

PORT MANN/HIGHWAY 1 PROJECT

SCHEDULE 11
CHANGES

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**PART 1  
MINOR WORKS**

**1.1 Procedure for Minor Works**

The procedure set out in this Part 1 of this Schedule shall apply to any Minor Works initiated by either the Authority or the Constructor pursuant to Section 7.3 [Minor Works]. No Change Report or Change Certificate shall be required for any such Minor Works, and neither the Review Procedure nor the Consent Procedure shall apply to the consideration of any such Minor Works.

**1.2 Minor Works Initiated by Authority**

(a) Upon receipt by the Constructor of a request by the Authority for Minor Works pursuant to Section 7.3(a), then subject only to the Constructor, within 10 Business Days of the receipt of such request, delivering a notice to the Authority's Representative objecting to such Minor Works:

- (i) pursuant to Section 4.2 [Constructor Refusal to Proceed] of this Schedule; or
- (ii) alleging that such Minor Works fail to meet the applicable requirements set out in Section 7.3(a),

(and with any such objection to then be resolved in accordance with the Dispute Resolution Procedure), the Constructor shall proceed to perform the Minor Works to completion as soon as reasonably practicable.

(b) If, in the opinion of the Authority, the Authority is or would be likely to be required by Laws, policies or guidelines to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Minor Works, the Authority's Representative may, in the notice delivered under Section 7.3(a), require the Constructor to seek and evaluate competitive tenders for the Minor Works in accordance with Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule.

(c) The Authority shall, subject to Section 4.3 [Constructor Delay in Responding] of this Schedule, at its discretion, as the sole compensation to which the Constructor is entitled in respect of such Minor Works:

- (i) pay to the Constructor in advance of the performance of any Minor Works pursuant to Section 1.2(a) of this Schedule the amount, if any, of the Minor Works Valuation for such Minor Works as set out in the request delivered by the Authority's Representative pursuant to Section 7.3(a);
- (ii) if competitive tenders are obtained pursuant to Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule for any Minor Works performed pursuant to Section 1.2(a) of this Schedule, pay to the Constructor for any Minor Works the amount of the lowest compliant tender received pursuant to Section 4.4(a) of this Schedule, such amount to be payable by the Authority within 30 days of the receipt by the Authority's Representative of an invoice from the Constructor in respect thereof; or

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- (iii) pay the Constructor for any Minor Works performed pursuant to Section 1.2(a) of this Schedule within 30 days of the receipt by the Authority's Representative of a monthly invoice from the Constructor, calculated on the following basis:
  - (A) labour and Construction Plant shall be charged in accordance with rates which are agreed upon by the parties prior to the commencement of such Minor Works; and
  - (B) charges for Plant shall be at the cost of such Plant to the Constructor (or any of its Subcontractors), net of all discounts, plus a Mark-up of 15%.

**1.3 Minor Works Initiated by Constructor**

Upon receipt by the Authority's Representative of a Constructor Proposal to carry out Minor Works pursuant to Section 7.3(b), then, unless the Authority's Representative, within 10 Business Days of the receipt of such Constructor Proposal, delivers a notice to the Constructor objecting to the proposed Minor Works on any of the following grounds:

- (a) the proposed Minor Works fail to meet the requirement set out in Section 7.3(b);
- (b) if such Minor Works had been initiated by the Authority, the Constructor would have been able to refuse to implement such Minor Works on any of the grounds set out in Section 4.2(a) of this Schedule;
- (c) such Minor Works would result in a material departure from, material failure to comply with or material variation to any of the DB Requirements;
- (d) following such Minor Works the Project Infrastructure would not be of a quality or standard of performance or value (to the Authority) equal to or better than that required under the DB Requirements prior to such Minor Works, or the residual value of the Project Infrastructure would be negatively affected;
- (e) the conduct of the DB Work in accordance with the proposed Minor Works would be less likely to achieve compliance with the DB Requirements or would be likely to provide for compliance to a lower standard or quality than the conduct of the DB Work in accordance with the DB Requirements prior to such Minor Works;
- (f) such Minor Works would interfere with the relationship of the Authority with third parties;
- (g) such Minor Works would otherwise materially affect the risks or costs to which the Authority is exposed in respect of the Project; or
- (h) such Minor Works would require any amendment to any Design Data in respect of the Construction or any other Construction Activities during the DB Term, thereby requiring the submission of such amendment of Design Data to the Design and Certification Procedure,

the Constructor may proceed to perform the Minor Works at the Constructor's sole risk and expense.

