
DEVELOPMENT PHASE AGREEMENT

HIGHWAY 5 - CATEGORY B PROJECT

**HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**

- AND -

PETER KIEWIT SONS ULC

- AND -

KEA5 PARTNERSHIP

Contents

1.	Definitions and interpretation	2
1.1	Definitions	2
1.2	Interpretation.....	7
1.3	Business Day.....	9
1.4	Ambiguities and inconsistencies.....	9
1.5	References to the Province	9
2.	Purpose and scope of Development Phase	9
3.	Commitments	10
3.1	Development Principles	10
3.2	Open Book	10
4.	NOPs' obligations	11
4.1	General	11
4.2	NOPs' warranties.....	11
4.3	Conflict of Interest.....	12
5.	Governance of the Development Phase	12
5.1	Senior Leadership Team (SLT)	12
5.2	Project Management Team (PMT)	13
5.3	Governance principles and procedures.....	13
6.	Development of the Collaborative Construction Contract	14
7.	Role of the Owner	14
7.1	Owner's Team	14
7.2	The Province Representative	14
8.	Term.....	15
9.	Provision of information.....	15
9.1	Provision of information by the Owner.....	15
10.	Independent advisors	15
11.	CCC Proposal	16
11.1	Development of CCC Proposal	16
11.2	Consideration of CCC Proposal	17
11.3	Subsequent CCC Proposals.....	17
11.4	Execution of Collaborative Construction Contract.....	17
11.5	Acknowledgements.....	17
12.	Early Works.....	18
12.1	Development of Early Works	18
12.2	Performance of Early Works by Owner	18
13.	Payments	18
13.1	Establishment Audit.....	18
13.2	Payment to NOPs for Services other than Early Works	19
13.3	Payment to NOPs for Early Works	19
13.4	Not to Exceed Amount.....	19
13.5	Payment Applications	20
13.6	Payments on Account.....	20

13.7	Set Off	21
13.8	Catch Up Payment.....	21
13.9	Payment not evidence	21
13.10	No entitlement to payment.....	21
13.11	Audit.....	21
13.12	Survival	22
14.	Insurances	22
14.1	Insurances	22
14.2	Commercial general liability insurance	22
14.3	Workers' compensation	22
14.4	Professional Liability Insurance	23
14.5	Evidence of insurance	23
14.6	Obligation to assist	23
14.7	Insurance for Early Works	23
14.8	Pass Through	23
15.	Limit of liability	23
15.1	No liability for Consequential Loss	23
15.2	Limit of liability	23
16.	Intellectual Property.....	24
16.1	Ownership.....	24
16.2	New developments	24
16.3	Intellectual Property infringement	25
16.4	Survival	25
17.	Termination.....	25
17.1	Termination for convenience	25
17.2	Default.....	26
17.3	Termination for Default	27
17.4	Consequences of termination	27
17.5	Rights preserved.....	28
17.6	Survival	28
18.	Notices	28
18.1	How and where Notices may be sent	28
18.2	When Notices are taken to have been given and received	28
19.	Confidentiality	29
19.1	Confidentiality	29
19.2	IBC as third party beneficiary.....	30
19.3	Publicity or media statements	30
19.4	Survival	30
20.	General	30
20.1	Governing law and jurisdiction.....	30
20.2	Severability	30
20.3	Further assurances	31
20.4	Waiver.....	31
20.5	Amendments.....	31
20.6	Entire agreement	31
20.7	Changes in the NOPs, assignment and novation.....	31

20.8	Relationship of the Parties.....	32
20.9	Corporate power and authority	32
20.10	Financial difficulties.....	32
20.11	Owner's statutory functions	32
20.12	Successors and assigns	32
20.13	Costs.....	32
20.14	Counterparts	32
Schedule 1 Agreement Particulars		36
Schedule 2 Heads of Terms for Collaborative Construction Contract		1
Schedule 3 Key Individuals		23
Schedule 4 Preparatory Work		24
Schedule 5 Form and Content of CCC Proposal		26
Schedule 6 Reimbursable Costs and Fee		36
Schedule 7 Project Scope.....		51

DEVELOPMENT PHASE AGREEMENT

THIS AGREEMENT dated as of May 18, 2022 is entered into:

BETWEEN:

Her Majesty The Queen In Right Of The Province Of British Columbia, As Represented By The Minister Of Transportation And Infrastructure

(the **Owner**)

AND

Peter Kiewit Sons ULC

- and -

KEA5 Partnership, consisting of Kiewit Infrastructure BC ULC and Emil Anderson Construction (EAC) Inc.

(each a **NOP** and together the **NOPs**).

Background

- A. Due to extreme rainfall events that occurred on in November 2021, the Owner has an urgent need to undertake repairs to certain provincial highways.
- B. Due to the urgent nature of these repairs, the Owner wishes to engage a design team and construction team to work collaboratively with the Owner in order to carry out certain site investigations, develop the design for the Project, agree on a form of Collaborative Construction Contract to govern detailed design and construction, agree on a target price for the Project and carry out certain Early Works.
- C. As a general summary, the project consists of the works required to replace two bridges at each of the three locations, any associated roadway works, and works associated with other agency permit requirements (the **Project**). Full details of the scope of the Project are set out in Schedule 7.
- D. The Province issued an RFP on March 21, 2022 in relation to the Project.
- E. The NOPs have been selected by the Province as the preferred proponent team pursuant to the RFP.
- F. The NOPs are the non-Owner parties to this Agreement.

That in consideration of, among other things, the mutual promises contained in this Agreement, the Parties agree as set out in the operative provisions of this Agreement.

Operative provisions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The meanings of terms used in this Agreement are set out below.

Agreement means this Development Phase Agreement.

Affiliate means, in relation to a person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person where “**control**” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person;

Best for Project means an approach, determination, decision, method, solution, interpretation, outcome or resolution that is consistent with the Project Objectives.

Business Day means a day other than a Saturday, Sunday or statutory holiday in British Columbia.

Catch Up Payment has the meaning given in Section 13.8.

CCC Proposal means the pricing proposal for the Project which is developed by the NOPs and submitted to the Owner in accordance with Section 11.1(f), which shall contain the information listed in Schedule 5.

Collaborative Construction Contract means the agreement for the Project to be developed between the Parties pursuant to this Agreement and entered into between the Owner and the NOPs (if the CCC Proposal is accepted by the Owner in accordance with this Agreement).

Confidential Information means any information of a Party or IBC that the Party (or in the case of information of IBC, the Owner), has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other Party (whether before or after the date of the Agreement), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other Party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party or IBC which contain or otherwise reflect or are derived from such designated information.

Conflict of Interest has the meaning given in Section 4.3.

Consequential Loss means loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, pure economic loss, or any other special, contingent, exemplary, punitive, indirect, incidental or consequential loss or damage, but does not include any entitlement of the NOPs to payment under this Agreement.

Construction Manager means the Key Individual identified as such in Schedule 3.

Construction Phase means the period which commences on the date of execution of the Collaborative Construction Contract.

Control of a person means any of the following:

- (a) the power to direct or cause the direction of the management, actions, policies or decisions of that person, whether directly or indirectly through other persons, and whether through the ownership of shares, voting securities, partnership interests, units of ownership, or other ownership interests, or by contract, or otherwise;
- (b) legal or beneficial ownership or control over equity or ownership interests in that person, whether directly or indirectly through other persons:
 - (i) having a subscribed value (taking into account contributions to be made) of more than one half of the subscribed value (taking into account contributions to be made) of all equity or ownership interests in that person; or
 - (ii) carrying more than one half of the voting rights for:
 - (1) the management, actions, policies or decisions of that person; or
 - (2) the election or appointment of directors or managers of that person; or
- (c) if the person is a corporation, “control” within the meaning of Section 2(3) of the *Business Corporations Act* (British Columbia) in effect as at the Effective Date.

Default has the meaning given in Section 17.2.

Design Manager means the Key Individual identified as such in Schedule 3.

Development Principles means the principles set out in Section 3.1.

Development Phase means the period which commences on the Effective Date and ends on the earlier of:

- (a) the date of execution of the Collaborative Construction Contract by the Owner and the NOPs; and
- (b) the date of termination of this Agreement.

Diligence means the exercise of the degree of professional skill, care, expertise, diligence and foresight which would from time to time be expected of skilled and experienced professional persons engaged in undertakings of a similar type as the Services.

Early Works means any advance construction or preparatory work for the Project which the NOPs or the Owner perform as part of the Services.

Effective Date means the date of this Agreement.

Establishment Audits has the meaning given in Section 13.1(a).

Fee means the fee payable to the NOPs to cover profit and non-Project specific overheads.

Final Draft Collaborative Construction Contract has the meaning given in Section 6(f).

Financial Auditor means the person appointed by the Owner for the purposes of this Agreement and the Collaborative Construction Contract.

Good Faith in the context of this Agreement means:

- (a) acting in accordance with the Development Principles both in a literal sense and with their intent;
- (b) undertaking, adopting and implementing all things reasonably necessary to ensure a Best For Project outcome; and
- (c) acting fairly, reasonably, honestly and with integrity at all times.

Governmental Authority means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of:

- (a) all or part of the Project, including the Services;
- (b) any NOP;
- (c) the Site; or
- (d) any land external to the Site on which construction work may be carried out.

GST means the goods and services tax imposed pursuant to Section IX of the *Excise Tax Act* (Canada).

Insolvency Event means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of any NOP;
- (b) any proceedings with respect to any NOP being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if such proceedings are commenced against a NOP and are disputed by the NOP, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days;
- (c) any NOP making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against any NOP under the Bankruptcy and Insolvency Act (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against any NOP and are disputed by the NOP, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) any NOP ceasing to carry on business.

Infrastructure BC or IBC means Infrastructure BC Inc.

Intellectual Property means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world.

Key Individuals means the individuals listed in Schedule 3.

Key Performance Indicators or **KPIs** are to be developed as part of the Development Phase.

Laws means the common law and any and all laws, statutes, enactments, by-laws, regulations, rules, orders, directives, policies, permits, licences, codes and rulings of any government, and any ministries, agencies, board, commission or tribunal of any government, as amended from time to time, whether or not existing at the Effective Date.

Liabe Party has the meaning given in Section 15.2(a).

Limit of Liability has the meaning given in Section 15.2.

Maximum Development Payment has the meaning given in Section 13.4(a).

Notice has the meaning given in Section 18.1.

Open Book is a reference to the NOPs' commitment:

- (a) to share on a transparent and full and continuing disclosure basis all information and documentation of the financial costs of performing the Services to ensure the highest standards of fairness and integrity are achieved so that only the true and bona fide costs of performing the Services are sought to be, and are in fact, reimbursed under this Agreement as Reimbursable Costs.; and

- (b) to ensure that the Owner has access to all records, information and data in the possession of the NOPs which in any way has a bearing on the TOC, the Target Cost Estimate, the KPIs, and any other aspects of the CCC Proposal.

Owner's Team means the Owner's team and employees who will, among other things, perform the functions set out in Section 7.1(a).

Participants means the parties to the Collaborative Construction Contract.

Parties is a reference to the Owner and each NOP and **Party** means any one of them, as the context requires.

Preparatory Work means the work required to be able to develop a CCC Proposal, including the work described in Schedule 4.

Program means the Highway Reinstatement Program being undertaken by the Owner, which includes the Project.

Project has the meaning given in paragraph C of the Background of this Agreement, as more particularly described in Schedule 7.

Project Director means the Key Individual identified as such in Schedule 3.

Project Objectives means the following objectives for the Project:

- (a) deliver the Works expediently;
- (b) recognize and respect the Indigenous territories on which the Works are being conducted;
- (c) create and support opportunities for Indigenous peoples, Indigenous businesses, underrepresented groups, trainees and apprentices;
- (d) ensure safety for workers and the public during construction;
- (e) design and innovate for climate change resiliency;
- (f) effective traffic management; and
- (g) provide value for public money.

Project Scope means the scope of the Project as set out in Schedule 7.

Province means Her Majesty The Queen In Right Of The Province Of British Columbia, As Represented By The Minister Of Transportation And Infrastructure, acting as the recipient of the Services.

Province Representative has the meaning given in Schedule 1.

Reimbursable Costs means the actual direct costs incurred by the NOPs in performing the Services.

RFP has the meaning given in Schedule 1.

Risk and Opportunity Provision has the meaning given in Schedule 5.

Services means the following services, to be performed by the NOPs during the Development Phase in accordance with this Agreement:

- (a) development of the design for the Project in accordance with the terms of this Agreement;
- (b) preparation of the CCC Proposal for submission to the Owner in accordance with the terms of this Agreement;
- (c) participation in the Preparatory Work; and
- (d) the carrying out of Early Works.

Site means any lands or areas made available by the Owner, the NOPs or a third party with the consent of the Owner for the purposes of performing the Works and any land which a Participant under the Collaborative Construction Contract enters in or on, or occupies, for the purposes of any construction works.

Specifications means the specifications, codes, standards, guidelines and technical circulars that will generally govern the design and construction of the Works in the Province of British Columbia as on the Effective Date, as may be proposed by the Project Management Team and accepted by the Senior Leadership Team and the Province.

Submission Date has the meaning given in Section 11.1(b).

Target Cost Estimate or **TCE** means the target cost estimate developed by the NOPs during the Development Phase.

Target Outturn Cost or **TOC** means the target outturn cost in the CCC Proposal developed in accordance with Section 11.1.

Third Party Intellectual Property Rights means all rights in Intellectual Property of any person which is not a member of, or a related party to, a NOP.

Works means the design and construction of the Project pursuant to the Collaborative Construction Contract.

1.2 Interpretation

In this Agreement:

- (a) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (b) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Authority as well as an individual;

- (e) each reference to a Section or Schedule, unless otherwise indicated, is a reference to a Section of, or Schedule to, this Agreement;
- (f) a Schedule includes all of the sub-schedules, appendices and other attachments attached to that Schedule;
- (g) a reference to this Agreement includes any Section, schedule, attachment, annexure and exhibit;
- (h) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (i) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provisions of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (j) a covenant or agreement on the part of the NOPs binds the NOPs jointly and severally to the Owner, with the exception of the covenant of the NOPs under Section 14 to take out certain insurances which will bind the NOPs severally only and not jointly to the Owner;
- (k) all monetary amounts are expressed in Canadian Dollars;
- (l) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (m) the words “include”, “includes” and “including” are not to be read as limiting;
- (n) no rule of law will apply that would construe this Agreement or any part of it against the Party who (or whose counsel) drafted, prepared or put forward the Agreement or any part of it;
- (o) each reference to time of day is a reference to Pacific Standard Time or Pacific Daylight Saving Time, as the case may be; and
- (p) general words are not given a restrictive meaning:
 - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words; and
- (q) whenever any matter is stated to be at the discretion of the Owner, the Owner may act in its absolute and unfettered discretion, which may be exercised for purposes connected with this Agreement or otherwise in the interests of the Owner.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.4 Ambiguities and inconsistencies

- (a) If the NOPs discover any ambiguity, discrepancy or inconsistency between any of the provisions of this Agreement and any other document expressly incorporated into this Agreement:
 - (i) they will notify the Owner of this in writing; and
 - (ii) the Owner will direct the NOPs as to the interpretation to be followed by the NOPs in performing their obligations under this Agreement.
- (b) If the Owner discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this Agreement and any other document expressly incorporated into this Agreement, the Owner will direct the NOPs as to the interpretation to be followed by the NOPs in performing their obligations under this Agreement.

1.5 References to the Province

- (a) While the Province is also the Owner, reference is made in this Agreement to the Province as distinct from the Owner, where the Owner is working collaboratively with the NOPs in the delivery of the Services and the Province is the recipient of those Services.
- (b) The NOPs acknowledge whenever any matter is stated to be at the discretion of the Province, the Province may act in its absolute and unfettered discretion, which may be exercised for purposes connected with this Agreement or otherwise in the interests of the Province and will not be subject to the commitments made under Section 3.1.

