

SOUTH FRASER PERIMETER ROAD PROJECT

**SCHEDULE 21
DELEGATED OBLIGATIONS, RIGHTS, POWERS AND FUNCTIONS**

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**PART 1
GENERAL PROVISIONS**

1.1 Delegated Obligations

In accordance with section 6(4) of the TIA, the Delegated Obligations set out in Part 2 of this Schedule are hereby imposed on the Concessionaire in relation to the Project Infrastructure, the Project Site and the Project Work. The Concessionaire acknowledges that the imposition of the Delegated Obligations is in accordance with section 6(4) of the TIA.

1.2 Delegated Rights, Powers and Functions

- (a) In accordance with section 6(3) of the TIA, the Delegated Rights, Powers and Functions set out in Part 3 of this Schedule are hereby delegated to the Concessionaire in relation to the Project Infrastructure, the Project Site and the Project Work. The Concessionaire acknowledges that the delegation of the Delegated Rights, Powers and Functions is in accordance with section 6(3) of the TIA.
- (b) The delegation of the Delegated Rights, Powers and Functions to the Concessionaire does not in any way derogate from, diminish, fetter or otherwise interfere with or limit any of the rights, powers and functions of the Minister, including those rights, powers and functions included in the Delegated Rights, Powers and Functions. At any time and from time to time the Minister in the Minister's discretion may, personally or through existing or future delegates of the Minister, exercise any of the rights, powers and functions included in the Delegated Rights, Powers and Functions.
- (c) Upon receipt of notice from the Minister that the Minister intends to exercise any right, power or function included in the Delegated Rights, Powers and Functions, the Concessionaire shall not exercise any delegated rights, powers or functions in relation to the same matter in any way that conflicts with the exercise by the Minister of the same right, power or function, or results in a decision of the Concessionaire that conflicts with the decision of the Minister in relation to the exercise of such right, power or function in relation to the same matter.
- (d) Any common law principle and any provision of an enactment that constrains, qualifies or otherwise applies to the Minister in or in relation to the exercise or performance by the Minister of any right, power or function, also applies to constrain, qualify or affect the Concessionaire in or in relation to the exercise or performance by the Concessionaire of that delegated right, power or function.

1.3 Concessionaire's Responsibility

- (a) The Concessionaire shall exercise the Delegated Rights, Powers and Functions and discharge the Delegated Obligations with all reasonable care and diligence and shall ensure that all reasonable care and diligence is taken in anything that is done or not done or caused to be done or not done by the Concessionaire or any persons for whom the Concessionaire is in law responsible in connection with the exercise of the Delegated Rights, Powers and Functions and the discharge of the Delegated Obligations.
- (b) The Concessionaire shall exercise the Delegated Rights, Powers and Functions and discharge the Delegated Obligations:

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- (i) subject to and in accordance with the terms of this Agreement and only for the purposes of performing its obligations hereunder;
- (ii) in good faith, without bias or capriciousness;
- (iii) in a rational manner; and
- (iv) subject to and in accordance with all Laws, including the rules of natural justice and the duty of fairness applicable to the Delegated Rights, Powers and Functions and Delegated Obligations and to the exercise or discharge of the Delegated Rights, Powers and Functions and Delegated Obligations by the Concessionaire.

1.4 No Assignment or Sub-Delegation

The Concessionaire shall not assign directly or indirectly or sub-delegate any of the Delegated Rights, Powers and Functions or Delegated Obligations but, for greater certainty, may engage persons for whom the Concessionaire is in law responsible to do or cause to be done works, services and any other thing whatsoever in the exercise of the Delegated Rights, Powers and Functions and the discharge of the Delegated Obligations. The engagement of persons for whom the Concessionaire is in law responsible shall not relieve the Concessionaire of any responsibilities in connection with any of the Delegated Rights, Powers and Functions, with any of the Delegated Obligations or with any of such works, services or other thing.

1.5 Responsibility and Liability

Without limiting any other responsibility or liability the Concessionaire may be subject to under any Laws, the Concessionaire is fully responsible and liable for the acts or omissions of the Concessionaire and of any persons for whom the Concessionaire is in law responsible, engaged to do or cause to be done any works, services or other thing whatsoever in connection with the exercise of the Delegated Rights, Powers and Functions or the discharge of the Delegated Obligations, including where such acts or omissions constitute defaults in performing any of the obligations set out in Sections 1.2(d), 1.3(a) and 1.3(b) of this Schedule, and if any Loss or Claim is sustained by any person by reason of such act or omission or default.

1.6 Revocation or Modification

- (a) Where the Minister considers it to be in the public interest to do so, including where there has been any failure on the part of the Concessionaire or any persons for whom the Concessionaire is in law responsible to observe, abide by or comply with any term of this Schedule or any other provision of this Agreement, the Minister may revoke, modify, or suspend, in whole or in part, with respect to any matter or matters, or category or categories of matter or matters, temporarily or otherwise, the delegation of the Delegated Rights, Powers and Functions and the imposition of the Delegated Obligations, and for greater certainty such modification may include adding or removing rights, powers, functions and obligations of the Minister.
- (b) If the Minister revokes, modifies, or suspends, in whole or in part, the delegation of the Delegated Rights, Powers and Functions as contemplated under Section 1.6(a) of this

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Schedule for a reason other than a failure (including for greater certainty, the consequences of any such failure) on the part of the Concessionaire or any persons for whom the Concessionaire is in law responsible to observe, abide by or comply with any term of this Schedule or any other provision of this Agreement, and if the Concessionaire, despite using all reasonable efforts to do so, is rendered unable to observe, abide by, comply with or otherwise perform a term of this Schedule or any other provision of this Agreement solely by reason of such revocation, modification or suspension by the Minister then:

- (i) such revocation, modification or suspension shall constitute a Compensation Event; and
 - (ii) the Concessionaire shall not be considered to be in breach of this Agreement for failing to observe, abide by, comply with or otherwise perform such term of this Schedule or any other provision this Agreement where such failure results solely from such revocation, modification or suspension by the Minister.
- (c) Any revocation, modification or suspension contemplated under Section 1.6(a) of this Schedule shall not constitute and is not to be construed as being a repudiation of this Agreement by the Province and shall not constitute a Province Change or, subject only to Section 1.6(b) of this Schedule, a Supervening Event.