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**1.4 Consequential Amendments**

The parties shall use their reasonable efforts to reach agreement as to the amendments to the DB Requirements, and any other consequential non-material amendments to this Agreement, necessary as a consequence of any Minor Works carried out in accordance with this Part. If the parties are unable to reach agreement within 10 Business Days, then either party may refer the matter for resolution under the Dispute Resolution Procedure.

**PART 2  
AUTHORITY CHANGES**

**2.1 Notice of Authority Change**

The Authority may, subject to the Authority's ability to initiate an Authority Change as a Minor Works under Section 7.3 [Minor Works], issue to the Constructor a request for an Authority Change under Section 7.1 [Authority Changes] setting out the nature, extent and timing of the relevant Authority Change with sufficient detail and information to permit the Constructor to prepare and deliver to the Authority's Representative a Change Report, and including whether:

- (a) in the opinion of the Authority, the Authority is or would be likely to be required by Laws, policies or guidelines to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Authority Change such that the Constructor shall be required to seek and evaluate competitive tenders for the Authority Change under Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule; and
- (b) the Authority requires the Constructor to provide a preliminary estimate of the impacts of the Authority Change in accordance with Section 2.2 [Preliminary Estimate of Impacts of Authority Change] of this Schedule.
- (c) [Intentionally Deleted]
- (d) [Intentionally Deleted]

**2.2 Preliminary Estimate of Impacts of Authority Change**

When required by the Authority for any Authority Change pursuant to Section 2.1(b) of this Schedule, but subject to Section 4.2 [Constructor Refusal to Proceed] of this Schedule, within 10 Business Days (or such later date as the Authority's Representative may specify acting reasonably in the circumstances) of:

- (a) the receipt by the Constructor of a request for an Authority Change under Section 2.1 [Notice of Authority Change] of this Schedule; or
- (b) a determination pursuant to the Dispute Resolution Procedure in favour of the Authority in respect of a dispute pursuant to Section 4.2(b) of this Schedule,

the Constructor shall, at its sole cost and expense, deliver to the Authority's Representative a written preliminary estimate of the impacts of such Authority Change determined in accordance with this Schedule. Within 10 Business Days of the delivery of such a preliminary estimate, the Authority's Representative shall notify the Constructor in writing whether or not the Authority desires to proceed with such Authority Change.

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**2.3 Preparation of Change Report**

Subject to Section 4.2 [Constructor Refusal to Proceed] of this Schedule:

- (a) in circumstances where Section 2.2 [Preliminary Estimate of Impacts of Authority Change] of this Schedule applies, within 35 Business Days of receipt of notification from the Authority's Representative pursuant thereto that the Authority desires to proceed with an Authority Change; or
- (b) in all other circumstances, within 45 Business Days of either:
  - (i) the receipt of a request for an Authority Change under Section 2.1 [Notice of Authority Change] of this Schedule; or
  - (ii) a determination pursuant to the Dispute Resolution Procedure in favour of the Authority in respect of a dispute pursuant to Section 4.2(b) of this Schedule,

the Constructor shall consider how to accommodate a proposed Authority Change in a cost effective manner so as to minimize the cost of such Authority Change, the Project Schedule and the Project, and otherwise on the performance of the DB Work, and shall prepare and submit to the Authority's Representative pursuant to the Consent Procedure (subject to the specific time periods set out in Section 2.7 [Agreement or Disagreement Regarding Change Report] of this Schedule) a written report (a "**Change Report**") identifying all aspects of the Authority Change as they relate to the Project, the DB Work and this Agreement including, without limitation:

- (c) an estimate in accordance with Section 2.4 [Valuation of Change in Costs] of this Schedule of the Change in Costs arising from the implementation of the Authority Change, and providing with such estimate:
  - (i) all necessary supporting calculations and information including particulars of additional sums to be paid to Subcontractors and professional advisers as reasonably requested and necessary for the Authority to be able to understand and evaluate the estimate; and
  - (ii) any time periods after which such estimated prices or parts thereof shall no longer be valid, which periods shall be of sufficient length to allow the Authority a reasonable time to consider the Change Report and arrive at an initial evaluation;
- (d) any resulting adjustment to the Maximum Payment Curve which the Constructor proposes is required to be made pursuant to Section 2.6(b) of this Schedule to reflect the Change in Costs estimated by the Constructor under Section 2.3(c) of this Schedule, together with all supporting information;
- (e) [Intentionally Deleted]
- (f) [Intentionally Deleted]
- (g) any impact on any other amounts payable by either party to the other as a result of the implementation of the Authority Change;

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- (h) any adjustments required to any of the dates set out in the Project Schedule due to the effect of carrying out such Authority Change on any milestone dates set out in the Project Schedule, including any adjustment to the FHC Substantial Completion Target Date, the Tolling Commencement Target Date, the Substantial Completion Target Date, the Total Completion Target Date and the Existing Port Mann Bridge Demolition Target Date which the Constructor shall require as a result of the implementation of the Authority Change (including details of any corresponding adjustments required by any Subcontractors);
- (i) any changes to the Design Data in respect of the Construction or any other Construction Activities during the DB Term required to be submitted to the Design and Certification Procedure in order to implement such Authority Change;
- (j) any other amendments required to this Agreement, the DB Requirements or any Project Document as a result of such Authority Change;
- (k) the Constructor's requirements for any other assistance and resources from the Authority or any other requirements of the Authority reasonably required to implement the Authority Change;
- (l) any required additional Permits or amendments to existing Permits;
- (m) any additional Land Rights necessary for the purpose of implementing the Authority Change;
- (n) the extent to which the Authority Change would interfere with the Constructor's ability to comply with any of its obligations under this Agreement, any Project Document or any Permits;
- (o) the identity of any Subcontractors which the Constructor intends to engage for the purposes of implementing the Authority Change; and
- (p) any further effects (including benefits and impairments) which the Constructor foresees as being likely to result from the Authority Change.

**2.4 Valuation of Change in Costs**

The Constructor shall estimate, and provide to the Authority's Representative in the Change Report pursuant to Section 2.3(c) of this Schedule, the net amount of all additional costs (including direct and indirect costs, and capital expenditure costs) which the Constructor reasonably expects to incur in order to implement an Authority Change and any cost savings which the Constructor can realize from the implementation of such Authority Change (such net amount, which may be positive or negative, the "**Change in Costs**") and shall, subject to Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule, incorporate in such estimate all such information, including quantities, as the Authority's Representative may reasonably require to enable it to properly evaluate such estimate, including a detailed summary of the prices, costs, charges and Mark-ups used to calculate such estimate, and sufficient additional information (including a statement of the Constructor confirming such matters) to demonstrate to the satisfaction of the Authority's Representative that:

- (a) the Constructor has used all reasonable efforts, including the use of competitive quotations or tenders, to oblige its Subcontractors to minimize any increase in costs and to maximize any reduction in costs;