2. PURPOSE AND SCOPE OF DEVELOPMENT PHASE

- (a) The purpose and scope of the Development Phase is:
 - (i) for the NOPs to perform the Services in accordance with this Agreement;
 - (ii) to enable the Parties to meet the Project Objectives by collaborating in the investigation, planning, design and development of the Project and the delivery of Early Works;
 - (iii) to enable the Parties to clearly identify risks, opportunities and contingency;
 - (iv) to enable the Parties to develop a CCC Proposal that satisfies the Project Objectives;
 - (v) to enable the Parties to experience the reality of working together as a collaborative team and to build a high-performance team to work together pursuant to the Collaborative Construction Contract;
 - (vi) to enable the Parties to work together to develop a governance structure for the Project, both during the Development Phase and the Construction Phase, including an organization chart that sets out the names of relevant personnel, their roles and anticipated time commitment;

- (vii) to enable the Parties to finalize the terms of the Collaborative Construction Contract, working in collaboration with other organizations who are delivering other elements of the Program;
 - (viii) to enable the delivery of Early Works in advance of execution of the Collaborative Construction Contract; and
 - (ix) to enable the Parties to do all things necessary to allow the Owner and the NOPs to enter into the Collaborative Construction Contract, including conducting a financial establishment audit.
- (b) Without limiting the obligations of the Owner to pay the NOPs in accordance with Section 13, the NOPs and each NOP releases each of the Owner, the Province Representative, the Owner's Team, from any losses, damages, claims, costs or expenses arising out of or in connection with any co-operation or assistance provided, or any failure to provide any co-operation or assistance, by the Owner, the Province Representative, the Owner's Team to the NOPs under this Agreement.
 - (c) Neither the Owner nor IBC are liable for any losses, damages, claims, costs or expenses suffered by the NOPs or any NOP arising from the Province not accepting the CCC Proposal or not executing the Collaborative Construction Contract, except, in respect of the Owner only, for making payment in accordance with Section 13.

3. COMMITMENTS

3.1 Development Principles

The Parties agree that in performing their respective obligations under this Agreement:

- (a) they will act in Good Faith;
- (b) they will develop and foster a culture of trust, collaboration and innovation;
- (c) all decisions will be made on a Best for Project basis;
- (d) they will have clear accountabilities, with the Owner providing direction;
- (e) all financial and commercial transactions are fully Open Book;
- (f) communication between them will be open and honest; and
- (g) all dealings between them will be ethical.

3.2 Open Book

- (a) The NOPs commit to:
 - (i) maintain, for at least the period set out in Schedule 1, all of their records and other documentation referred to in this Agreement that relate to the Services in accordance with, where applicable, good accounting practices, standards and procedures;
 - (ii) make their records and other documentation needed for the purpose of the Establishment Audits available to the Financial Auditor;

- (iii) make their records and other documentation referred to in this Agreement that relate to the Services available to the Owner (or the Owner's nominated auditor) on request; and
 - (iv) make available to the Owner (or the Owner's nominated auditor) any existing documentation or information in whatever form relating to the Services.
- (b) The obligation to make records and documentation available does not apply to records or documentation that may be the subject of legal professional privilege or are confidential lawyer/client communications.
 - (c) For the purposes of this Section 3.2, all of the references to the nominated auditor of the Owner will include the Auditor General of British Columbia.

4. NOPS' OBLIGATIONS

4.1 General

The NOPs will:

- (a) at all times be suitably qualified and experienced and ensure that the NOPs' employees, contractors and consultants are so qualified and experienced;
- (b) between them, keep the Key Individuals engaged in relation to the Services and not remove or replace the Key Individuals without the prior written consent of the Owner;
- (c) exercise Diligence in the performance of the Services and their other obligations under this Agreement; and
- (d) develop the CCC Proposal taking into account all of the above and the other requirements of this Agreement.

4.2 NOPS' warranties

The NOPs warrant that they will:

- (a) exercise Diligence in the development of all aspects of the CCC Proposal, and that they will ensure that the NOPs' employees, contractors and consultants are qualified and experienced and exercise such Diligence;
- (b) examine and verify the Project Objectives to the extent necessary for the preparation and submission of the CCC Proposal under this Agreement;
- (c) prepare a CCC Proposal that the NOPs honestly and genuinely believe will achieve the Project Objectives and fairly represents the cost of achieving the Project Objectives;
- (d) develop the CCC Proposal on the basis that the Target Outturn Cost will be developed applying first principles estimating procedures utilizing a pricing structure that has been approved by the Province Representative and each NOP will collaborate in good faith with the Owner and each other NOP to determine the reasonable and realistic level of resources, rates and prices required to compile the proposed Target Outturn Cost;
- (e) develop the CCC Proposal to meet the Project Scope and to comply with the Specifications;

- (f) ensure all efforts by the NOPs will be open, transparent and collaborative;
- (g) ensure all technical solutions will be robust and meet the Owner's requirements as set out in the Project Objectives;
- (h) to the extent possible, ensure all estimates of production rates, plant, equipment, materials and subcontract procurement costs will be validated by competitive market testing, or will otherwise be established by benchmarking to current industry best practice;
- (i) ensure all innovations and technical solutions identified by the NOPs in developing the CCC Proposal will be incorporated into the CCC Proposal and considered in determining the Risk and Opportunity Provision;
- (j) collaborate in Good Faith to establish a risk register and evaluation of the risks identified for the purpose of determining a joint contingency and risk value for inclusion in the Risk and Opportunity Provision and the TOC, utilizing a risk evaluation model and tool that has been approved by the Owner; and
- (k) perform the Services in accordance with this Agreement.

4.3 Conflict of Interest

- (a) The NOPs represent and warrant that none of the NOPs nor any of their Affiliates have any interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the NOPs' ability to perform the Services and their other obligations under this Agreement in Good Faith and otherwise fairly, objectively and independently (**Conflict of Interest**).
- (b) The NOPs will ensure that no Conflict of Interest arises during the course of this Agreement.

5. GOVERNANCE OF THE DEVELOPMENT PHASE

5.1 Senior Leadership Team (SLT)

- (a) The Parties have, by this Agreement, established the SLT. The SLT will:
 - (i) comprise one member appointed by the Owner, one member from IBC, one member appointed by Peter Kiewit Sons ULC and one member appointed by KEA5 Partnership;
 - (ii) provide oversight and leadership for the Project, including showing a commitment to the Development Principles and Project Objectives;
 - (iii) provide high level support for the Project Management Team;
 - (iv) make decisions that are consensus-based;
 - (v) resolve disputes arising from the Project Management Team;
 - (vi) approve changes to Key Individuals;
 - (vii) monitor progress of the Development Phase, including progress against schedule and budget; and

- (viii) decide whether Early Works are required and the terms and conditions applicable to any Early Works carried out by the NOPs.
- (b) All decisions of the SLT will be made on a Best for Project basis and will be unanimous.
- (c) The quorum for SLT meetings is one representative from each party. The representative from IBC is not required for a quorum.
- (d) Members of the PMT may not also be members of the SLT.
- (e) The NOPs acknowledge and accept that a representative of IBC will participate in all discussions, considerations and decisions of the SLT on a Best for Project basis “as if” IBC was a party to this Agreement.

5.2 Project Management Team (PMT)

- (a) The Parties have, by this Agreement, established the PMT. The PMT will:
 - (i) comprise one representative of the Owner, the Project Director, the Design Manager and the Construction Manager;
 - (ii) have day to day responsibility for ensuring the effective delivery of the Services and preparation of the CCC Proposal;
 - (iii) be responsible in the first instance for resolving disputes between the Parties; and
 - (iv) report to the SLT on a bi-weekly basis to provide information on progress on delivery of the Services, Reimbursable Costs incurred to date and schedule for delivery of the Project.
- (b) All decisions of the PMT will be made on a Best for Project basis and will be unanimous.
- (c) The PMT may delegate certain tasks and the decisions associated with those tasks to any one of the members of the PMT. The PMT will decide the terms and conditions associated with such a delegation.

5.3 Governance principles and procedures

- (a) The Parties will work together through the PMT and SLT to develop principles and procedures for the governance of the Project. This may include:
 - (i) ensuring regular SLT meetings;
 - (ii) ensuring timely decisions and feedback from SLT to the PMT;
 - (iii) requiring written minutes of SLT meetings;
 - (iv) requiring written materials to be provided to the SLT in advance of meetings; and
 - (v) establishing clear lines of authority and delegation.

6. DEVELOPMENT OF THE COLLABORATIVE CONSTRUCTION CONTRACT

- (a) Schedule 2 contains the heads of terms for the Collaborative Construction Contract.
- (b) The NOPs acknowledge that the Owner wishes to develop a form of Collaborative Construction Contract that is consistent across the Program, allowing for project-specific variations.
- (c) The Owner will issue a draft form of Collaborative Construction Contract within one month after execution of this Agreement.
- (d) The Owner will establish a series of workshops, on both a Program or Project specific basis to discuss the draft Collaborative Construction Contract. The NOPs will participate in these workshops. The Development Principles will apply to the behaviour of the people taking part in these workshops and each Party will be responsible for ensuring that its representatives comply with the Development Principles.
- (e) The Owner will issue revised drafts of the Collaborative Construction Contract as needed to assist the Parties in agreeing its final form.
- (f) The Owner, acting reasonably, may issue a final draft of the Collaborative Construction Contract reflecting the discussions held on a Program and Project level (the **Final Draft Collaborative Construction Contract**). This Final Draft Collaborative Construction Contract will form the basis for the development of the CCC Proposal.

7. ROLE OF THE OWNER

7.1 Owner's Team

- (a) The NOPs acknowledge and agree that the Owner has nominated the Owner's Team to:
 - (i) co-ordinate and administer the Development Phase up to the execution of the Collaborative Construction Contract;
 - (ii) work collaboratively with the NOPs to develop the Design, carry out site investigations, develop a risk register and develop the schedule for carrying out the Works;
 - (iii) carry out consultation with Indigenous groups affected by the Project; and
 - (iv) assist in the consideration and evaluation of the CCC Proposal under Section 11.2;
- (b) In resourcing the Owner's Team, the Owner will ensure that the Owner's Team is suitably qualified to perform the role set out in Section 7.1(a).
- (c) The Owner will use reasonable efforts to maintain consistency within the members of the Owner's Team.

7.2 The Province Representative

- (a) The Province will perform its obligations and exercise its rights as the Province, as opposed to its activities as part of the Owner, under this Agreement through a representative appointed in writing by the Province from time to time.

- (b) The NOPs will provide all assistance necessary to ensure the Province Representative can fulfil those responsibilities, perform those roles and functions and exercise those rights.
- (c) The Province has initially selected the person named in Schedule 1 as its representative for the purposes of this Agreement. The Province may, from time to time, change its representative by giving notice in writing to the other Parties.

8. TERM

- (a) This Agreement commences on the Effective Date and, subject to the termination rights set out in this Agreement, terminates on the date the Collaborative Construction Contract is executed by the Owner and the NOPs.

9. PROVISION OF INFORMATION

9.1 Provision of information by the Owner

- (a) The Owner may, at any time and from time to time, make presentations (or arrange for others to make presentations) to the NOPs of information relevant to the preparation of the CCC Proposal or the Project.
- (b) The Owner makes no representation or warranty as to the availability of information or as to its accuracy. The NOPs will take such information into account in developing the CCC Proposal, without the benefit of any such representation or warranty.

10. INDEPENDENT ADVISORS

- (a) The NOPs acknowledge and accept that the Owner will appoint advisors including:
 - (i) a Financial Auditor;
 - (ii) a third party estimator;
 - (iii) a collaborative coach;
 - (iv) one or more construction, engineering or technical reviewers;
 - (v) commercial advisors; and
 - (vi) legal advisors,

to be accountable independently and directly to the Owner to validate the CCC Proposal, to perform any task required by the Owner, and to provide independent reports and validation of any aspect of the CCC Proposal.
- (b) The Owner has engaged Infrastructure BC to provide advice and assistance in relation to the procurement process for the Project and to provide ongoing advice in the administration of this Agreement and the Collaborative Construction Contract. The Owner anticipates that a senior employee of Infrastructure BC will be a member of the Senior Leadership Team and that other Infrastructure BC employees will form part of the wider Project team.
- (c) The NOPs agree, in the spirit of the commitments it has made in Section 3 and elsewhere in this Agreement, to:

- (i) provide the Owner's independent advisors with full access to all records and the basis of all of the methodology, approaches, assumptions, quantities, rates, amounts, estimations and contingencies referred to above during the investigations and the preparation of the TOC; and
 - (ii) fully co-operate with and assist the Owner's advisors to ensure that such advisors are able to effectively and expeditiously carry out their duties
- (d) In preparing the CCC Proposal, the NOPs commit to an Open Book approach, which will be carried forward by the NOPs into all aspects of costing and accounting.
- (e) The Owner will bear all of the costs of any independent advisors appointed under this Section 10.

11. CCC PROPOSAL

11.1 Development of CCC Proposal

- (a) The Parties working together will carry out the Preparatory Work in order to provide sufficient information to finalize the CCC Proposal.
- (b) The Province will, acting reasonably and in consultation with the SLT, determine when it requires a CCC Proposal to be delivered and will provide the Parties no less than two weeks' notice of the same. The Province will not require a CCC Proposal before September 2, 2022. The date for delivery of the CCC Proposal established by the Province is the **Submission Date**.
- (c) The NOPs acknowledge that the Province is under no obligation to request a CCC Proposal.
- (d) At the same time as notifying the Parties of the Submission Date, the Province may advise the Parties in writing of any additional documents or further information that the Province requires to be incorporated into the CCC Proposal and the Parties will incorporate the additional documents or further information into the CCC Proposal. If the NOPs consider that additional time is required to prepare the CCC Proposal, they may request an extension of time from the Province.
- (e) In developing the CCC Proposal, the Parties will:
 - (i) address the Project Objectives, the requirements of the Final Draft Collaborative Construction Contract and the responsibilities of the Participants under the Final Draft Collaborative Construction Contract;
 - (ii) develop the Target Cost Estimate in the form of an outturn cost probability S-curve based on a Monte Carlo uncertainty analysis and the CCC Proposal TOC must be the point on the outturn cost probability S-curve that matches a confidence level of 50% (the "P50" point);
 - (iii) prepare the CCC Proposal in a diligent and timely manner so that:
 - (1) it complies with the requirements of this Agreement, the Project Objectives, and all Laws; and
 - (2) the design and specification of the Works set out in the CCC Proposal meets the Specifications, the Project Objectives and ensures the Works conform to all Laws.

- (f) The Parties will submit the CCC Proposal to the Province for approval (or otherwise) by no later than the Submission Date.

11.2 Consideration of CCC Proposal

- (a) After the Submission Date the Province will review and evaluate the CCC Proposal. The Province may accept or reject the CCC Proposal in its discretion.
- (b) The NOPs will honestly and openly answer any questions that the Province and its advisors may have in connection with the CCC Proposal (including the TOC) in a manner consistent with the NOPs' commitments under Section 3 of this Agreement.

11.3 Subsequent CCC Proposals

- (a) If the Province is not satisfied that the CCC Proposal meets the Project Objectives it will notify the NOPs of its concerns. The Parties will work together to identify potential solutions to such concerns.
- (b) The Province may negotiate with the NOPs to modify the CCC Proposal, the Final Draft Collaborative Construction Contract or any other aspect of the Project, or may repeat the process set out in Sections 11.1 and 11.2 by requesting a further CCC Proposal.

11.4 Execution of Collaborative Construction Contract

- (a) If the Province accepts a CCC Proposal, with or without modifications pursuant to Section 11.3, the NOPs shall proceed to execute the Collaborative Construction Contract in the form of the Final Draft Collaborative Construction Contract subject to changes, modifications and additions:
 - (i) relating to the determination by the Province, in its discretion, of which parts, if any, of the CCC Proposal are to be incorporated by reference or otherwise into the Collaborative Construction Contract, or otherwise pursuant to express provisions of the Collaborative Construction Contract;
 - (ii) to those provisions or parts of the Final Draft Collaborative Construction Contract that are indicated as being subject to completion or finalization, or which the Province determines, in its discretion, require completion or finalization;
 - (iii) required by the Province to complete, based on the CCC Proposal, any provision of the Final Draft Collaborative Construction Contract;
 - (iv) that are necessary to create or provide for a legally complete, enforceable and binding agreement; or
 - (v) that enhance clarity in legal drafting.

