j. If a Dispute Resolution Panel fails to issue its written determination to the Parties within the 30 Business Days of the hearing under Section 5.e of this Appendix 20, the Dispute Resolution Panel shall be deemed to have failed to reach a decision in the matter and it shall be deemed that the Parties have exhausted their remedies. In such case, either Party may refer the Dispute for court resolution. Any decision of the Dispute Resolution Panel notified to the Parties after the expiry of such 30-Business Day period shall be ineffective unless the Parties mutually agree otherwise in writing.
- k. The Dispute Resolution Panel is responsible for maintaining the Administrative Record. Within 14 days of issuing a Final Order, the Dispute Resolution Panel

shall prepare and certify the Administrative Record in a manner consistent with the requirements of C.R.C.P. 106(a)(4), and create a listing of all documents, physical evidence, and recordings comprising the Administrative Record.

6. NO JOINDER

No proceedings to resolve any Dispute shall include, by consolidation or joinder or in any other manner, any additional Person, including any Contractor, that is not a party to the Agreement, except with the written consent of the other Party and any other Person sought to be so joined.

7. CONTINUATION OF WORK

During the course of resolving any Dispute pursuant to this Appendix 20, Developer shall continue to perform with the Work (including any Work that is the subject of the Dispute) in accordance with the Contract Documents.

8. COSTS OF DISPUTE RESOLUTION

Each Party shall bear its own costs and expenses, including attorneys' fees, in any Dispute, except as expressly provided therein or pursuant to the terms of any binding Dispute resolution.

9. RECORDING:

Hearings shall be recorded by electronic means. The Dispute Resolution Panel shall provide and maintain custody of the recording device. This recording shall be the official record of the hearing. Transcripts of such recordings may be made, but at the expense of the Party requesting a transcript. In addition to a recording, a Party may employ at its own expense a certified court reporter.

10. DISSOLUTION OF THE DISPUTE RESOLUTION PANEL

The Dispute Resolution Panel may be dissolved on mutual written agreement between the Parties, provided that new Dispute Resolution Panel(s) may be constituted by the Parties at any time thereafter (and shall be constituted pursuant to Section 4.c and Section 4.d of this Appendix 20 in the event of a Dispute), in which case the provisions of this Appendix 20 shall apply as to its or their appointment, constitution and functioning (except in relation to the period of its or their appointment, which shall be decided in each case by the Parties).