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- (b) all costs of the Constructor, and its Subcontractors are limited to actual amounts to the extent such amounts relate specifically to the Authority Change and would not otherwise have been incurred and are:
  - (i) paid or to be paid or invoiced to the Constructor or its Subcontractors; or
  - (ii) paid by the Constructor or its Subcontractors,all without addition of any Mark-ups except as otherwise expressly provided for in this Section;
- (c) [Intentionally Deleted]
- (d) the amount of the Mark-up for profit and overhead included on amounts charged directly by the Constructor included in the calculation of such estimated costs does not exceed 15% of the Change in Costs, and no other Mark-ups (except for any Mark-up referred to in Section 2.4(f) of this Schedule) are included;
- (e) the estimate includes an estimate, without any Mark-up, of all additional amounts that would be payable by the Constructor to the Authority under Schedule 10 [Performance Mechanism] as a result of the implementation of the Authority Change;
- (f) to the extent that the Authority Change would directly result in a material adverse change to the Constructor in the overall risk allocation under this Agreement as at the date of the delivery of the notice of the Authority Change to the Constructor, taking into account any other factors mitigating the effect of the Authority Change on the overall risk allocation (including any changes in this Agreement or the DB Requirements arising out of the Authority Change), the amount of any Mark-ups included in the calculation of such estimated costs (in excess of the Mark-up for profit and overhead referred to in Section 2.4(d) of this Schedule) fairly and appropriately reflects such change in overall risk allocation;
- (g) all costs included in such estimate reflect:
  - (i) labour rates applying in the open market to providers of services similar to those required in connection with the implementation of the Authority Change;
  - (ii) any and all changes in this Agreement or the DB Requirements arising out of the Authority Change; and
  - (iii) any and all changes in risk allocation (including any Mark-up referred to in Section 2.4(f) of this Schedule);
- (h) any costs of preparing the Change Report included in such estimate are recoverable by the Constructor pursuant to Section 2.10 [Costs of Preparing Change Report] of this Schedule;
- (i) the estimated costs will provide good overall value to the Authority and take into account any reasonably foreseeable changes in Laws; and
- (j) the Constructor has obtained or will obtain the best value for money when procuring any work, services, supplies, materials or equipment required in connection with the

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implementation of the proposed Authority Change and has complied or will comply with Good Industry Practice in relation to any such procurement, to a standard no less than the Constructor would apply if all costs incurred were to its own account without recourse to the Authority.

**2.5 [Intentionally Deleted]**

**2.6 Consequences of Authority Changes**

- (a) If it has been agreed or determined in accordance with this Part that, as a result of an Authority Change, either party is required to make a payment to the other, such payment shall be made in the amount and in accordance with the payment schedule as agreed or determined in accordance with this Part.
- (b) If it has been agreed or determined in accordance with this Part that an Authority Change results in an adjustment to the Maximum Payment Curve, the resulting adjustment shall be made to the Maximum Payment Curve as set out in Schedule 33 [Maximum Payment Curve].

**2.7 Agreement or Disagreement Regarding Change Report**

- (a) Following receipt by the Authority's Representative of a Change Report prepared in accordance with Section 2.3 [Preparation of Change Report] of this Schedule in respect of a proposed Authority Change, the parties shall use reasonable efforts to reach agreement on the matters described in Section 2.6 [Consequences of Authority Change] of this Schedule and all other information contained in the Change Report, and any agreement so reached in writing shall, if recorded in a Change Certificate issued in accordance with Section 2.8 [Change Certificate] of this Schedule, be binding upon the Authority and the Constructor with respect to the Authority Change in accordance with Section 2.9 [Effect of Change Certificate] of this Schedule.
- (b) If the parties are unable to agree on the resolution of all matters referred to in the Change Report within 15 Business Days of its receipt by the Authority's Representative, the Authority's Representative:
  - (i) may elect not to proceed with the relevant Authority Change by notice to the Constructor; or
  - (ii) otherwise shall issue to the Constructor a Change Certificate stating the determination of the Authority's Representative of the matters referred to in the Change Report.
- (c) If the Constructor disagrees with all or any of the determinations set out in a Change Certificate issued by the Authority's Representative pursuant to Section 2.7(b)(ii) of this Schedule, then the Constructor may deliver to the Authority's Representative within 15 Business Days of the issuance of such Change Certificate notice that it disputes such determinations, failing which such Change Certificate shall be deemed to have been accepted by the Constructor. The parties shall cooperate to have such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure. Pending the resolution of any such dispute, the Constructor shall proceed with the implementation of the Authority Change as directed by the Authority's Representative in the Change Certificate and in accordance with Section 2.9 [Effect of Change Certificate] of this Schedule, provided that



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any amounts reasonably expensed, and any delay reasonably established, by the Constructor in proceeding to implement such Authority Change pending resolution pursuant to the Dispute Resolution Procedure shall be dealt with as part of such Authority Change.