11.5 Acknowledgements

The NOPs acknowledge and agree that:

- (a) there are a number of authorizations that are required to be obtained by the Owner prior to execution by the Owner of the Collaborative Construction Contract (if that occurs) which may not be given or which may be given on terms which are not acceptable to the Owner, in which case, in the Province's discretion, the Collaborative Construction Contract will not be executed by the

Owner and the Project will not proceed, although the Province will remain obliged to pay the Catch Up Payment in accordance with Section 13.2;

- (b) the CCC Proposal and the NOPs' commitments and obligations under this Agreement remain unaffected notwithstanding the Owner's co-operation and participation in the Preparatory Work; and
- (c) nothing in this Agreement may be construed as an indication or representation to the NOPs by the Province that the Province will accept the CCC Proposal.

12. EARLY WORKS

12.1 Development of Early Works

- (a) The Parties anticipate that Early Works may be required in order to deliver the Works expeditiously or to allow for a fully developed CCC Proposal.
- (b) The PMT shall work together to identify potential Early Works and develop a schedule and cost estimate for each element of the Early Works. The PMT shall deliver a report to the SLT providing as much information as possible on the proposed Early Works, including a recommendation as to any required amendments to this Agreement, including whether liability for such Early Works shall be joint and several as between any or all of the NOPs.
- (c) If the SLT recommends the Early Works, the Parties shall, subject to obtaining any necessary approvals, execute an amendment to this Agreement setting out the scope and schedule for the Early Works and a not to exceed value for the Early Works and including such other provisions as are agreed to govern the carrying out of the Early Works.

12.2 Performance of Early Works by Owner

- (a) The NOPs acknowledge and accept that, without limiting the Owner's duties to co-operate with and assist the NOPs to perform the Services, the Owner may at any time in its sole and absolute discretion elect to deliver all or any part of the Project or any related works outside the project (including, for clarity, Early Works), either by itself or by way of separate arrangements entered into with others.

13. PAYMENTS

13.1 Establishment Audit

- (a) During the Development Phase, the Financial Auditor will, on behalf of the Owner, conduct audits (**Establishment Audits**) on the financial records of each NOP to:
 - (i) clarify the basis for calculating Reimbursable Costs; and
 - (ii) establish a clear demarcation between what is intended to be a Reimbursable Cost and what is intended to be covered by the Fee.
- (b) The NOPs will fully cooperate with the Financial Auditor in carrying out the Establishment Audits.
- (c) When the Establishment Audits have been completed, the Financial Auditor shall review all payments made to date to assess whether they reflect the results of the Establishment Audit. The provisions of Section 13.11 shall apply.

13.2 Payment to NOPs for Services other than Early Works

- (a) Each NOP will be paid monthly its Reimbursable Costs incurred in providing the Services other than Early Works during the month. Details of what constitute Reimbursable Costs are set out in Schedule 6.
- (b) Each NOP is entitled to receive a Fee calculated as a percentage of the Reimbursable Costs incurred by that NOP in providing the Services other than Early Works. The relevant percentage for the Fee for each NOP is set out in Schedule 6. One half of the Fee will be paid monthly to each NOP. The other half of the Fee will accrue monthly, but will only be paid in accordance with Section 13.8.
- (c) For the avoidance of doubt, no painshare or gainshare will be applied to payments made under this Agreement.

13.3 Payment to NOPs for Early Works

- (a) Unless the Parties agree otherwise with respect to any Early Works, each NOP will be paid monthly:
 - (i) its Reimbursable Costs incurred in providing the Early Works during the month;
 - (ii) a Fee calculated as a percentage of the Reimbursable Costs incurred by that NOP in providing the Early Works.

13.4 Not to Exceed Amount

- (a) The total amount payable to the NOPs under this Agreement for:
 - (i) Reimbursable Costs incurred in providing the Services other than the Early Works; and
 - (ii) 100% of the Fee payable on such Reimbursable Costs,
 shall not exceed \$6,230,000 CAD (the **Maximum Development Payment**).
- (b) The PMT shall develop a budget for the Services within one week of the Effective Date, which shall provide estimates of Reimbursable Costs and associated Fee to be incurred by each NOP in respect of the Services and shall report every two weeks to the SLT showing amounts actually incurred against budget.
- (c) If the PMT report shows that actual Reimbursable Costs and Fee are within 20% of the Maximum Development Payment, the SLT shall meet and agree to recommend to the Owner either an increase in the Maximum Development Payment or an alternative approach to ensure that the total Reimbursable Costs and Fee incurred in providing the Services other than the Early Works are less than the Maximum Development Payment.
- (d) The NOPs will not be under any obligation to carry on performing the Services once the Maximum Development Payment, as increased from time to time, has been reached.
- (e) When approving any Early Works, the SLT shall establish a not to exceed value for the Reimbursable Costs and Fee to be incurred in carrying out those Early Works. The provisions of Sections 13.4(b) and 13.4(c) shall apply, mutatis mutandis, to this not to exceed amount.

13.5 Payment Applications

- (a) On a weekly basis each NOP shall notify the PMT of the Reimbursable Costs incurred by it in the performance of the Services, showing any costs related to the Early Works separately, and an estimate of the Reimbursable Costs to be incurred in the following two weeks. The NOPs shall provide such additional information as is reasonably required by the PMT to substantiate the Reimbursable Costs.
- (b) By the fifth Business Day of each month, the PMT will prepare and deliver to the Owner a payment application in a format provided by the Owner:
 - (i) setting out the Reimbursable Costs incurred by each NOP, distinguishing any Reimbursable Costs incurred for Early Works;
 - (ii) setting out the total Fee earned by each NOP, showing the amount of the Fee that is payable in that month and the amount that has accrued towards the Catch Up Payment and distinguishing the Fee payable in respect of Early Works; and
 - (iii) including certification by the Financial Auditor of the amount payable to each NOP for that month in accordance with this Agreement.
- (c) The payment application under Section 13.5(b) must include:
 - (i) all invoices, time sheets and other reasonable documentation (including additional documentation requested by the SLT or the Owner) in support of the payment application including any such documentation required by the terms of this Agreement; and
 - (ii) a declaration in a form determined by the SLT duly completed by the Project Management Team to the Province certifying that the payment application is true, correct and fully substantiated.
- (d) Each NOP will issue an invoice to the Province for the amount certified by the Financial Auditor under Section 13.5(b)(iii).
- (e) The Province, subject to the Owner's entitlement in Section 13.7(a) and within 15 Business Days of receiving an invoice from a NOP, will pay to that NOP the amount certified for payment to that NOP by the Financial Auditor, plus any amount payable for GST.
- (f) The NOPs acknowledge and agree that the Province may engage independent adviser(s) to review and validate the amounts contained in any payment application prepared under Section 13.5(b) and all supporting documentation relating to the amounts contained in that notice will be available for inspection and audit by the Province (or the Province's independent adviser(s)).

13.6 Payments on Account

The NOPs acknowledge and accept that:

- (a) payments by the Owner are payments on account; and
- (b) are not evidence that the whole or any part of the Services have been performed in accordance with this Agreement; and

- (c) are subject to audit in accordance with the procedure set out in Section 13.11.

13.7 Set Off

- (a) The Owner may set-off from any amount payable to a NOP under this Agreement any amount due from that NOP to the Owner under this Agreement.
- (b) A NOP may set-off from any money which is payable by the NOP to the Owner under this Agreement, any amount payable by the Owner to that NOP under this Agreement.

13.8 Catch Up Payment

- (a) The accrued Fee payable to each NOP for the Services other than the Early Works (each a **Catch Up Payment**) will be paid by the Owner, subject to the Owner's entitlement in Section 13.7(a) and the provisions of Section 13.10 and within 15 Business Days of receiving an invoice from the relevant NOP, to the relevant NOP on the earlier of:
 - (i) execution of the Collaborative Construction Contract by the Owner and the NOPs;
 - (ii) termination of this Agreement as a whole; and
 - (iii) termination of this Agreement as it relates to that NOP.

13.9 Payment not evidence

Payment of moneys is not evidence of the value of the Services, or that the Services have been executed satisfactorily, or an admission of liability, but is payment on account only.

13.10 No entitlement to payment

If any of the NOPs commits a Default which causes the Owner to terminate this Agreement, then the Owner will pay the Reimbursable Costs incurred by the NOPs to the date of termination, but will not be liable to pay the Catch Up Payment to the NOP that committed the Default.

13.11 Audit

- (a) The Owner, the Auditor General of British Columbia or any person appointed or allowed by either of them, may at any time until the expiry of the period set out in Section 6 of Schedule 1 from the Termination Date audit, inspect or investigate all records prepared or maintained by a NOP for the purpose of the Services.
- (b) The NOPs will provide whatever access or facilities are necessary to conduct any such audit, inspection or investigation.
- (c) Any records provided, or to which any person has access, for the purposes of any audit, inspection or investigation will, subject to Law, be treated as Confidential Information in accordance with Section 19.
- (d) The NOPs acknowledge and agree that:
 - (i) the Auditor General of British Columbia or any person appointed or allowed by the Owner may at its discretion elect to audit, inspect or investigate any record prepared or maintained by a NOP for the purposes of performing the Services; and

- (ii) subject to Law, this Section 13.11 will apply to any such audit, inspection or investigation by the Auditor General of British Columbia.
- (e) If an audit, inspection or investigation in accordance with this Section 13.11 identifies that any payments under this Agreement are less than, or exceed, a NOP's entitlement, then, as the case may be:
 - (i) the Owner will pay the relevant NOP any shortfall; or
 - (ii) the relevant NOP will reimburse the Owner any excess.
- (f) In the event of an audit, inspection or investigation by the Auditor General of British Columbia or any person appointed or allowed by the Auditor General of British Columbia Section 13.11(d) applies notwithstanding that this Agreement has been terminated and whether an audit, inspection or investigation is carried out under this Agreement or otherwise.

13.12 Survival

This Section 13 survives the termination of this Agreement.

14. INSURANCES

14.1 Insurances

- (a) Throughout the Development Phase, each NOP will effect and maintain commercial general liability insurance and workers' compensation insurance in accordance with this Section 14, with insurers and for coverage on terms approved by the Owner, which approval will not be unreasonably withheld.
- (b) Peter Kiewit Sons ULC will effect and maintain professional liability insurance in accordance with this Section 14, with insurers and for coverage on terms approved by the Owner, which approval will not be unreasonably withheld.
- (c) It is acknowledged that each NOP is free to use its existing insurance policies for the purposes of this Section 14.
- (d) The NOPs will ensure that any subcontractor engaged by any of the NOPs in respect of the performance of the Services effects and maintains insurance which meets such requirements as the SLT may determine.

14.2 Commercial general liability insurance

Each NOP will effect and maintain a commercial general liability insurance policy for an amount of _____ arising from any one occurrence in respect of bodily injury, personal injury and property damage and including liability assumed under this Agreement.

14.3 Workers' compensation

Each NOP must comply with, and must ensure that any subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the NOP's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

14.4 Professional Liability Insurance

Peter Kiewit Sons ULC will effect and maintain a professional liability insurance policy for an amount of

14.5 Evidence of insurance

By no later than 10 Business Days after the Effective Date, the NOPs will produce evidence to the satisfaction of the Owner for each NOP, whether by certificate of currency or otherwise, that the insurances referred to in this Section 14 are taken out and maintained. For clarity, the NOPs may use existing corporate policies to satisfy the requirements of this Section 14.

14.6 Obligation to assist

The Parties will provide each other with all assistance and cooperation that they reasonably consider is necessary (including providing all information and making available relevant personnel) to enable the relevant Party to procure and implement any insurance policies which they will effect and maintain under the Collaborative Construction Contract.

14.7 Insurance for Early Works

The PMT will identify any additional insurance required for the Early Works and include these requirements in its report pursuant to Section 12.1(b).

14.8 Pass Through

- (a) To the extent that insurance is available to reimburse any cost loss or expense incurred by a NOP, the NOPs will claim such costs and expenses under the relevant insurance policy.
- (b) To the extent that any NOP receives payment under an insurance policy that reimburses any cost loss or expense that has been reimbursed by the Owner, that NOP must pass that payment on to the Owner in full.
- (c) To the extent that any NOP receives insurance proceeds in advance of reimbursement by the Owner, that NOP will not have an obligation to pass on that payment to the Owner, and the Owner will not have the obligation to pay the NOP for any cost loss or expense already reimbursed by the insurance proceeds.

15. LIMIT OF LIABILITY

15.1 No liability for Consequential Loss

Except to the extent that Consequential Loss is covered and is recoverable under a policy of insurance taken out under this Agreement, in which case a Party will be liable, no Party will be liable to another Party for any Consequential Loss sustained by a Party, whether caused by that Party's breach of this Agreement, negligence or otherwise.

15.2 Limit of liability

- (a) The Owner and the NOPs collectively are each referred to in this Section as a Party.
- (b) The total liability of a Party (**Liable Party**) to the other Party for any losses, damages or claims arising out of, or in connection with, this Agreement is limited in the aggregate to the greater of:

- (i) the Maximum Development Payment, and any amount payable for Early Works; and
- (ii) the amount which the Liable Party is able to recover or would have been able to recover under a policy of insurance required to be taken out or maintained by the Liable Party under this Agreement, up to the maximum amounts specified in Section 14 of this Agreement.

(Limit of Liability).

- (c) The Limit of Liability is an aggregate limit of liability for all losses, damages or claims arising in relation to, or in connection with, this Agreement.
- (d) The Limit of Liability does not apply where the loss, damage or claim:
 - (i) relates to any death, personal injury or damage to property;
 - (ii) arises out of fraud of the Liable Party or its officers, agents, contractors or employees or any NOP (if the Liable Party is the NOPs collectively);
 - (iii) a breach of Section 19 (Confidentiality) of this Agreement;
 - (iv) arises out of an infringement by a Party of any third party's rights in Intellectual Property; or
 - (v) where the Liable Party is a NOP:
 - (1) arises from the abandonment of the whole or a substantial part of the Services by the NOPs; or
 - (2) arises from a repudiation of this Agreement by the NOPs.

16. INTELLECTUAL PROPERTY

16.1 Ownership

- (a) Neither Party may assert ownership of all or any part of the other Party's pre-existing Intellectual Property.

16.2 New developments

- (a) If the NOPs enter into the Collaborative Construction Contract with the Owner, the terms of that agreement will govern any Intellectual Property developed by the NOPs or any of their subcontractors in the course of the Parties performing their obligations under this Agreement.
- (b) If Section 16.2(a) does not apply:
 - (i) the Owner will not have an ownership interest in any Intellectual Property developed by the NOPs or any of them or any of their respective subcontractors in the course of the Parties performing their obligations under this Agreement;
 - (ii) the NOPs grant to the Owner, and will cause all of their subcontractors to grant to the Owner, an irrevocable, non-exclusive, perpetual, sub-licensable, assignable, royalty-free, fully-paid licence without restriction giving the Owner the right to use any Intellectual

Property developed in the course of providing services under this Agreement or otherwise contained in the CCC Proposal; and

- (iii) the NOPs will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Owner may reasonably request to effect and record the licence referred to in Section 16.2(b)(ii).
- (c) The NOPs will not be responsible or liable for any use by the Owner or any sub-licensee or assignee of the Owner of the Intellectual Property referred to in Section 16.2(b)(ii).
- (d) The licence referred to in Section 16.2(b)(ii) does not extend to Third Party Intellectual Property Rights to non-specialized third-party technology and software that are generally commercially available. The NOPs represent to the Owner that they own or have, and will continue to own or have at the time of submission of its CCC Proposal, all necessary rights to all Third Party Intellectual Property Rights contained in the CCC Proposal and, subject to the foregoing exceptions, has the right to grant a licence of such Third Party Intellectual Property Rights in accordance with Section 16.2(b)(ii).

16.3 Intellectual Property infringement

- (a) Each NOP indemnifies the Owner against any loss, damage, claim, cost or expense that the Owner may suffer or incur as a result of any design, materials, document, processes or methods of work applied in the development of the CCC Proposal or incorporated into the CCC Proposal infringing or misappropriating, directly or indirectly, a third party's Intellectual Property rights.
- (b) The Owner will give the NOPs notice of any such claim referred to in Section 16.3(a) that it receives or of any proceedings in relation to such a claim being threatened or served on the Owner.
- (c) The Owner will permit the NOPs (at the NOPs' expense) to conduct the defence of any such claim and all negotiations for its settlement. The NOPs will keep the Owner fully informed of all steps taken in the defence of a claim.

