

SCHEDULE 7

FORM OF CONSENT TO ARBITRATION ARTICLE 37(4)

NEW WEST PARTNERSHIP TRADE AGREEMENT

Consent to Arbitrate by a Person

1. In this consent:

"administrator" means the administrator appointed pursuant to Article 19 of the Agreement;

"Agreement" means the *New West Partnership Trade Agreement* including any amendments, related documents, and any joint decisions issued by the Parties under Article 21, as the case may be;

"complainant" means the person wishing to access the bid protest mechanism provided for under Part IV(B) and providing this consent;

"consent" means this Consent to Arbitrate by a Person required under Article 37(4) from any person wishing to access the bid protest mechanism provided for under Part IV(B);

"disputants" means the complainant and responding government entity or Party, and **"disputant"** means either one of them, as the case may be; and

"Parties" means the Parties to the Agreement and **"Party"** means any one of them, as the case may be.

2. This consent is being provided by [name], of [address for service].

3. The complainant hereby acknowledges that under Article 37(4), any person wishing to access the bid protest mechanism provided for under Part IV(B) of the Agreement must first acknowledge in writing its consent to the process. This consent is in fulfillment of that requirement.

4. The complainant has a dispute with [applicable government entity] arising under the Agreement relating to [brief description of the specific procurement at issue]. The complainant specifically consents to submitting this dispute to an arbiter under Part IV(B) of the Agreement, and agrees to do so wholly in accordance with this consent and the procedures specified in the Agreement.

5. In doing so, the complainant acknowledges and agrees that those procedures provide as follows:

- (a) Proceedings under Part IV(B) of the Agreement are governed by the Agreement. Those procedures differ in many ways from those normally used by domestic courts.

- (b) Subject to limited protections for certain types of information in Article 7(4) and any ruling relating to confidentiality made by the arbiter, the Agreement provides for public process. The arbiter's final report will be made public (see Article 38(10)). In addition, any information and documentation provided to a government entity or a Party as part of the proceeding will thereafter become subject to the Party's freedom of information legislation which may require that the government entity or Party disclose such information and any records or documents that have been created by that government entity or Party based on such information or documentation, to third parties making appropriate requests under such legislation;
- (c) Subject to a limited right of judicial review, the decision of the arbiter is final and cannot be appealed (see Articles 38(10) and 41));
- (d) The disputants are solely responsible for the costs associated with a proceeding under Part IV(B) of the Agreement. Such costs will include the fees of the arbiter, costs incurred by the administrator and certain costs associated with legal representation. Such costs can be significant. In particular, see Schedule 5 of the Agreement which establishes the fees payable to the arbiter and certain other permitted costs. Article 39(1) provides that, in principle, all such costs shall be borne by the unsuccessful disputant. However, an arbiter retains the discretion to apportion costs between the disputants as the arbiter considers reasonable. This means that the arbiter may allocate all or a greater proportion of costs to one or the other of the disputants in some circumstances. Once a cost award is issued by an arbiter, it becomes enforceable against the named disputant as if it were a superior court order (see Article 40(3));
- (e) A complainant wishing to initiate a proceeding under Part IV(B) of the Agreement must provide an initial financial deposit in the amount of \$2,500 with the administrator (see Article 37(4)). That initial deposit, in the form a certified cheque or bank draft made payable to the administrator, must be attached to this consent. An arbiter may subsequently order that a complainant provide one or more additional financial deposits, at the arbiter's discretion, in order to fully cover the estimated costs of the proceeding. The proceeding is automatically terminated if the complainant fails to provide the required financial deposits (see Article 37(5));
- (f) Once a proceeding commences it may only be terminated prior the issuance of arbiter's final report by mutual consent of the disputants (see Article 38(9)). Even if a proceeding is so terminated the complainant may still be responsible for some or all of the costs of the proceeding incurred up to that date, at the arbiter's discretion;
- (g) In the event that a complainant is successful in a proceeding, its remedies under

Part IV(B) of the Agreement are strictly limited to a cost award, not to exceed \$50,000, and a recoupment award, not to exceed \$50,000 (see Article 39(3)). These remedies may not fully compensate the complainant for the costs it has incurred in participating in applicable procurement process or in the proceeding; and

(h) The Parties may, at any time, issue a joint decision declaring an agreed interpretation of the Agreement. All such joint decisions are binding on arbiters and all arbiters' decisions must be consistent with all preceding joint decisions (see Article 21(3)). Any joint decision issued by the Parties at any time prior to the issuance of the arbiter's final report in this proceeding could therefore affect the outcome of the proceeding.

6. The complainant hereby consents to consideration of its dispute pursuant to the bid protest mechanism specified in Part IV(B) of the Agreement and on the bases outlined above.

Signed by an authorized signatory of the complainant at _____
_____, on the _____ day of _____, 20__

(Signature)

(Name)

(Position)