**2.8 Change Certificate**

An Authority Change shall be authorized by the Authority's Representative issuing to the Constructor a certificate (the "**Change Certificate**") which shall set out:

- (a) the extent to which such Authority Change applies to vary any of the DB Work, the DB Requirements, this Agreement or the other Project Documents;
- (b) any payment to be made in accordance with Section 2.6(a) of this Schedule and the schedule for the making of such payment;
- (c) any adjustment to be made to the Maximum Payment Curve in accordance with Section 2.6(b) of this Schedule; and
- (d) the resolution of any other matters contained in the Change Report.

**2.9 Effect of Change Certificate**

- (a) A Change Certificate shall have the effect of varying the DB Work, the DB Requirements and/or this Agreement to the extent provided therein with effect from the date of issuance of the Change Certificate or as otherwise provided in the Change Certificate (or, if later, the date on which the Authority procures written confirmation from the Province in favour of the Constructor that the Province consents, for the purposes of the Provincial Payment Guarantee and Support Agreement, to any amendments to the Guaranteed Agreements (as defined therein) agreed by the Authority and the Constructor pursuant to this Schedule in relation to the Authority Change), subject only to the contrary resolution of a dispute initiated by the Constructor pursuant to Section 2.7(c) of this Schedule.
- (b) Unless otherwise agreed, or unless directed otherwise by an interim notice to proceed received from the Authority's Representative, the Constructor shall not proceed with the performance of any Authority Change prior to the issuance of a Change Certificate or as otherwise provided in the Change Certificate. With effect from the date of issuance of a Change Certificate or as otherwise provided in the Change Certificate (or, if later, the date on which the Authority procures written confirmation from the Province in favour of the Constructor that the Province consents, for the purposes of the Provincial Payment Guarantee and Support Agreement, to any amendments to the Guaranteed Agreements (as defined therein) agreed by the Authority and the Constructor pursuant to this Schedule in relation to the Authority Change) or such an interim notice to proceed, or upon making such other agreement, the Constructor shall implement the Authority Change as directed in the Change Certificate or interim notice to proceed, or as otherwise agreed, and shall, subject to the resolution of any dispute initiated by the Constructor in accordance with Section 2.7(c) of this Schedule in respect of such Change Certificate, be bound by this Agreement in so doing as if the Authority Change formed part of the DB Requirements.
- (c) Subject only to a dispute initiated by the Constructor in accordance with Section 2.7(c) of this Schedule, once issued (or, if later, the date on which the Authority procures written

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confirmation from the Province in favour of the Constructor that the Province consents, for the purposes of the Provincial Payment Guarantee and Support Agreement, to any amendments to the Guaranteed Agreements (as defined therein) agreed by the Authority and the Constructor pursuant to this Schedule in relation to the Authority Change) a Change Certificate shall be binding upon the Authority and the Constructor with respect to the Authority Change and may not be reopened by either party, and the relief and/or compensation, if any, to which the Constructor is entitled in accordance with such Change Certificate shall be the only relief and/or compensation to which the Constructor shall be entitled in respect of such Authority Change.

**2.10 Costs of Preparing Change Report**

- (a) The costs incurred by the Constructor in preparing a Change Report shall be paid for as follows:
  - (i) all costs of the Constructor's own staff and employees, or any of their Affiliates, which would normally be part of the general management, administration, and supervision of the DB Work and general construction estimating shall be paid for by the Constructor and such costs shall not form part of the Change in Costs; and
  - (ii) subject to Section 2.10(b) of this Schedule, the Constructor shall be entitled to receive payment from the Authority, as part of the Change in Costs or, if the Authority elects not to proceed with the relevant Authority Changes pursuant to Section 2.7(b)(i) of this Schedule, by separate payment to the Constructor by the Authority, for any out of pocket costs that the Constructor reasonably and necessarily incurs, directly or indirectly, to prepare such Change Report and that are approved by the Authority's Representative prior to being incurred by the Constructor.
- (b) The Constructor shall not be entitled to receive payment from the Authority pursuant to Section 2.10(a)(ii) of this Schedule for any out of pocket costs in respect of the preparation of a Change Report for a proposed Authority Change if it is agreed or determined pursuant to the Dispute Resolution Procedure that the preliminary estimate of the net amount of the Change in Costs arising from such Authority Change prepared by the Constructor pursuant to Section 2.2 [Preliminary Estimate of Impacts of Authority Change] of this Schedule was less than, by more than 20%, the net amount of the Change in Costs subsequently determined by the parties in accordance with this Part.