16.4 Survival

This Section 16 survives the termination of this Agreement.

17. TERMINATION

17.1 Termination for convenience

- (a) The Owner may, at any time, in its discretion and with immediate effect:
 - (i) terminate this Agreement as a whole by giving the NOPs a written notice of termination; or
 - (ii) terminate the right of any NOP to participate in the Project.
- (b) Subject to any rights the Owner has arising out of or in connection with this Agreement (including any right to set off payments), if the Owner terminates this Agreement under Section 17.1(a)(i), the Owner will pay the NOPs:

- (i) any unpaid Reimbursable Costs incurred prior to the date of termination, and the associated Fee;
 - (ii) the Catch Up Payment;
 - (iii) Reimbursable Costs (and the associated Fee) reasonably committed to by the NOPs with the agreement of the SLT which are required to be paid, provided that the benefit of anything purchased with such amounts vest unencumbered in the Owner upon payment;
 - (iv) reasonable Reimbursable Costs incurred in demobilizing from any Early Works, and the associated Fee; and
 - (v) the reasonable Reimbursable Costs incurred as a result of complying with any direction given by the Owner on or after termination, and the associated Fee.
- (c) Subject to any rights the Owner has arising out of or in connection with this Agreement (including any right to set off payments), if the Owner terminates the rights of a NOP under Section 17.1(a)(ii) the Owner will pay that NOP:
- (i) any unpaid Reimbursable Costs incurred by them prior to the date of termination;
 - (ii) the Catch Up Payment applicable to that NOP;
 - (iii) Reimbursable Costs reasonably incurred by that NOP with the agreement of the SLT which cannot be recovered, provided that the benefit of anything purchased with such amounts vest unencumbered in the Owner upon payment;
 - (iv) reasonable Reimbursable Costs incurred by that NOP in demobilizing from any Early Works; and
 - (v) the reasonable Reimbursable Costs incurred by that NOP as a result of complying with any direction given by the Owner on or after termination.
- (d) Other than as described in this Section 17.1, the Owner is not required to make any other payment to the NOPs if it terminates this Agreement or the rights of a NOP under this Section 17.1 and is not liable for any claim or liability suffered or incurred by the NOPs arising from any decision by the Owner to terminate this Agreement or the rights of a NOP under this Section 17.1.
- (e) If the Owner terminates the right of a NOP to participate in the Project, any other NOP which is an Affiliate of the terminated NOP will have the right to withdraw from the Agreement and Section 17.1(c) shall apply to that NOP.

17.2 Default

A Default for the purposes of this Section 17 occurs where the NOPs (or any NOP):

- (a) commits a material breach of this Agreement; or
- (b) is the subject of an Insolvency Event.

17.3 Termination for Default

- (a) If the NOPs (or any NOP) commits a Default, which Default remains unremedied 10 Business Days after receipt of notice by the NOPs from the Owner containing details of the Default and requiring the Default to be remedied to the Owner's reasonable satisfaction, the Owner may in its discretion either:
 - (i) terminate this Agreement as a whole; or
 - (ii) terminate the right of the defaulting NOP to participate in the Project,
 by serving a notice under this Section 17.3 which notice specifies the Default.
- (b) A Default by any NOP is deemed to be a Default by the NOPs but without prejudice to the right for the Owner to treat it solely as a Default by that NOP.
- (c) If the Owner chooses not to terminate the Agreement as a whole, the SLT shall recommend to the Owner as to how to proceed on a Best For Project basis.
- (d) Where the Owner has terminated this Agreement as a whole under this Section 17.3, the Parties will have the same rights, remedies and liabilities as if the NOPs repudiated this Agreement and the Owner elected to treat this Agreement to be at an end and recover damages.

17.4 Consequences of termination

- (a) On termination of this Agreement as a whole:
 - (i) the NOPs will promptly return to the Owner all copies of information and documentation provided by the Owner (including by the Owner's Team) for the purposes of this Agreement;
 - (ii) subject to Section 16 and if the termination is pursuant to Section 17.3, the Owner may, at no cost, use any of the work, documentation or information developed by the NOPs under this Agreement for any purpose whatsoever, and the NOPs will provide any such work, documentation or information to the Owner within 10 Business Days of the Owner's reasonable request for it to do so; and
 - (iii) subject to Section 16 and if the termination is pursuant to Section 17.1, the Owner may, at its own risk but at no additional cost, use any of the work, documentation or information developed by the NOPs under this Agreement for any purpose whatsoever. The NOPs will provide any such work, documentation or information to the Owner within 10 Business Days of the Owner's reasonable request for it to do so.
- (b) The NOPs warrant, notwithstanding the termination of this Agreement, that they will not do, or omit to do, anything to prevent the Owner from carrying out the Project.
- (c) On termination of the rights of a NOP:
 - (i) that NOP will promptly return to the Owner all copies of information and documentation provided by the Owner (including by the Owner's Team) for the purposes of this Agreement;

- (ii) subject to Section 16 and if the termination is pursuant to Section 17.3, the Owner may, at no cost, use any of the work, documentation or information developed by that NOP under this Agreement for any purpose whatsoever, and the NOP will provide any such work, documentation or information to the Owner within 10 Business Days of the Owner's reasonable request for it to do so; and
- (iii) subject to Section 16 and if the termination is pursuant to Section 17.1, the Owner may, at its own risk but at no additional cost, use any of the work, documentation or information developed by the NOPs under this Agreement for any purpose whatsoever. The NOPs will provide any such work, documentation or information to the Owner within 10 Business Days of the Owner's reasonable request for it to do so.

17.5 Rights preserved

The expiry or termination of this Agreement will not affect any rights of a Party against the other Party in respect of any act, omission, matter, or thing occurring or under this Agreement prior to that expiry or termination.

17.6 Survival

This Section 17 survives the termination of this Agreement.

18. NOTICES

18.1 How and where Notices may be sent

A notice or other communication under this Agreement (**Notice**) will be in writing and delivered by hand or transmitted by electronic transmission to a Party at the address or the email address for that Party set out in Schedule 1 or as otherwise specified by a Party by Notice.

18.2 When Notices are taken to have been given and received

- (a) A Notice will be considered to have been received:
 - (i) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
 - (ii) if sent by electronic transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:
 - (1) the receiving party has, by electronic transmission, by hand delivery or by facsimile transmission, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also sent a copy of such notice to the receiving party by hand delivery or facsimile transmission.
- (b) Delivery by mail will not be considered timely notice under this Agreement.

- (c) Section 18.2(a) shall apply to any communication between the Parties, whether served as a formal Notice or not.

19. CONFIDENTIALITY

19.1 Confidentiality

- (a) Subject to Section 19.1(b), the Parties agree that this Agreement, and any Confidential Information, is confidential, and that they will not disclose the Agreement, or any Confidential Information to any person, unless that disclosure or that Confidential Information:
- (i) is at the material time in the public domain, otherwise than through any disclosure prohibited by this Agreement;
 - (ii) is required by any Law to be communicated to a person who is authorized by any Law to receive it, including disclosure pursuant to the Freedom of Information and Protection of Privacy Act (British Columbia);
 - (iii) is necessarily made to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings provided that, in the case of any arbitration proceedings, the Party concerned first obtains from each other Party to those proceedings an undertaking, enforceable by any Party, that each Party will similarly not divulge or communicate, without the Owner's written consent, any information referred to in this Section;
 - (iv) is required to be disclosed to any Governmental Authority whether in connection with the granting of any licence or otherwise;
 - (v) is to a servant, employee, agent or contractor of the Parties, when that disclosure is reasonably necessary for the conduct of this Agreement; or
 - (vi) was consented to in writing by each of the other Parties.
- (b) The NOPs acknowledge and agree that the Owner may publish the names of the NOPs, amount of the Target Outturn Cost and other details of the CCC Proposal, except for such commercially sensitive information as is identified by the NOPs in the CCC Proposal, subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia).
- (c) Section 19.1(a) shall not prevent:
- (i) the NOPs and each NOP from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform the Services;
 - (ii) the Owner from disclosing or granting access to such information to any provincial ministry, IBC, and any other Governmental Authority that requires the information in relation to the Project and any other project; and
 - (iii) the Owner from enforcing Section 19 on behalf of IBC.
- (d) Without prejudice to any other rights and remedies that the other Party may have, each of the Parties agrees that damages may not be an adequate remedy for a breach of Section 19.1 and that the other Party or IBC may be irreparably harmed if any provision of Section 19.1 were not

performed by the Party or any party to whom the Party provides Confidential Information, and that any such harm could not be compensated reasonably or adequately in damages. In such case, the other Party or IBC, as applicable, will be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 19.1 subject, in the case of a claim for any such remedy against the Owner or IBC, to the provisions of the *Crown Proceeding Act* (British Columbia).

19.2 IBC as third party beneficiary

- (a) The provisions of Sections 19.1(a) to 19.1(d) and each other provision of this Agreement which is expressed to be for the benefit of IBC, are:
 - (i) intended for the benefit of IBC; and
 - (ii) are in addition to, and not in substitution for, any other rights that IBC may have in contract or otherwise.
- (b) The Owner shall hold the rights and benefits of Sections 19.1(a) to 19.1(d) and each other provision of this Agreement which is to the benefit of IBC in trust for and on behalf of IBC, and the Owner hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of IBC.

19.3 Publicity or media statements

- (a) The NOPs acknowledge and accept that they will not issue any information, publication, document or article relating to this Agreement, the Project or the Services without the prior written approval of the Owner.
- (b) The NOPs will immediately refer to the Owner any media enquiries relating to this Agreement, the Project or the Services.

19.4 Survival

This Section 19 survives the termination of this Agreement.

20. GENERAL

20.1 Governing law and jurisdiction

This Agreement will be governed by and construed in accordance with the Laws of the Province of British Columbia and the Laws of Canada applicable therein, and the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of British Columbia and any courts entitled to hear appeals from the courts of British Columbia.

20.2 Severability

If any term or part of this Agreement is or becomes for any reason illegal, void or unenforceable at law, then in that event, that term or part of this Agreement will be and be hereby deemed to be severed from this Agreement without thereby affecting the remainder of this Agreement and the remainder of this Agreement will continue to be valid and enforceable in all things.

20.3 Further assurances

Each Party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as may be necessary for the purpose of giving effect to this Agreement.

20.4 Waiver

- (a) No waiver by either Party of a right of that Party or any breach by the other Party in the performance of any of its obligations under this Agreement is effective unless it is in writing.
- (b) No waiver of any right or obligation is a waiver of any other right or obligation under this Agreement.
- (c) Failure to notify, or a delay in notifying, the other Party of an act or failure of the other Party or to declare the other Party in default, irrespective of how long the failure or delay continues, does not constitute a waiver by the Party of any of its rights against the other Party.

20.5 Amendments

Amendment of this Agreement will be in writing and signed by the Parties.

20.6 Entire agreement

This Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

20.7 Changes in the NOPs, assignment and novation

- (a) If the PMT considers that a change in the NOPs would be Best for Project, it will propose that change to the SLT, providing full details of the removal or addition of a NOP. The SLT shall review this proposal and made a recommendation to the Owner. The Owner may consent to or withhold its consent from the change to the NOPs in its discretion.
- (b) If as a result of an approved change under Section 20.7(a):
 - (i) a new NOP is added, the Parties and such new NOP will enter into an acknowledgement agreement under which the new NOP will become a NOP under this Agreement; or
 - (ii) a NOP ceases to be a NOP, the Parties will enter into an agreement releasing that NOP from further rights or obligations under this Agreement.
- (c) The NOPs (or any NOP) will not assign, transfer or novate to any third party any of their obligations or entitlements under this Agreement.
- (d) The Owner may assign, transfer or novate its rights or obligations to any person or entity that the Owner can demonstrate has the resources to perform the Owner's obligations or entitlements under this Agreement.
- (e) No change in the Control of any NOP shall be permitted without the prior written consent of the Owner, which consent may be withheld in the Owner's discretion, provided that a change in the

Control of a NOP arising from any bona fide open market transaction effected on a recognized public stock exchange shall not require the Owner's consent.

20.8 Relationship of the Parties

- (a) Nothing in this Agreement gives a Party authority to bind any other Party in any way.
- (b) The NOPs are, independent contractors of the Owner. The employees, agents and subcontractors of the NOPs (or of any NOP) will not be deemed to be employees, agents or subcontractors of the Owner and each Party will pay all costs associated with its employees.
- (c) This Agreement is not intended to create, nor will it be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the Parties.

20.9 Corporate power and authority

Each Party represents and warrants to the others that it has full power to enter into and perform its obligations under this Agreement and that when executed it will constitute legal, valid and binding obligations under its terms.

20.10 Financial difficulties

A Party will immediately notify the other Parties in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its financial obligations in relation to this Agreement from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

20.11 Owner's statutory functions

Nothing contained in or implied by this Agreement or any document contemplated by this Agreement has the effect of:

- (a) constraining or placing any fetter on the Owner's statutory rights, duties, powers and functions, including those contained or referred to in any Law; and
- (b) constraining the Auditor General for British Columbia or placing any fetter on its statutory rights, duties, powers and functions.

20.12 Successors and assigns

This Agreement enures to the benefit of and binds the Owner, its successors and its assigns and the NOPs (and each NOP) and their respective successors and permitted assigns.

20.13 Costs

Each Party will pay its own legal and other costs and expenses of negotiating this Agreement and in preparing, drafting, executing and performing its obligations under this Agreement, any amendments to this Agreement or any agreement replacing this Agreement.

20.14 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for

more than one such counterpart. A Party may deliver an executed copy of this Agreement by email or other electronic means.

[Signature page to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

Her Majesty The Queen In Right Of The Province Of British Columbia, As Represented By The Minister Of Transportation And Infrastructure

Signature of duly authorised signatory

Kevin Richter

Full name of duly authorised signatory

Peter Kiewit Sons ULC

Signature of duly authorized signatory

Full name of duly authorised signatory

Signature of duly authorised signatory

Full name of duly authorised signatory

KEA5 Partnership, by its partners:

Kiewit Infrastructure BC ULC

Signature of duly authorised signatory

Full name of duly authorised signatory

Emil Anderson Construction (EAC) Inc.

Signature of duly authorised signatory

Full name of duly authorised signatory

**Schedule 1
Agreement Particulars**

No.	Reference	Description	Particular
1	Section 18	Owner's contact details	<p>Address: 4C-940 Blandshard St. Victoria, BC V8W9T5</p> <p>Email: Vicki.Willow@gov.bc.ca</p> <p>Attention: Vicki Willow, Executive Director - Procurement, Contracts and Risk Management Services</p>
2	Section 18	NOPs' contact details	<p>KEA5 Partnership</p> <p>Address: #310, 4350 Still Creek Drive, Burnaby BC, V5C 0G5</p> <p>Email:</p> <p>Attention:</p> <p>Peter Kiewit Sons ULC</p> <p>Address: #310, 4350 Still Creek Drive, Burnaby BC, V5C 0G5</p> <p>Email:</p> <p>Attention:</p>
3	Section 1.1	Province Representative	<p>A representative nominated by the Province, from time to time, in writing to the NOPs for the purposes of Section 7.2. The Province Representative as at the Effective Date is Kevin Volk</p>
4	Section 1.1	RFP	<p>The request for proposals issued</p>

			on March 21, 2022
5	Section 3.2	Period for maintenance of records	In respect of any record the original, or a copy, of which is not provided to the Owner prior to the termination of the Agreement, the expiry of seven years after the termination of the Agreement
6	Section 13.11	Period for Audit	Seven years after the termination of the Agreement

Schedule 2
Heads of Terms for Collaborative Construction Contract

1. Parties
 - (a) Ministry of Transportation and Infrastructure
 - (b) [BCTFA]
 - (c) Contractor Non-Owner Participant(s)¹
 - (d) Designer Non-Owner Participant(s)²
 - (i) Parent company guarantees or other security acceptable to the Owner will be required for each Contractor and each Designer.