1.7 Revocation and Termination on Termination Date

Subject to Section 1.6 of this Schedule, the delegation of the Delegated Rights, Powers and Functions to and the imposition of the Delegated Obligations on the Concessionaire are effective for the Term and automatically and without further action by the Minister or the Concessionaire shall be revoked and terminated in their entirety on the Termination Date (but without prejudice to any liability, whether incurred prior to or after the Termination Date, in connection with or as a result of the exercise of the Delegated Rights, Powers and Functions or the discharge of the Delegated Obligations).

1.8 Transfer on Revocation or Termination

On the revocation, termination or suspension of the delegation of all or any of the Delegated Rights, Powers and Functions, the Concessionaire must, at the request of the Minister, promptly take such actions as are necessary to facilitate the efficient transfer or delegation of any such Delegated Rights, Powers and Functions to such person or persons as the Minister may designate.

1.9 No Claims

Without limiting the effect of Section 1.6 [Revocation of Modification] of this Schedule and the Concessionaire's entitlement to claim a Compensation Event thereunder, notwithstanding the delegation of the Delegated Rights, Powers and Functions to the Concessionaire and the imposition of the Delegated Obligations on the Concessionaire, the Concessionaire shall not have any Claim whatsoever against the Province or the Minister arising from or in connection with:

- (a) the delegation or imposition by the Minister of;
- (b) the failure by the Minister to delegate or impose;

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(c) the exercise or performance by the Minister of; or

(d) the failure by the Minister to exercise or perform,

whether personally or through existing or future delegates of the Minister, any of the rights, powers or functions included in the Delegated Rights, Powers and Functions or any of the obligations included in the Delegated Obligations in relation to the Project Infrastructure, the Project Site or the Project Work.

1.10 Data Gathering, Document Preparation, etc.

The Concessionaire, at its cost, shall be responsible for, and shall provide, all data gathering, document preparation, administrative and other support and liaison (including preparation of plans, publication of notices and administrative steps required to serve notices and serving notices) in such manner and at such times as required to enable the Province and BCTFA to exercise all statutory and other powers, functions and discretions and to discharge all duties in respect of the Project Infrastructure, the Project Site and the Project Work.

**PART 2
DELEGATED OBLIGATIONS**

2.1 Delegated Obligations

The Delegated Obligations that are imposed on the Concessionaire under Section 1.1 of this Schedule in relation to the Project Infrastructure, the Project Site and the Project Work are as follows:

- (a) the obligations of the Minister set out in section 70 of the *Transportation Act* (British Columbia); and
- (b) all and any common law obligations of the Minister.

**PART 3
DELEGATED RIGHTS, POWERS AND FUNCTIONS**

3.1 Delegated Rights, Powers and Functions

The Delegated Rights, Powers and Functions that are delegated to the Concessionaire under Section 1.2 of this Schedule in relation to the Project Infrastructure, the Project Site and the Project Work are the rights, powers and functions set out in the following:

- (a) section 2(1)(a) of the *Transportation Act* (British Columbia), save and except that the rights, powers or functions of the Minister to remove, discontinue, close and dispose of the whole or any part or parts of the Project Infrastructure, the Project Site and the Project Work are not delegated to the Concessionaire;
- (b) section 16 of the *Transportation Act* (British Columbia);
- (c) section 22 of the *Transportation Act* (British Columbia);
- (d) section 47 of the *Transportation Act* (British Columbia), save and except that the rights, powers or functions of the Minister to remove, discontinue, close and dispose of the

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whole or any part or parts of the Project Infrastructure, the Project Site and the Project Work that is or are designated as arterial highway are not delegated to the Concessionaire;

- (e) section 49 of the *Transportation Act* (British Columbia);
- (f) section 50 of the *Transportation Act* (British Columbia);
- (g) section 51(1) of the *Transportation Act* (British Columbia);
- (h) section 51(2)(a), (b), (c), (d) of the *Transportation Act* (British Columbia);
- (i) section 51(3) of the *Transportation Act* (British Columbia);
- (j) section 55 of the *Transportation Act* (British Columbia);
- (k) section 61(1)(a) of the *Transportation Act* (British Columbia), save and except that the rights, powers or functions of the Minister to remove, discontinue, close and dispose of the whole or any part or parts of the Project Infrastructure, the Project Site and the Project Work are not delegated to the Concessionaire;
- (l) section 61(1)(b), (c) of the *Transportation Act* (British Columbia);
- (m) section 61(2) of the *Transportation Act* (British Columbia);
- (n) section 135(1) of the *Motor Vehicle Act* (British Columbia);
- (o) section 204(3) of the *Motor Vehicle Act* (British Columbia); and
- (p) section 214(2) of the *Motor Vehicle Act* (British Columbia).