**PART 3  
VALUE ENGINEERING PROPOSALS**

**3.1 Notice of Value Engineering Proposal**

The Constructor may submit to the Authority's Representative pursuant to the Consent Procedure a Value Engineering Proposal under Section 7.4 [Value Engineering Proposal], which Value Engineering Proposal shall:

- (a) set out the extent to which such Value Engineering Proposal would, if accepted by the Authority's Representative, apply to vary the DB Work, the DB Requirements and/or this Agreement;
- (b) set out all the applicable information required in a Change Report;

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- (c) provide sufficient information to the Authority's Representative to enable it to consider the sharing of benefits under Section 3.4 [Sharing Benefits of Value Engineering Proposal] of this Schedule;
- (d) specify the Constructor's reasons and justification for proposing the Value Engineering Proposal, including:
  - (i) the comparative advantages to the Constructor and the Authority of each variation to the DB Work, the DB Requirements and/or this Agreement referred to in Section 3.1(a) of this Schedule;
  - (ii) [Intentionally Deleted]
  - (iii) confirmation that, if such Value Engineering Proposal had been initiated by the Authority, the Constructor would not have been able to refuse to implement such Value Engineering Proposal on any of the grounds set out in Section 4.2(a) of this Schedule; and
  - (iv) confirmation whether, if such Value Engineering Proposal had been initiated by the Constructor as a Minor Works, the Authority could potentially have been able to reject such Value Engineering Proposal on any of the grounds set out in Section 1.3 [Minor Works Initiated by Constructor] of this Schedule, together with the Constructor's rationale for why the Value Engineering Proposal is nevertheless recommended to the Authority notwithstanding the applicability of any such grounds for rejection; and
- (e) indicate if there are any dates by which a decision by the Authority is requested.

**3.2 Evaluation of Value Engineering Proposal**

- (a) In accordance with the Consent Procedure, the Authority's Representative shall consider any Value Engineering Proposal received from the Constructor, including:
  - (i) requesting any clarification or additional information or documentation regarding the Value Engineering Proposal as required by the Authority's Representative to fully evaluate and consider the Value Engineering Proposal; and
  - (ii) requesting modifications of the Value Engineering Proposal if required by the Authority's Representative.
- (b) The Authority may accept or reject any Value Engineering Proposal in its discretion.

**3.3 Change Certificate for Value Engineering Proposal**

If the Authority's Representative accepts a Value Engineering Proposal pursuant to Section 3.2(b) of this Schedule, with or without modification, the relevant Value Engineering Proposal shall be documented and evidenced by a Change Certificate prepared by the Constructor and issued by the Authority's Representative in the same manner as an Authority Change under Section 2.8 [Change Certificate] of this Schedule.

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**3.4 Sharing Benefits of Value Engineering Proposal**

If the Value Engineering Proposal causes or shall cause the costs of the Constructor to decrease, after taking into account the agreed implementation and reasonably allocated development costs of the Value Engineering Proposal incurred by the Constructor or any Subcontractor, and taking into account any other uses of the Value Engineering Proposal by the Constructor, the net savings in the costs of the Constructor and any such Subcontractor shall be shared equally by the Constructor and the Authority in the manner agreed to by the Authority's Representative and set out in the relevant Change Certificate in response to the Constructor's proposal therefor provided under Section 3.1(c).