2. Project Governance
 - (a) Senior Leadership Team (SLT):
 - (i) One representative from the Province, each Contractor NOP, and each Design NOP. Infrastructure BC will also be a member of the SLT “as if” it were a party to the CCC.
 - (ii) Parties to use best efforts to ensure continuity of attendance; substitutes and alternates should not be used.
 - (iii) Decisions to be unanimous.
 - (iv) Meets at least monthly.
 - (v) Provides leadership and oversight, seeking to ensure Project performs as well as possible.
 - (vi) Ultimate decision maker and resolver of disputes.
 - (b) Project Management Team (PMT):³
 - (i) One representative from each of the Province Team, Design NOPs and Construction NOPs.
 - (ii) Parties to use best efforts to ensure continuity of attendance; substitutes and alternates should not be used.
 - (iii) Decisions to be unanimous.
 - (iv) Provides day to day management of the project, with the authority to make decisions on behalf of the parties.

¹ May be multiple Contractors

² May be multiple Designers

³ During the Development Phase, the parties may decide to replace the PMT with a single Project Director or similar role, appointed by the SLT on a Best for Project basis.

- (v) Reports to Senior Leadership Team.
 - (vi) Manages wider Project team.
 - (c) Wider Project Team
 - (i) Implements the Project.
 - (ii) Will include members from Design NOPS and Construction NOPS.
 - (iii) May include members from Owner Team, subcontractors, suppliers and third party advisors.
 - (iv) Work together to deliver the Project, subject to the role of the Owner outside of the collaborative team (see section 7 below).
 - (d) Design NOPS and Construction NOPS commitments to maintain involvement of key personnel.
 - (e) One Construction NOP to be designated as prime contractor for health and safety purposes.
 - (f) Management system. To be developed during the Development Phase, recognizing statutory and regulatory needs of the parties and building on or incorporating existing processes and systems offered by the parties. Examples of matters to be addressed by the management system include:
 - (i) Reporting and financial management
 - (ii) Quality
 - (iii) Environmental
 - (iv) Procurement and subcontractor management
 - (v) Records management
 - (vi) Communications
 - (vii) People and culture
3. Payment:
- (a) Three limb compensation:
 - (i) Reimbursable Costs
 - (ii) A Fee, to recover non-project specific overheads and profit, paid as a percentage of reimbursable costs
 - (iii) Gainshare/painshare based on performance against targets
 - (b) Reimbursable Costs are paid in all cases.
 - (i) See Appendix for details of Reimbursable Costs.

- (ii) Includes all project-specific overheads, such as employment related overhead.
- (iii) Paid monthly as costs are incurred.
- (c) The Fee is paid monthly as a percentage of Reimbursable Costs. The Fee set out in the DPA will carry across to the CCC.
- (d) Gainshare/painshare, reflecting both cost performance and KPI performance, is shared between NOPs in proportion to their Fee, with painshare capped at the Fee paid to each NOP.
- (e) Gainshare/painshare based on cost performance is calculated as the overrun / underrun of actual costs (NOP costs plus designated Owner costs) against Target Price and is shared 50/50 between the Owner and the NOPs collectively.
- (f) Gainshare/painshare based on key performance indicators:
 - (i) Maximum potential KPI-related gainshare/painshare is a sum equal to plus or minus \$10,000,000.
 - (ii) KPI-related gainshare/painshare will reflect the weighted average score against agreed KPIs.
 - (iii) Appropriate KPIs will be developed during the Development Phase, including metrics and performance targets equating to that expected from a well-resourced high-performance integrated Owner-NOP project team.
 - (iv) The Province anticipates that the KPIs will include:
 - 1 Indigenous employment and contracting opportunities.
 - 2 Employment of apprentices and under-represented groups.
 - 3 Traffic delays during construction.
 - 4 Schedule.
- (g) Gainshare/painshare payments:
 - (i) Performance is monitored by the Senior Leadership Team and (where trending adversely) interim painshare is applied to minimize risk of payments being due from NOPs to Owner at any point.
 - (ii) Near-final payment is calculated and paid at Substantial Completion, making an allowance for future defect rectification costs.
 - (iii) A final gainshare/painshare payment is made at the end of a two-year rectification period. If there are defects in the design and construction during that period, the costs to rectify the defects are treated as Reimbursable Costs or Owner Costs (depending on who undertakes the rectification).
- (h) There may be a shared incentive pool across multiple projects based on achieving overall program schedule.

4. Principles

- (a) All decisions are taken on a Best for Project basis.
- (b) Parties to act in Good Faith.
- (c) All communications to be open and honest.
- (d) No blame/ no claim - Waiver of claims except:
 - (i) Wilful Default
 - (ii) Insolvency
- (e) Open book:
 - (i) Full transparency of all information and documentation related to the actual costs incurred in carrying out the Work.
 - (ii) Subject to audit by the Owner and Auditor General.
- (f) Peer relationship, collective management of risks and opportunities.

5. Disputes are to be resolved by the Senior Leadership Team:

- (a) Project Management Team has the authority to address disputes between them.
- (b) If the PMT cannot agree, disputes will be referred to the SLT.
- (c) The Province will appoint a Technical Advisory Committee (TAC) to assist the PMT and SLT in resolving disputes. The TAC will be appointed to assist in resolving disputes on a Program-wide basis, to allow for a consistency of approach for different projects on each highway and to identify Best-for-Project approaches. Recommendations of the TAC will not be binding on the SLT.
- (d) The resolution of a dispute at the SLT must be unanimous.

6. Project Objectives

- (a) deliver the Works expediently;
- (b) recognize and respect the Indigenous territories on which the Works are being conducted;
- (c) create and support opportunities for Indigenous Peoples, Indigenous Businesses, underrepresented groups, trainees and apprentices;
- (d) ensure safety for workers and the public during construction;
- (e) design and innovate for climate change resiliency;
- (f) effective traffic management; and
- (g) provide value for public money.

7. Role of the Owner outside of the Project Team:
 - (a) Able to give directions, for example, changes in scope.
 - (b) Changes in scope will give rise to a change to target pricing and schedule.
 - (c) Termination or suspension for convenience.
 - (d) Exercise of statutory or constitutional rights, duties, powers or functions, such as consultation with indigenous groups. The costs of such consultation will be Owner Costs contributing to outturn costs and therefore gainshare/painshare.
 - (e) Communications.
 - (f) Design review - in addition to the role of the Owner on the PMT and wider project team, the design will need to be reviewed at key stages by MOTI's Chief Engineer and/or Chief Bridge Engineer, or their delegates. This external role is to ensure Provincial standards are met for these critical pieces of infrastructure. This review will not remove the Designer NOPs' professional responsibility for the design nor the collective responsibility of the parties for all obligations under the CCC. Any design changes that flow from this review will not give rise to an adjustment to the Target Price or KPI performance targets.
8. Supervening or Adjustment Events
 - (a) The key principle of the CCC is that all risks and opportunities are shared between all parties, except for a limited number of risks and opportunities that remain with the Owner alone. This ensures that the parties respond to risks by prioritizing mitigations rather than prioritizing avoidance of responsibility.
 - (b) These Owner retained risks and opportunities will be established during the Development Phase, prior to finalizing the CCC Proposal. If these risks or opportunities arise, the Target Price and KPI performance targets will be adjusted to neutralize their impact to the NOPs.
9. Insurance
 - (a) Standard wrap up liability and course of construction insurance and other construction related insurances.
 - (b) Professional liability insurance will need careful consideration as the waiver of liability (see Section Schedule 24(d)) makes a standard policy ineffective, as there is no ability for the Owner to claim against the Designer and therefore nothing for the policy to bite on. First party cover is available and a decision will be made during the Development Phase on its value for money on a Best for Project basis.
 - (c) The identity of the party taking out the relevant insurances will be established during the Development Phase.
 - (d) The costs of required insurances will be either an Owner Cost or a Reimbursable Cost.
 - (e) Deductibles to be treated as Reimbursable Costs.
 - (f) Insurance proceeds accrue to the benefit of the Project.

10. Intellectual Property

- (a) Completed licence from NOPs to the Owner for all IPR developed as part of the design and construction of the Project.
- (b) Records, including IPR in any records, belong to the Province. For clarity, pre-existing IPR will not be transferred to the Province.

11. Suspension and Termination

- (a) Owner has right to suspend for convenience.
 - (i) Gives rise to adjustment to target cost and schedule.
 - (ii) If any suspension lasts for more than one year, the SLT will recommend a course of action to the Owner, including termination.
- (b) Owner has right to terminate for convenience.
 - (i) Pays NOPs for work carried out to date, plus Fee on those costs.
 - (ii) Pays NOPs for outstanding commitments and demobilization costs, without any Fee.
 - (iii) Painshare/gainshare applied on just and equitable basis, having regard to performance up to date of termination.
- (c) NOP defaults:
 - (i) Limit to insolvency or Wilful Default.
 - (ii) Owner decides whether to trigger full termination or just termination of party in default.
 - (iii) Only pay defaulting party for work carried out to date of notice of default.
 - (iv) Defaulting party is liable to other NOPs for loss, including loss of gainshare or increase in painshare.
- (d) Owner default:
 - (i) Limited to Wilful Default.
 - (ii) Determined by NOPs unanimously.
 - (iii) Owner compensates for loss of payments, including gainshare or painshare, resulting from the Owner default.

12. All work carried out under the Development Phase Agreement (including Early Works and design work) is to be treated as if carried out under the Collaborative Construction Contract. The Reimbursable Costs and Fee paid under the Development Phase Agreement will form part of the Target Price and be treated as having been paid under the Collaborative Construction Contract.

13. Standard provisions:

- (a) Governing law - British Columbia
- (b) Confidentiality and personal information
- (c) Entire agreement
- (d) Waiver and severability
- (e) Notices

14. Definitions

- (a) **Best for Project** means an outcome, decision, solution or result that is consistent with the Collaborative Principles (see section 4), achieves the Project Objectives (see section 6), enables or facilitates the efficient performance of the design and construction and which is arrived at or taken for the ultimate purpose of providing Fit for Purpose assets to the Owner.
- (b) **Fit for Purpose** an asset is fit for purpose when it achieves⁴:
 - (i) the benefits or purpose required by this Agreement (including performance and functional requirements of the Specification) or those purposes necessarily inferred from this Agreement; and
 - (ii) the purpose which, having regard to the performance and functional requirements of the Specification could be reasonably inferred by a person experienced and competent in the performance of works and services required for projects similar to the Project.
- (c) **Good Faith** means:
 - (i) acting fairly, reasonably, honestly and with integrity at all times;
 - (ii) doing all proper and reasonable things to enable each other to perform the design and construction; and
 - (iii) doing all proper and reasonable things to give effect to the spirit and intent of this Agreement.
- (d) **Wilful Default** means any of the following:
 - (i) intentional or reckless act or omission which the relevant party knew or ought reasonably to have known:
 - 1 was dishonest, illegal, fraudulent or wrongful; or
 - 2 would likely have harmful consequences or was carried out with disregard to harmful consequences;

⁴ To be reviewed and addressed in the light of the final determined adjustment events

- (ii) failure to pay within an agreed period;
- (iii) intentional or reckless act or omission that:
 - 1 is in breach of any law; or
 - 2 that prevents another party from performing a role, responsibility or function, or discharging an obligation, under any law;
- (iv) refusal or failure to effect and maintain, or to comply with, required insurances;
- (v) refusal or failure to ensure that all financial and commercial transactions are Open Book (see section Schedule 24(e));
- (vi) refusal or failure to comply with audit obligations;
- (vii) intentional or reckless refusal, or an intentional or reckless failure, to honour confidentiality, publication and privacy obligations;
- (viii) intentional or reckless refusal or failure to act in Good Faith;
- (ix) repudiation of the Agreement;
- (x) infringement of intellectual property rights;
- (xi) assignment, novation or change in control without consent; and
- (xii) breach of insurance policy.

Wilful Default excludes ordinary negligence, mistakes and errors made in Good Faith.

Appendix - Reimbursable Costs

1. Overview

- (a) Reimbursable Costs are costs that are wholly and specifically incurred by the NOPs in carrying out the works and which have been approved by the PMT. Reimbursable Costs will be determined based on the following principles:
 - (i) A NOP will not receive any contribution to its non-Project-specific or corporate overhead costs or expenses or derive any profit or unreasonable advantage from the utilisation of its people, plant, equipment or resources.
 - (ii) A NOP cannot recover anything that is not a bona-fide specific cost or expense incurred by it in performing work under the CCC. A NOP can only recover a maximum of 100% of any bona-fide specific cost or expense incurred by it. There must not be any duplicate recovery of any cost or expense or allowance for cost or expense (i.e. no double dipping).
 - (iii) Where a NOP receives payments (refunds, rebates, discounts, proceeds of insurance, third party settlements and the like) arising from its performance of the works under the CCC (other than payments received from the Owner for the Fee or gainshare) such payments will be taken to account as a reduction of Reimbursable Costs.
 - (iv) Reimbursable Costs must not include any contribution to the NOP's profit or recovery of its corporate overhead costs/expenses.
 - (v) Costs associated with off-site administrative or functional support not directly involved in the performance of the work under the CCC under the immediate control/direction of the PMT will not be Reimbursable Costs unless stated otherwise in this Agreement or otherwise approved by the SLT.
- (b) None of the costs or expenses incurred by the NOPs in developing, negotiating or agreeing the Collaborative Construction Contract shall be Reimbursable Costs.
- (c) Where unfixed materials, minor plant and the like are treated as a Reimbursable Cost become excess to what is required to complete the work under the CCC, the PMT will arrange for their sale at fair market value, the proceeds of the sale will accrue to the Owner and be deducted from the actual costs.
- (d) If it is not clear whether an item is a Reimbursable Cost, an assessment will be made by the Financial Auditor based on interpretation of this Appendix and the establishment audits carried out at the Development Phase, having regard to the principles mentioned in this Appendix. If any party does not agree with the Financial Auditor's assessment the matter shall be referred to the SLT for a determination.

2. Details for Construction NOP(s)

- (a) Tables A to G below set out which categories of cost will be Reimbursable Costs for the Construction NOP(s) or included in the Fee.

3. Reimbursable Costs and Fee for [Designer]

- (a) As part of the RFP Project, the Engineering and Design NOPs provided details of multipliers to be applied to the base salary costs of their employed staff and the base payments to their contract staff. These multipliers will be subject to an establishment audit by the Financial Auditor to confirm that they properly reflect the historic practice of the relevant Engineering and Design NOP(s) in the light of the specific circumstances of this Project.

- (b) Following the establishment audit, the multipliers as determined by the Financial Auditor will be used to establish the Reimbursable Costs and Fee for [Designer] and such multipliers will not be subject to further audit during the course of the Project. The Owner will pay the base salary or base payment plus the agreed multipliers for [Designer]'s staff who are principally engaged in carrying out the Services, including any design review, provided they are detailed on the staff organizational chart approved by the SLT, regardless of whether such staff are located at a Corporate Office, Project Office, or some other location approved by the SLT.
- (c) In addition to these multipliers, third party costs incurred by [Designer] with the approval of the SLT, such as sub-consultants and travel costs, will be Reimbursable Costs, but the Owner will not pay any Fee in respect of such third party costs.
- (d) Travel expenses incurred by the SLT Members of the [Designer] to attend SLT meetings are a Reimbursable Cost, however, the cost of the time allocated to the fulfillment of the duties of SLT Member is a not a Reimbursable Cost and forms part of the Fee.

Table A
Overhead and Corporate Office Costs

Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	Corporate Office and corporate overhead costs		✓
B.	Franchises, royalties, patent licence fees required by a NOP to perform its obligations under the DPA or the CCC	✓	
C.	Unrecoverable sales taxes on items that are themselves Reimbursable Costs	✓	
D.	All other taxes (e.g. property tax, business tax, income tax, etc.)		✓
E.	Interest, financing charges, banking charges		✓
F.	Corporate or entity accounting / auditing costs		✓
G.	Research and development costs (unless specifically approved by the Owner during the Development Phase or the SLT during the Construction Phase)		✓
H.	Premiums for the insurances required to be taken out and maintained by the NOPs under the CCC except for corporate insurances	✓	
I.	Premiums for corporate insurances		✓
J.	Corporate Office ⁵ paper, printing and stationery		✓
K.	Marketing, sales, and industry conferences		✓
L.	Legal advice, fees and services incurred for the benefit of the parties generally and with the approval of the SLT	✓	
M.	Other legal advice, fees and services		✓
N.	Advertising, including agency fees and publication costs		✓
O.	Corporate Office management, technical (exclusive of designated Project specific staff, such as Scheduler, who report to the Project Director), administration and service staff and non-Project specific staff, including HR, Finance, Commercial, Accounts, Purchasing,		✓

⁵ **Corporate Office** means any office or location where the NOP operates its business that is not a Project Office (approved by the SLT). It includes the NOP's corporate or head office, as well as any regional, divisional or subsidiary offices.

Table A Overhead and Corporate Office Costs			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
	<i>Occupational Health and Safety, Quality, Environment, and IT</i>		
P.	<i>Company cars including all costs and expenses, other than those vehicles allocated directly to Project specific staff on the Project as stated in Table B, Ref F.</i>		✓
Q.	<i>All Corporate Office accommodation costs, including all services, administration, maintenance, furniture, equipment, rent, rates, taxes, telephone, fax, reprographics, couriers, postage</i>		✓
R.	<i>Corporate Office computer hardware and software systems</i>		✓
S.	<i>Corporate office recruitment costs, including both staff and agency costs and layoff and severance payments, and any Corporate Office human resources/industrial relations management staff</i>		✓
T.	<i>Procurement or tendering costs incurred after the Construction Phase Commencement Date with the approval of the SLT</i>	✓	
U.	<i>Other procurement and tendering costs</i>		✓
V.	<i>Charitable donations and entertaining</i>		✓
W.	<i>Training (except where expressly permitted under the CCC or applicable Laws, including safety training and orientation)</i>		✓
X.	<i>Parent Company Performance Guarantee</i>		✓
Y.	<i>Membership fees in trade bodies and professional fees</i>		✓
Z.	<i>Travel expenses incurred by SLT Members to attend the SLT meetings</i>	✓	
AA.	<i>Cost of the time allocated to the fulfillment of SLT Member duties</i>		✓

Table B			
Designated Project Specific⁶ Costs of NOP's Employed Staff			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<i>NOP's staff who are principally engaged in carrying out work on the Project, including any design review, provided they are detailed on the staff organizational chart approved by the SLT, regardless of whether such staff are located at a Corporate Office, Project Office, or some other location approved by the SLT.</i>	✓	
B.	<i>Project specific secretarial/clerical personnel as detailed on the staff organizational staff approved by the SLT</i>	✓	
C.	<p><i>Staff payroll burden consisting of Project specific supervisory and administrative personnel based on the entitlements set out in the corporate employment contracts for the staff, except as expressly excluded elsewhere in this Table, which may include::</i></p> <ul style="list-style-type: none"> <i>i. actual salaries and wages;</i> <i>ii. payments in respect of public holidays and pre-authorized vacation;</i> <i>iii. pre-authorized overtime pay (in accordance with the NOP's standard HR policies);</i> <i>iv. employer contributions to private health/dental insurance, accidental death and dismemberment (AD&D) and life insurance as per the employee's contract of employment;</i> <i>v. employer contributions to Employer Health Tax premiums in accordance with applicable Laws;</i> <i>vi. employer contributions to approved pension schemes (excluding discretionary contributions and special pension contributions that the employer may have to make to the pension fund to make up any shortfall); and</i> <i>vii. employer contributions in respect of Canada Pension Plan (CPP) and Employment Insurance (EI) in accordance with Applicable Law.</i> <i>viii. WorkSafe BC premiums</i> 	✓	
D.	<i>Employee stock or share purchase plans</i>		✓

⁶ **Project specific** means staff members who principally carry out work of any description in respect of the Project, with the prior approval of the SLT, excluding support staff who fall within the definition of Corporate Office staff. No distinction shall be made between staff working for different divisions within the same legal entity.

Table B
Designated Project Specific⁶ Costs of NOP's Employed Staff

Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
E.	All costs for Project specific vehicles directly allocated to Project specific staff at the rate and for the number of vehicles approved by the SLT, including insurance, depreciation, and maintenance. Fuel and fuel allowances to be reimbursed in accordance with the NOP's standard conditions of employment for individual members of the NOP's Project specific staff.	✓	
F.	Costs and expenses for accommodation, meals, housing and laundry expenses for the NOP or any of the NOP's Personnel except as set out in the following item.		✓
G.	Costs and expenses for any accommodation created specifically for the Project as approved by the SLT, such as a work camp. ⁷	✓	
H.	Travel (domestic), accommodation and subsistence costs (including location allowances) for Project specific staff who are required to travel to the project site, in accordance with any travel policy established by the SLT	✓	
I.	Travel (domestic), accommodation and subsistence costs (including location allowances) for Corporate Office based personnel (excluding identified Project specific staff per Ref A)		✓
J.	Maternity or parental leave payments		✓
K.	Long term sickness payments in excess of 3 months or applicable Law		✓
L.	Long term sickness payments up to 3 months or applicable Law		✓
M.	Project specific bonus or incentive payments, not related to the profitability of the NOP's broader business		✓
N.	Retention payments as anticipated in the CCC Proposal or otherwise approved by the SLT	✓	
O.	Laptop computers (hardware and software), tablets and mobile phones assigned to Project specific Staff.		✓

⁷ During the Development Phase, the parties may agree that other living away from home allowances are appropriate to be included as Reimbursable Costs.

Table B
Designated Project Specific⁶ Costs of NOP's Employed Staff

Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
<i>P.</i>	<i>Reimbursement of mobile phone usage for full time personnel</i>	✓	
<i>Q.</i>	<i>Personal professional fees and subscriptions</i>		✓

Table C			
NOP's Site Labour			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<p><i>Site Labour costs burden consisting of all amounts payable pursuant to the Project Labour Agreement, which may include:</i></p> <ul style="list-style-type: none"> i. <i>Worker's total earnings, including pre-authorized overtime (excluding bonuses);</i> ii. <i>Payments in respect of public holidays and pre-authorized vacation;</i> iii. <i>Sickness or injury payments (not recovered by insurance);</i> iv. <i>Employer's contributions to annual vacation credits, pensions, death benefit and other employment benefit schemes (excluding special pension contributions that the NOP (as employer) may have to make to the pension fund to make up any shortfall);</i> v. <i>Cost of small tools (picks, shovels, barrows, buckets and similar non-mechanical tools, including small portable power tools), small equipment and consumables (e.g. welding rods, oxyacetylene, personal protective equipment and clothing etc.);</i> vi. <i>Personal protective equipment and clothing (subject to standard NOP's policy); and</i> vii. <i>Project specific employee training inclusive of time spent and course fees, subject to prior written authorisation by the SLT.</i> 	✓	
B.	<i>Labour only sub-contract.</i>	✓	
C.	<i>Layoff and severance payments, in each case subject to the Project Labour Agreement (PLA)</i>		✓
D.	<i>Project specific bonus or incentive payments, not related to the profitability of the NOP's broader business.</i>		✓
E.	<i>Retention payments as anticipated in the CCC Proposal or otherwise approved by the SLT</i>	✓	
F.	<i>Flight and travel expenses (not relocation allowances) where such trips are required for and/or directly related to the performance of the Work, in accordance with any travel policy established by the SLT and subject to the Project Labour Agreement</i>	✓	

Table D			
Project Office(s), Site Establishment and Site Charges			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	Offices, stores and workshops etc.	✓ *	
B.	Partitioning, racking and fitting out	✓ *	
C.	Temporary foundations and services	✓ *	
D.	Installation and running costs of utilities including water, gas, electricity and other services	✓ *	
E.	Documentation, printing, photocopying and consumables	✓ *	
F.	Project specific computer hardware and software systems	✓ *	
G.	Cleaning and maintenance	✓ *	
H.	Safety requirements, including first aid, clothing, training, protection systems, inspecting and all other measures required to satisfy applicable Laws	✓ *	
I.	Project specific telephone connection for site office and site communication systems	✓ *	
J.	Security and CCTV surveillance services provided by third-party firm	✓ *	
K.	Consumables, tea, coffee, paper and the like	✓ *	
L.	Furniture, fixtures, fittings and equipment	✓ *	
M.	Stationery, postage, courier services and the like	✓ *	
N.	Project specific photography	✓ *	
O.	Temporary roads and hard-standings	✓ *	
P.	Temporary fencing, hoarding and security	✓ *	
Q.	Petty cash		✓ *
R.	Lunch rooms, drying and messing rooms as may be required including maintenance	✓ *	

Table D			
Project Office(s), Site Establishment and Site Charges			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
S.	Road-sweeping, waste disposal	✓ *	
T.	Project specific technical equipment for surveying and testing, etc.	✓ *	
U.	Rent (including other lease costs incurred by virtue of a property lease approved by the SLT), rates and other municipal and statutory charges	✓ *	
V.	Office furniture and equipment costs (such as printer, scanner, site trailer, desk and chair) associated with Project specific staff working on the Project, wherever they may be located	✓ *	
W.	Any other related site establishment and site charges expressly stated in the CCC.	✓ *	
<p>“✓ *” means for purposes of this Table D that costs may be charged at quoted rates approved by the SLT, but only to the extent that such costs are directly related to the Project.</p>			

Table E			
Other NOP Machinery and Equipment for the Works			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<i>Machinery and equipment purchased for incorporation within the Works.</i>	✓	
B.	<i>Machinery, tools, consumables and equipment required for the design (if any), installation, testing, commissioning and management of the Works, forming part of the Works, either purchased, hired or leased..</i>	✓	
C.	<p><i>Own 'internal' NOP's machinery and equipment.</i></p> <p><i>Where the machinery and equipment is purchased specifically for use by the NOP to execute the Works, the cost is the purchase price or the first cost if the NOP assembled, fabricated or otherwise produced the item of equipment. The cost is credited with residual values, as actually realized or if not, as approved by the SLT after that equipment is no longer required by the NOP to execute the Works.</i></p> <p><i>Where the equipment is hired or rented by the NOP from an Affiliate, the costs should be at reasonable market hire or rental rates approved by the SLT.</i></p> <p><i>Where the equipment is owned by the NOP but not purchased specifically for use by the NOP to execute the Works, the costs should be at reasonable market hire or rental rates, subject to approval by the SLT.</i></p>	✓ *	
D.	<i>Hired or rented third party (non-NOP owned) machinery and equipment.</i>	✓	
E.	<i>Transportation, erection and dismantling, fuels, oils and other consumables for NOP's own and hired or rented NOP's machinery and equipment.</i>	✓	
F.	<i>Spare parts and maintenance for NOP's own and hired or rented machinery and equipment.</i>	✓	
G.	<i>Site transport (if specified).</i>	✓	
<p>“✓ *” means for purposes of this Table E that costs may be charged at quoted rates approved by the SLT, but only to the extent that such costs are directly related to the Project.</p>			

Table F			
Materials			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<i>NOP's materials for incorporation as part of the Works including samples, testing, packaging, protection and transportation and insurance (if such insurance is not covered under the Project specific insurance policy) of the materials whilst in storage and transit. The cost is credited with payments received for the disposal of materials and return packaging. The SLT may approve payment for materials in advance of delivery to the Sites.</i>	✓ *	
B.	<i>Subcontractor's materials for incorporation as part of the Works including samples, testing, packaging, protection and transportation and insurance (if such insurance is not covered under the Project specific insurance policy) of the materials whilst in storage and transit.</i>	✓	
C.	<i>Materials for temporary works including formwork, earthwork support, etc.</i>	✓	
<p>“✓ *” means for purposes of this Table F that costs may be charged at quoted rates approved by the SLT, but only to the extent that such costs are directly related to the Project.</p>			

Table G			
Miscellaneous			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<i>Costs of surety bonds or other form of security required under the CCC.</i>	✓	
B.	<i>Insurance premiums in respect of insurance policies required to be provided by the NOP under the CCC, including premiums or other charges associated with workplace safety insurance (WorkSafe) clearance certificate and corporate insurances.</i>	✓	
C.	<i>Insurance premiums for corporate insurances</i>		✓
D.	<i>Deductibles paid or payable under an insurance policy in respect of an insured loss or event.</i>	✓	
E.	<i>Costs or expenses incurred by the NOP to obtain, maintain or comply with any Permits or other permissions that the NOP is required to obtain pursuant to the CCC.</i>	✓	
F.	<i>Cost incurred by the NOP in undertaking its responsibility for the care and protection of the Works, Owner's property, the Lands, the work of other contractors and existing infrastructure, in accordance with the CCC.</i>	✓	
G.	<i>Haulage and disposal.</i>	✓	
H.	<i>The cost of scrap recovery where undertaken by the NOP, provided that the cost shall be credited with the payments received for scrap sold or held by the NOP.</i>	✓	
I.	<i>Costs incurred by the NOP in respect of Owner's entry, occupation and placement of fittings, furniture, or equipment, or for other uses of the Works.</i>	✓	
J.	<i>Costs incurred by or out-of-pocket expenses of the NOP in connection with an extension of time granted due to a Notice of suspension, or cost associated with a Notice of termination issued by Owner under the DPA or the CCC, including demobilization, winding up and/or remobilization costs.</i>	✓	
K.	<i>Project specific team building events and other special team functions.</i>	✓	
L.	<i>Manufactured products and goods at the lowest discounted market price current at the date of their supply. The cost is credited with payments received for the disposal of materials and return</i>	✓	

	<i>packaging.</i>		
<i>M.</i>	<i>Community engagement costs directly related to the performance of the Works.</i>	✓	
<i>N.</i>	<i>Other corporate services or events, including any off-Site administrative support function which is not directly involved in performing the Works.</i>		✓
<i>O.</i>	<i>The cost of subcontracts specific to the Project, in accordance with the procurement and contracting policy approved by the SLT</i>	✓	

**Schedule 3
Key Individuals**

Title	Name
Project Director	
Design Manager	
Construction Manager	
KEA5 Partnership SLT Member	
Peter Kiewit Sons ULC SLT Member	

Schedule 4 Preparatory Work

1. Foundational Activities

- (a) Within one week of execution of this Agreement, the Parties will hold a foundational workshop, facilitated by a collaborative coach. Each Party will ensure that this workshop is attended by each of their nominated SLT and PMT members. The aim of this workshop is to develop a strong foundation for the Parties to work collaboratively through the Development Phase and beyond.
- (b) Further workshops will be held as agreed by the SLT with a view to creating a collaborative team to deliver the Project.
- (c) Within one week of execution of this Agreement, the PMT shall develop a schedule for the Preparatory Work to be delivered by the SLT. Once accepted by the SLT, the Parties will work together to maintain the schedule. Changes to the schedule will be proposed by the PMT and approved by the SLT.

2. Design Development

- (a) The Parties will work together to develop a design for the Work to a sufficient level to allow for an estimate of the Reimbursable Costs of carrying out the Work plus an appropriate contingency for risks to be established. The Owner anticipates that this will mean developing a design to at least a 50% functional design level.
- (b) Peter Kiewit Sons ULC will take the lead in developing the design. However, all Parties will contribute their expertise to the development of the design.
- (c) The Parties will work together to establish a process to ensure the design is compliant with the Specifications. This may include review by the Province independently of the SLT and PMT.
- (d) The design should reflect the Project Objectives.

3. Site Investigations

- (a) The Parties will work together to identify any investigative work that needs to be carried out to assist in design development and risk analysis.

4. Risk Analysis

- (a) The Parties will work together to identify risks and mitigation measures for the Project.
- (b) This work will also identify opportunities which might reduce the cost of the Project and may result in adjustments to the insurance requirements for the Project.

5. Permitting

- (a) The Parties will work together to identify the permits and other third-party approvals required for the Project.
- (b) The Parties will identify the appropriate Party to apply for each permit and approval, and will work together to assist that Party in the process of applying for the permits and approvals.

6. Management System

- (a) The Parties will work together to establish a management system for the Project, which will include identifying reporting structures and appropriate management plans and implementing suitable technology and systems for information management and communications.

Schedule 5
Form and Content of CCC Proposal

The CCC Proposal will detail the plans to design, construct, commission and handover the Project.