**3.5 Costs of Value Engineering Proposal**

- (a) The Constructor may deliver to the Authority's Representative preliminary information with respect to a proposed Value Engineering Proposal and the Authority may, at its discretion, agree in advance to pay all or any portion of the costs of developing such Value Engineering Proposal.
- (b) Subject only to an agreement of the Authority otherwise in accordance with Section 3.5(a) of this Schedule, all costs of a Value Engineering Proposal shall be borne solely by the Constructor, including that the Constructor shall pay to the Authority promptly after receipt of an invoice therefor all reasonable and proper costs and expenses reasonably incurred by the Authority in connection with reviewing such Value Engineering Proposal and making a determination as to the acceptance or rejection of such Value Engineering Proposal, whether or not such Value Engineering Proposal is accepted and whether or not the proposed Value Engineering Proposal takes place, such costs and expenses to include professional costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged by Partnerships BC or the Province to the Authority, and the Authority's reasonable internal administrative and personnel costs. At the time of the Constructor's submission of a Value Engineering Proposal pursuant to Section 3.1 [Notice of Value Engineering Proposal] of this Schedule, and as a condition precedent to the commencement of any time period specified for the Authority's Representative to object or otherwise respond to such submission and to any obligation of the Authority to review or consider any matter in respect of which any such submission is made, the Constructor shall pay to the Authority the sum of \$35,000 (index linked) to be held by the Authority on account of the Constructor's obligations to pay under this Section in respect of such submission. After the relevant decision of the Authority is rendered, the Authority shall either refund any overpayment by the Constructor on account of amounts payable by the Constructor under this Section, or invoice the Constructor for any additional amounts payable by the Constructor under this Section, which additional amounts the Constructor shall pay within 10 Business Days after receipt of such invoice.

**PART 4  
GENERAL PROVISIONS****4.1 Modification of Processes and Procedures**

Nothing in this Schedule or Part 7 [Authority Changes and Constructor Proposals] shall limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule or such Part in respect of Authority Changes or Constructor Proposals, including Minor Works and Value Engineering Proposals.

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**4.2 Constructor Refusal to Proceed**

- (a) The Constructor may, acting reasonably, refuse to provide a Change Report or implement an Authority Change (including Minor Works but excluding Required Authority Changes) on the basis that:
- (i) to implement the Authority Change would not be technically feasible;
  - (ii) the Authority Change would, if implemented, materially and adversely affect the Constructor's ability to perform its obligations under this Agreement, or any other Authority Project Document, after having taken into account any amendments to any provision thereof contemplated under this Schedule and any payments to be made to the Constructor by the Authority in respect of such Authority Change under this Schedule;
  - (iii) to implement the Authority Change would be contrary to Good Industry Practice;
  - (iv) to implement the Authority Change would be contrary to Laws;
  - (v) to implement the Authority Change would be unsafe;
  - (vi) the Constructor would be unable (using all reasonable efforts in respect thereof) to obtain any new Permit or any amendment or revision to an existing Permit (other than any new or amended Permit that would be the responsibility of the Authority) that is:
    - (A) necessary to implement the Authority Change;
    - (B) necessary otherwise to allow compliance with the provisions of this Agreement as a consequence of implementation of such Authority Change having regard to the provisions of this Agreement (as amended, where appropriate, to take account of or make provision for the Authority Change); or
    - (C) necessitated by the revocation or cancellation of any existing Permit or the imposition of any additional conditions with which the Constructor would be unable to comply in relation to any existing Permit occurring as a result of the Authority Change; or
  - (vii) the Constructor would be unable (using all reasonable efforts in respect thereof) to obtain any Land Rights necessary for the purpose of implementing the Authority Change except where the Authority obtains, directly or indirectly, such Land Rights,

provided that the Constructor shall deliver to the Authority's Representative, within 20 Business Days (or within 10 Business Days in the case of Minor Works) after the receipt by the Constructor of the request for such Authority Change, written notice of such refusal together with an explanation of the Constructor's reasons therefor in sufficient detail to permit a considered review thereof by the Authority's Representative. If the Constructor does not deliver to the Authority's Representative any such written notice of refusal within such time period, the Constructor shall be deemed to have agreed to such Authority Change and shall either proceed with the performance of such Minor Works

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under Section 1.2(a) of this Schedule or the preparation of a Change Report under Section 2.3 [Preparation of Change Report] of this Schedule for such other Authority Change, as the case may be.