The CCC Proposal must comprise, as a minimum, the following documents, each of which is described briefly further below:

1. Design and Construction Report
2. Project Schedule
3. Target Cost Estimate (TCE) report, which includes the proposed Target Outturn Cost (TOC)
4. Performance Measurement Procedures (which details the Key Performance Indicators (KPIs) for the Key Result Areas and the methodology to measure the KPIs)
5. Confirmation of Adjustment Event Guidelines
6. Risk and Opportunity Report
7. Governance and Leadership Framework, including an integrated organization chart
8. Management System (which itself comprises numerous separate documents)

In preparing the CCC Proposal it is expected that the Owner and NOPs will have carried out the Preparatory Work and in particular:

- (a) undertaken various investigations, engineering, cost planning and other planning activities;
- (b) conducted value management, value engineering and constructability studies;
- (c) developed alternative schedules for the construction of the Project, with an understanding of the costs attached to each to assist the Owner in balancing accelerating the construction work against the costs of acceleration;
- (d) performed risk assessments of the various design and construction options and prepared a risk register to inform the contingencies to be included in the proposed TOC;
- (e) identified and liaised with companies and persons (consultants, contractors, suppliers and others) who could supplement the resources of the Owner and NOPs to perform the Works. This includes understanding, considering the Project Labour Agreement and labour supply issues;
- (f) undertaken preliminary mobilization activities, which may include Early Works;
- (g) liaised with various interested parties and Indigenous Businesses as necessary;
- (h) identified the permits and other third-party approvals required for the Project and identified the appropriate Party to apply for these;
- (i) worked with the Owner to secure commitments from suitable insurers for wrap up liability, course of construction and professional liability insurance policies referred to in the CCC;

- (j) reached alignment on the various Key Performance Indicator gainshare/painshare targets for the CCC;
- (k) conducted workshops and other processes as necessary to develop a high-performance collaborative culture; and
- (l) undertaken any other works related to the Project as reasonably required by the Owner.

Format

Text and tables should be on double sided 8.5" x 11" paper. Where practical, text should be 1.5 spaced and not smaller than 11-point typeface. Drawings submitted with the CCC Proposal should be in format no larger than 11" x 17" paper.

Table A-1 Electronic File Formats

File Type	Software Package
Text based document	Adobe PDF format (unprotected and searchable)
Spreadsheet based documents	Microsoft Excel (unprotected)
Graphic files	Adobe PDF format
Drawing files	AutoCAD and Adobe PDF Format

1. Design and Construction Report

Section	Title	Contents
1.1	Design Basis Manual	Prepare a Design Basis Manual (DBM) summarising the specifications, codes, standards, guidelines and requirements to which the Project will be designed. The DBM shall include a copy of the Design Criteria Sheet for Climate Change Resilience with explanatory notes describing how climate change and resilience have been addressed in the design of the Project.
1.2	Roadway Design	Demonstrate how the roadway design substantially satisfies the roadway design requirements by providing a description of the approach to the roadway design requirements and the proposed design including: <ul style="list-style-type: none"> (a) key attributes and issues; (b) demonstrate how impacts on potential archaeological sites is minimized; (c) provide the following roadway design drawings: <ul style="list-style-type: none"> (i) a key plan; and (ii) laning and geometric drawings, including plan, profile, typical cross-sections and property lines, at an appropriate scale to describe the proposed design for roads (including

Section	Title	Contents
		<p>major drainage channels).</p> <p>Drawings shall be in accordance with the BC Ministry of Transportation and Infrastructure standards.</p>
1.3	Structural Design	<p>Provide a narrative and General Arrangement drawings to illustrate the proposed Structural Design methodology, concepts, and configurations which shall comply with the Specifications and address the following:</p> <ul style="list-style-type: none"> (a) key structural dimensions, vertical clearance, horizontal clearance, lane arrangement, span arrangement, and structure articulation; (b) access considerations for future maintenance, inspections, and rehabilitation; (c) approach and methods to achieve Design Life; (d) seismic design, including modes of vibration, load paths, soil improvements, seismic isolation systems, shock transmission strategies and proposed seismic analysis methods as appropriate; (e) aeroelastic design, where appropriate, including anticipated behaviour and mitigation measures if required; (f) strategy regarding noise mitigation including treatment of joints and wearing surfaces and other methods; (g) structure drainage, including interaction with adjacent road drainage; and (h) proposed material deviations from standard MoTI construction specifications, or special provisions template. <p>Drawings shall be in accordance with the BC Ministry of Transportation and Infrastructure standards.</p>
1.4	Foundation Design	<p>Provide a narrative and drawings to illustrate the approach to geotechnical issues, constraints and foundation design required for the Structure(s), including the following:</p> <ul style="list-style-type: none"> (a) a description of geotechnical issues, conditions, constraints, and risk related to the proposed design concept such as settlement, embankment construction and groundwater issues, including a description of the proposed approach to resolve these concerns and issues;

Section	Title	Contents
		<p>(b) a description of the foundation concept, including how the foundation design addresses the geotechnical characteristics of the site; and</p> <p>(c) identification of seismic design issues and a description of the methodology to solve these issues, including, but not limited to, retaining walls, stability of embankments, soil liquefaction, lateral load deformation response of foundations, and spatial incoherence.</p> <p>Drawings shall be in accordance with the BC Ministry of Transportation and Infrastructure standards.</p>
1.5	Construction Approach	<p>Provide a narrative illustrating how the Project will achieve its proposed construction schedule in a reasonable and realistic manner, having regard to the following:</p> <p>(a) key issues and constraints affecting construction and strategies to manage those issues;</p> <p>(b) coordination with communications and environmental management activities;</p> <p>(c) transportation and delivery of critical construction components;</p> <p>(d) details of in-stream works, including temporary access and other temporary works;</p> <p>(e) method of pile installation;</p> <p>(f) interaction with other concurrent projects;</p> <p>(g) major temporary works;</p> <p>(h) major prefabricated elements;</p> <p>(i) demonstration of how impact on potential archaeological sites is minimized; and</p> <p>(j) approach to operations and maintenance during construction (including coordination with local maintenance contractor who will provide operations and maintenance on active highway lanes).</p>
1.6	Construction Staging	<p>Provide a narrative and drawings illustrating the construction staging approach to achieve Project milestones, including:</p> <p>(a) carrying out the proposed construction including</p>

Section	Title	Contents
		<p>identification of all associated major milestones;</p> <p>(b) constructing temporary roadwork and detours;</p> <p>(c) providing for local access and operational requirements during construction; and</p> <p>(d) delivering and erecting major structural components, including temporary works.</p>
1.7	Traffic Management	<p>Provide a narrative and drawings illustrating how traffic will be managed during construction for the Project, including:</p> <p>(a) addressing how construction and traffic management will be managed within the wider Coquihalla Traffic Coordination Plan;</p> <p>(b) approach and methods used to provide detours, closures and stoppages which minimize the impacts to roadway users;</p> <p>(c) approach of the construction team to integrating communications requirements in relation to detours, closures, and stoppages;</p> <p>(d) approach to integrating the construction schedule and staging with the Traffic Management Plan;</p> <p>(e) approach to dealing with traffic accidents and other incidents; and</p> <p>(f) approach to dealing with unplanned closures.</p>
1.8	Operations and Maintenance and Rehabilitation	<p>Provide a narrative and drawings illustrating the operations and maintenance and rehabilitation considerations, assumptions and implications of the proposed design, including an indication of the ongoing activities for operations and maintenance and rehabilitation.</p>

2. Project Schedule

Section	Title	Contents
2.1	Project Schedule	<p>Project Schedule prepared in accordance with, at a minimum, the following information:</p> <p>(a) interim and final design milestones for major submittals;</p> <p>(b) the construction start and completion dates for each</p>

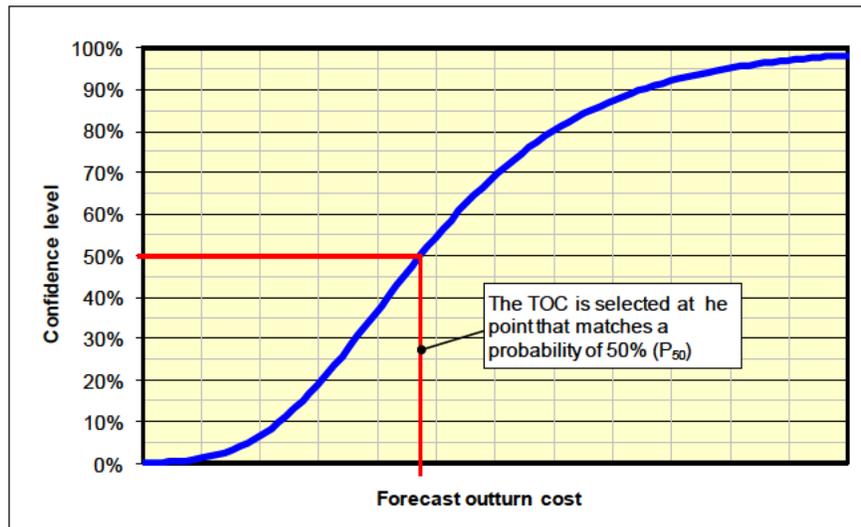
Section	Title	Contents
		<p>element of the Project infrastructure;</p> <ul style="list-style-type: none"> (c) the target open to traffic milestone date(s); (d) the target Substantial Completion Date; and (e) the target date for rectification of all deficiencies.
2.2	Works Schedule (Target Schedule)	<p>A draft Works Schedule, using Oracle Primavera P6 Professional 18 Release 18.8.0 or earlier scheduling software (or other software as agreed), showing the anticipated dates for execution of the CCC (taking into account the time to obtain approvals), target open to traffic milestone date(s), target Substantial Completion Date, and target date for rectification of all deficiencies. At a minimum, the following key work elements are to be identified:</p> <ul style="list-style-type: none"> (a) Early Works completed prior to submission of CCC Proposal and remaining to be completed; (b) intended construction start date including all milestones and constraints required to be met prior to the start of construction; (c) critical path; (d) securing approvals, permits, and licenses, including environmental, and utilities; (e) design and submittal schedule; (f) earthworks/soft soils/consolidation periods; (g) road construction; (h) structures construction; (i) utility relocations and/or protection; (j) construction mobilization, demobilization and site remediation; (k) construction of temporary or offsite facilities; (l) procurement of major prefabricated and other critical materials; (m) environmental remediation works; and (n) any other significant work functions.

3. Target Cost Estimate

Prepare a detailed estimate, referred to as the Target Cost Estimate (TCE), of what it will cost to complete the design, construction, commissioning and handover of the Project under the CCC, including attending to any Defects (as defined in the CCC) that arise during the Defect Correction Period (as defined in the CCC).

Carry out a Monte Carlo analysis of the inherent uncertainties, including both foreseen and unforeseen risks and opportunities, that are to be borne collectively by the Owner and the NOPs in completing the delivery of the Project under the CCC. The output from the TCE will therefore be in the form of a cost probability distribution curve. The Target Outturn Cost (TOC) will be the point that matches a probability of 50% (the P50 point) on the TCE cost probability distribution curve, as illustrated in **Figure 1** below.

Figure 1 – Selecting the TOC from the TCE



The Owner will engage a suitably qualified and experienced independent estimator, supported by appropriate staff, to confirm the following, working concurrently and in coordination with the NOPs:

- (a) the TCE is a reasonable estimate of what it is likely to cost to deliver the Works using best-in-class design and construction practices, within the agreed Target Schedule;
- (b) the Risk and Opportunity Provision provides for allowances within the TCE that are reasonable, and
- (c) the TOC represents value for money for the Owner.

4. Performance Measurement Procedures

Complete the following table to show the Key Performance Indicators (KPIs) for the Key Result Areas and the methodology to measure the KPIs:

Key Result Area	Key Performance Indicator	Methodology
Indigenous employment and contracting opportunities.		
Employment of apprentices and		

under-represented groups.		
Traffic delays during construction.		
Schedule		

5. Confirmation of Adjustment Event Guidelines

Prior to finalising the TCE/TOC and the other gainshare/painshare targets the Owner and NOPs will conduct workshops where we confirm the kinds of events and circumstances that might arise during the performance of the Works and whether the risk/opportunities associated with those events should be borne unilaterally by the Owner or shared collectively by of the Owner and the NOPs under the CCC. Changes to the Adjustment Events defined during the RFP should be based on new or additional information. Based on those workshops:

- (a) we will aim to reach final alignment on the kinds of events and situations that would be considered to be an Adjustment Event under the CCC and record these in the “Adjustment Event Guidelines”, and
- (b) we will make provision within the TCE for the risks and opportunities associated with other kinds of events and circumstances.

6. Risk and Opportunity Report

Submit a document that outlines the structured approach describing how risks and opportunities will be managed during the performance of the Works, addressing the treatment, mitigation and management of risks, including:

- (a) risk and opportunity register;
- (b) risk and opportunity workshop updates to work undertaken previously during Development Phase;
- (c) risk mitigation and opportunity strategies; and
- (d) risk and opportunity platform and reporting.

7. Governance and Leadership Framework

Section No.	Title	Contents
7.1	Organizational Structure	<ul style="list-style-type: none"> (a) Submit a fully integrated resourced organizational chart for the construction phase of the Project, including providing details of the roles, responsibilities, and lines of reporting. At a minimum, the organization chart should: <ul style="list-style-type: none"> (i) identify all personnel from the NOPs and the Owner required during the design, construction and commissioning phases of the Project, including all Key Individuals and Wider Project Team (WPT) nominees listed and any other key roles as necessary;

Section No.	Title	Contents
		<ul style="list-style-type: none"> (ii) include the availability and commitment of each person Key Individual and WPT nominee as a percentage of a full time equivalent (for all phases); (iii) include the name and working location of each Key Individual and WPT nominee as well as their parent entity; and (iv) include the firm name and working location of any subcontractors and/or subconsultants. <p>(b) In addition, provide a detailed explanation of all the proposed roles, positions and their primary responsibilities as outlined in the organizational charts.</p>

8. Management System

The Management System will comprise as a minimum the separate plans listed in **Table 1** below. Further information on the anticipated contents of these plans will be set out in the draft CCC. The Owner will provide details of plans that apply to the Highway Reinstatement Program as a whole.

Table 1 – List of plans within the Management System

1.	Risk and Opportunity Plan
2.	CCC Training Plan
3.	Commissioning and Turnover Plan
4.	Communications & Interested Party Management Plan
5.	Construction Management Plan
6.	Design Management Plan
7.	Demobilization Plan
8.	Emergency Response Plan
9.	Construction Environmental Management Plan
10.	Finance and Administration Plan (including regular monthly reporting)
11.	People and Culture Plan (including how apprentices and underrepresented hires (including locals and Indigenous groups) will be incorporated)
12.	Procurement and Contracting Plan
13.	Project Management Systems Plan (includes completion, defects, handover, etc)
14.	Quality Management Plan, including audit plan to encompass safety and quality field auditing, process audits

-
15. Mobilization Plan

 16. Respectful Workplace Health & Safety Plan

 17. Indigenous Engagement Plan

 18. Performance Management Plan (includes approach to key results)

All of the above plans are required to complete the Project. It is a requirement that the relevant plans have to be completed before the activities it relates to are undertaken. The expectation is that the Owner and NOPs will collaboratively develop the plans during the Development Phase. All Management System plans require acceptance from the SLT.

For plans that are not required upon execution of the Collaborative Construction Contract please indicate when the plans are required.

Schedule 6 Reimbursable Costs and Fee

1. Overview

- (a) Reimbursable Costs are costs that are wholly and specifically incurred by the NOPs in performing the Services and which have been approved by the PMT. Reimbursable Costs will be determined based on the following principles:
 - (i) A NOP will not receive any contribution to its non-Project-specific or corporate overhead costs or expenses or derive any profit or unreasonable advantage from the utilisation of its people, plant, equipment or resources.
 - (ii) A NOP cannot recover anything that is not a bona-fide specific cost or expense incurred by it in performing the Services. A NOP can only recover a maximum of 100% of any bona-fide specific cost or expense incurred by it. There must not be any duplicate recovery of any cost or expense or allowance for cost or expense (i.e. no double dipping).
 - (iii) Where a NOP receives payments (refunds, rebates, discounts, proceeds of insurance, third party settlements and the like) arising from its performance of the Services (other than payments received from the Owner for the Fee) such payments will be taken to account as a reduction of Reimbursable Costs.
 - (iv) Reimbursable Costs must not include any contribution to the NOP's profit or recovery of its corporate overhead costs/expenses.
- (b) None of the costs or expenses incurred by the NOPs in developing, negotiating or agreeing the Collaborative Construction Contract shall be Reimbursable Costs.
- (c) If it is not clear whether an item is a Reimbursable Cost, an assessment will be made by the Financial Auditor based on the interpretation of this Schedule and the establishment audits once carried out, having regard to the principles mentioned in this Schedule. If any party does not agree with the Financial Auditor's assessment the matter shall be referred to the SLT for a determination.