- (b) If the Authority's Representative disagrees with the Constructor's refusal to proceed delivered under Section 4.2(a) of this Schedule, then the Authority's Representative may notify the Constructor of such disagreement within 15 Business Days of the receipt of the Constructor's refusal, failing which the request for such Authority Change shall be deemed to have been cancelled. The parties shall cooperate to have such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure and, pending the resolution of such dispute, the Constructor shall not be required to proceed with the performance of such Minor Works under Section 1.2(a) of this Schedule or the preparation of a Change Report under Section 2.3 [Preparation of Change Report] of this Schedule for such other Authority Change, as the case may be.

**4.3 Constructor Delay in Responding**

In the event that the Constructor fails to:

- (a) commence the performance of any Minor Works requested by the Authority or deliver a notice to the Authority's Representative disputing such requested Minor Works within the time period set out in Section 1.2(a) of this Schedule;
- (b) prepare a Change Report in respect of any other Authority Change requested by the Authority within the time period set out in Section 2.3 [Preparation of Change Report] of this Schedule or deliver a notice to the Authority's Representative refusing to proceed with such other Authority Change within the time period set out in Section 4.2(a) of this Schedule; or
- (c) meet any other time period required in respect of any Minor Works or other Authority Change under Part 7 [Authority Changes and Constructor Proposals] and this Schedule,

then, without limiting any rights of the Authority under this Agreement in respect of such failure, the Constructor shall bear the sole risk and expense of any increase in the amount that the Authority would be required to pay to the Constructor pursuant to Part 7 [Authority Changes and Constructor Proposals] and this Schedule in respect of such Minor Works or other Authority Change as a result of such delay. The onus for establishing that no such increase has resulted from such delay shall be on the Constructor.

**4.4 Requirement to Obtain Competitive Tenders**

- (a) If either:
  - (i) the Authority's Representative gives notice of the requirement for the Constructor to obtain competitive tenders for any Minor Works or other Authority Change pursuant to Section 1.2(b) or Section 2.1(a) of this Schedule; or
  - (ii) the total estimated Change in Costs payable by the Authority in respect of the Minor Works or other Authority Change are reasonably likely to exceed \$300,000 (index linked),

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then, unless the Authority's Representative waives such requirement by notice to the Constructor or the Constructor demonstrates to the reasonable satisfaction of the Authority's Representative that it is impracticable, given the nature of such Minor Works or other Authority Change, to obtain such competitive tenders, the Constructor shall obtain, or cause its Subcontractors to obtain, as appropriate, at least three competitive tenders for the work involved in such Minor Works or other Authority Change, at least one of which such tenders shall be from a third party at arm's length from the Constructor and its Affiliates.

- (b) In the case of Minor Works, the Authority shall, notwithstanding the receipt of tenders pursuant to Section 4.4(a) of this Schedule, make payment for such Minor Works in accordance with Section 1.2(c) of this Schedule.
- (c) In the case of any Authority Change other than Minor Works, the Change in Costs for such Authority Change shall be the amount of the lowest compliant tender received pursuant to Section 4.4(a) of this Schedule, plus any Mark-up contemplated in Sections 2.4(d) and (f) of this Schedule.

**4.5 Changes Not to Correct Errors in Cost Estimates**

Neither the Constructor nor the Authority shall use a Constructor Proposal or an Authority Change, respectively, to correct, or derive benefit from, any errors or omissions in the cost estimates provided by the Constructor for any DB Work forming part of this Agreement.

**4.6 Disputes**

Any dispute between the parties arising in connection with any matter in respect of an Authority Change or Constructor Proposal, including any Minor Works, shall be resolved in accordance with the Dispute Resolution Procedure.