2. Details for KEA5 Partnership

- (a) Tables A to G below set out which categories of cost will be Reimbursable Costs for the KEA5 Partnership or included in the Fee.

3. Reimbursable Costs and Fee for Peter Kiewit Sons ULC

- (a) As part of the RFP Project, the Engineering and Design NOPs provided details of multipliers to be applied to the base salary costs of their employed staff and the base payments to their contract staff. These multipliers will be subject to an establishment audit by the Financial Auditor to confirm that they properly reflect the historic practice of the relevant Engineering and Design NOP(s) in the light of the specific circumstances of this Project.
- (b) Following the establishment audit, the multipliers as determined by the Financial Auditor will be used to establish the Reimbursable Costs and Fee for Peter Kiewit Sons ULC and such multipliers will not be subject to further audit during the course of the Project. The Owner will pay the base salary or base payment plus the agreed multipliers for Peter Kiewit Sons ULC staff who are principally engaged in carrying out the Services, including any design review, provided they are detailed on the staff organizational chart approved by the SLT, regardless of whether such

staff are located at a Corporate Office, Project Office, or some other location approved by the SLT.

- (c) In addition to these multipliers, third party costs incurred by Peter Kiewit Sons ULC with the approval of the SLT, such as sub-consultants and travel costs, will be Reimbursable Costs, but the Owner will not pay any Fee in respect of such third party costs.
- (d) Travel expenses incurred by the SLT Members of Peter Kiewit Sons ULC to attend SLT meetings are a Reimbursable Cost, however, the cost of the time allocated to the fulfillment of the duties of SLT Member is a not a Reimbursable Cost and forms part of the Fee.

Table A Overhead and Corporate Office Costs			
Ref	Cost Element	Cost Category	
		Reimbursable Cost	Fee (Profit and Overhead)
A.	Corporate Office and corporate overhead costs		✓
B.	Franchises, royalties, patent licence fees required by a NOP to perform the Services	✓	
C.	Unrecoverable sales taxes on items that are themselves Reimbursable Costs	✓	
D.	All other taxes (e.g. property tax, business tax, income tax, etc.)		✓
E.	Interest, financing charges, banking charges		✓
F.	Corporate or entity accounting / auditing costs		✓
G.	Research and development costs (unless specifically approved by the Owner)		✓
H.	Premiums for the insurances required to be taken out and maintained by the NOPs under this Agreement, including CGL, warranties, professional liability insurance, product liability insurance. ⁸		✓
I.	Corporate Office ⁹ paper, printing and stationery		✓
J.	Marketing, sales, and industry conferences		✓
K.	Legal advice, fees and services whether or not Project specific ¹⁰		✓
L.	Advertising, including agency fees and publication costs		✓
M.	Corporate Office management, technical (exclusive of designated Project specific staff, such as Scheduler, who report to the PMT), administration and service staff and non-Project specific staff, including HR, Finance, Commercial, Accounts, Purchasing, Occupational Health and Safety, Quality, Environment, and IT		✓

⁸ Under the CCC, the costs of project specific insurances will be Reimbursable Costs. If Project specific insurance is required for Early Works, the costs of such insurance will be Reimbursable Costs.

⁹ **Corporate Office** means any office or location where the relevant NOP operates its business that is not a Project Office (approved by the SLT). It includes the NOP's corporate or head office, as well as any regional, divisional or subsidiary offices.

¹⁰ Under the CCC, legal fees approved by the SLT, for example, to enforce subcontracts, will be Reimbursable Costs.

Table A Overhead and Corporate Office Costs			
Ref	Cost Element	Cost Category	
		Reimbursable Cost	Fee (Profit and Overhead)
N.	<i>Company cars including all costs and expenses, other than those vehicles allocated directly to Project specific staff on the Project as stated in Table B, Ref F.</i>		✓
O.	<i>All Corporate Office accommodation costs, including all services, administration, maintenance, furniture, equipment, rent, rates, taxes, telephone, fax, reprographics, couriers, postage</i>		✓
P.	<i>Corporate Office computer hardware and software systems</i>		✓
Q.	<i>Corporate office recruitment costs, including both staff and agency costs and layoff and severance payments, and any Corporate Office human resources/industrial relations management staff</i>		✓
R.	<i>Procurement or tendering costs incurred in relation to Early Works</i>	✓	
S.	<i>Charitable donations and entertaining</i>		✓
T.	<i>Training (except where expressly permitted under this Agreement or required by applicable Laws, including safety training and orientation)</i>		✓
U.	<i>Parent Company Performance Guarantee</i>		✓
V.	<i>Membership fees in trade bodies and professional fees</i>		✓
W.	<i>Travel expenses incurred by SLT Members to attend the SLT meetings</i>	✓	
X.	<i>Cost of the time allocated to the fulfillment of SLT Member duties</i>		✓

Table B			
Designated Project Specific¹¹ Costs of NOP's Employed Staff			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<i>NOP's staff who are principally engaged in carrying out the Services, including any design review, provided they are detailed on the staff organizational chart approved by the SLT, regardless of whether such staff are located at a Corporate Office, Project Office, or some other location approved by the SLT.</i>	✓	
B.	<i>Project specific secretarial/clerical personnel as detailed on the staff organizational staff approved by the SLT</i>	✓	
C.	<p><i>Staff payroll burden consisting of Project specific supervisory and administrative personnel based on the entitlements set out in the corporate employment contracts for the staff, except as expressly excluded elsewhere in this Table, which may include:</i></p> <ul style="list-style-type: none"> <i>i. actual salaries and wages;</i> <i>ii. payments in respect of public holidays and pre-authorized vacation;</i> <i>iii. pre-authorized overtime pay (in accordance with the NOP's standard HR policies);</i> <i>iv. employer contributions to private health/dental insurance, accidental death and dismemberment (AD&D) and life insurance as per the employee's contract of employment;</i> <i>v. employer contributions to Employer Health Tax premiums in accordance with applicable Laws;</i> <i>vi. employer contributions to approved pension schemes (excluding discretionary contributions and special pension contributions that the employer may have to make to the pension fund to make up any shortfall); and</i> <i>vii. employer contributions in respect of Canada Pension Plan (CPP) and Employment Insurance (EI) in accordance with applicable Law.</i> <i>viii. WorkSafe BC premiums</i> 	✓	
D.	<i>Employee stock or share purchase plans</i>		✓

¹¹ **Project specific** means staff members who principally carry out work of any description in respect of the Project, with the prior approval of the SLT, excluding support staff who fall within the definition of Corporate Office staff. No distinction shall be made between staff working for different divisions within the same legal entity.

Table B
Designated Project Specific¹¹ Costs of NOP's Employed Staff

Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
E.	All costs for Project specific vehicles directly allocated to Project specific staff at the rate and for the number of vehicles approved by the SLT, including insurance, depreciation, and maintenance. Fuel and fuel allowances to be reimbursed in accordance with the NOP's standard conditions of employment for individual members of the NOP's Project specific staff.	✓	
F.	Except as set out in Table B, Ref G, costs and expenses for accommodation, meals, housing and laundry expenses for the NOP or any of its Personnel. ¹²		✓
G.	Travel (domestic), accommodation and subsistence costs (including location allowances) for Project specific staff who are required to travel to the project site, in accordance with any travel policy established by the SLT	✓	
H.	Travel (domestic), accommodation and subsistence costs (including location allowances) for Corporate Office based personnel (excluding identified Project specific staff per Ref A)		✓
I.	Maternity or parental leave payments		✓
J.	Long term sickness payments in excess of 3 months or applicable Law		✓
K.	Long term sickness payments up to 3 months or applicable Law		✓
L.	Project specific bonus or incentive payments, not related to the profitability of the NOP's broader business ¹³		✓
M.	Laptop computers (hardware and software), tablets and mobile phones assigned to Project specific Staff.		✓
N.	Reimbursement of mobile phone usage for full time personnel	✓	
O.	Personal professional fees and subscriptions		✓

¹² If the parties agree to establish a work camp for the Project or agree that living away from home or similar allowances are justified, the costs associated with this will be Reimbursable Costs. It is not anticipated that this will occur until the CCC.

¹³ In the CCC, contractual retention or similar payments may be treated as Reimbursable Costs, if they are anticipated in the CCC Proposal or otherwise approved by the SLT.

Table C			
NOP's Site Labour			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<p><i>Site Labour costs burden consisting of all amounts payable pursuant to the Project Labour Agreement, which may include:</i></p> <ul style="list-style-type: none"> i. <i>Worker's total earnings, including pre-authorized overtime (excluding bonuses);</i> ii. <i>Payments in respect of public holidays and pre-authorized vacation;</i> iii. <i>Sickness or injury payments (not recovered by insurance);</i> iv. <i>Employer's contributions to annual vacation credits, pensions, death benefit and other employment benefit schemes (excluding special pension contributions that the NOP (as employer) may have to make to the pension fund to make up any shortfall);</i> v. <i>Cost of small tools (picks, shovels, barrows, buckets and similar non-mechanical tools, including small portable power tools), small equipment and consumables (e.g. welding rods, oxyacetylene, personal protective equipment and clothing etc.);</i> vi. <i>Personal protective equipment and clothing (subject to standard NOP's policy); and</i> vii. <i>Project specific employee training inclusive of time spent and course fees, subject to prior written authorisation by the SLT.</i> 	✓	
B.	<i>Labour only sub-contract.</i>	✓	
C.	<i>Layoff and severance payments, in each case subject to the Project Labour Agreement</i>		✓
D.	<i>Project specific bonus or incentive payments, not related to the profitability of the NOP's broader business¹⁴</i>		✓
E.	<i>Flight and travel expenses (not relocation allowances) where such trips are required for and/or directly related to the performance of the Services in accordance with any travel policy established by the SLT</i>	✓	

¹⁴ In the CCC, contractual retention or similar payments may be treated as Reimbursable Costs, if they are anticipated in the CCC Proposal or otherwise approved by the SLT.

Table C
NOP's Site Labour

Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
	<i>and subject to the Project Labour Agreement</i>		

Table D			
Project Office(s), Site Establishment and Site Charges			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	Offices, stores and workshops etc.	✓ *	
B.	Partitioning, racking and fitting out	✓ *	
C.	Temporary foundations and services	✓ *	
D.	Installation and running costs of utilities including water, gas, electricity and other services	✓ *	
E.	Documentation, printing, photocopying and consumables	✓ *	
F.	Project specific computer hardware and software systems	✓ *	
G.	Cleaning and maintenance	✓ *	
H.	Safety requirements, including first aid, clothing, training, protection systems, inspecting and all other measures required to satisfy applicable Laws	✓ *	
I.	Project specific telephone connection for site office and site communication systems	✓ *	
J.	Security and CCTV surveillance services provided by third-party firm	✓ *	
K.	Consumables, tea, coffee, paper and the like	✓ *	
L.	Furniture, fixtures, fittings and equipment	✓ *	
M.	Stationery, postage, courier services and the like	✓ *	
N.	Project specific photography	✓ *	
O.	Temporary roads and hard-standings	✓ *	
P.	Temporary fencing, hoarding and security	✓ *	
Q.	Petty cash		✓ *
R.	Lunch rooms, drying and messing rooms as may be required	✓ *	

Table D
Project Office(s), Site Establishment and Site Charges

Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
	<i>including maintenance</i>		
S.	<i>Road-sweeping, waste disposal</i>	✓ *	
T.	<i>Project specific technical equipment for surveying and testing, etc.</i>	✓ *	
U.	<i>Rent (including other lease costs incurred by virtue of a property lease approved by the SLT), rates and other municipal and statutory charges</i>	✓ *	
V.	<i>Office furniture and equipment costs (such as printer, scanner, site trailer, desk and chair) associated with Project specific staff working on the Project, wherever they may be located</i>	✓ *	

“✓ *” means for purposes of this Table D that costs may be charged at quoted rates approved by the SLT, but only to the extent that such costs are directly related to the Project.

Table E			
Other NOP Machinery and Equipment for the Services			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<i>Machinery and equipment purchased for incorporation within any Early Works.</i>	✓	
B.	<i>Machinery, tools, consumables and equipment required for the design (if any), installation, testing, commissioning and management of any Early Works, forming part of any Early Works, either purchased, hired or leased..</i>	✓	
C.	<p><i>Own 'internal' NOP's machinery and equipment.</i></p> <p><i>Where the machinery and equipment is purchased specifically for use by the NOP to execute the Services, the cost is the purchase price or the first cost if the NOP assembled, fabricated or otherwise produced the item of equipment. The cost is credited with residual values, as actually realized or if not, as approved by the SLT after that equipment is no longer required by the NOP to execute the Services.</i></p> <p><i>Where the equipment is hired or rented by the NOP from an Affiliate, the costs should be at reasonable market hire or rental rates approved by the SLT.</i></p> <p><i>Where the equipment is owned by the NOP but not purchased specifically for use by the NOP to execute the Services, the costs should be at reasonable market hire or rental rates, subject to approval by the SLT.</i></p>	✓ *	
D.	<i>Hired or rented third party (non-NOP owned) machinery and equipment.</i>	✓	
E.	<i>Transportation, erection and dismantling, fuels, oils and other consumables for NOP's own and hired or rented NOP's machinery and equipment.</i>	✓	
F.	<i>Spare parts and maintenance for NOP's own and hired or rented machinery and equipment.</i>	✓	
G.	<i>Site transport (if specified).</i>	✓	
<p>“✓ *” means for purposes of this Table E that costs may be charged at quoted rates approved by the SLT, but only to the extent that such costs are directly related to the Project.</p>			

Table F			
Materials			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
D.	<i>NOP's materials for incorporation as part of any Early Works including samples, testing, packaging, protection and transportation and insurance (if such insurance is not covered under the Project specific insurance policy) of the materials whilst in storage and transit. The cost is credited with payments received for the disposal of materials and return packaging. The SLT may approve payment for materials in advance of delivery to the Sites.</i>	✓ *	
E.	<i>Subcontractor's materials for incorporation as part of any Early Works including samples, testing, packaging, protection and transportation and insurance (if such insurance is not covered under the Project specific insurance policy) of the materials whilst in storage and transit..</i>	✓	
F.	<i>Materials for temporary works including formwork, earthwork support, etc.</i>	✓	
<p>“✓ **” means for purposes of this Table F that costs may be charged at quoted rates approved by the SLT, but only to the extent that such costs are directly related to the Project.</p>			

Table G			
Miscellaneous			
Ref	Cost Element	Cost Category	
		Reimbursable Costs	Fee (Profit and Overhead)
A.	<i>Costs of surety bonds or other form of security required under this Agreement.</i>	✓	
B.	<i>Insurance premiums in respect of insurance policies required to be provided by the NOP under this Agreement, including premiums or other charges associated with workplace safety insurance (WorkSafe) clearance certificate.¹⁵</i>		✓
C.	<i>Deductibles paid or payable under an insurance policy in respect of an insured loss or event</i>	✓	
D.	<i>Costs or expenses incurred by the NOP to obtain, maintain or comply with any Permits or other permissions that the NOP is required to obtain pursuant to this Agreement.</i>	✓	
E.	<i>Cost incurred by the NOP in undertaking its responsibility for the care and protection of any Early Works, Owner's property, the Lands, the work of other contractors and existing infrastructure, in accordance with this Agreement.</i>	✓	
F.	<i>Haulage and disposal.</i>	✓	
G.	<i>The cost of scrap recovery where undertaken by the NOP, provided that the cost shall be credited with the payments received for scrap sold or held by the NOP.</i>	✓	
H.	<i>Costs incurred by the NOP in respect of Owner's entry, occupation and placement of fittings, furniture, or equipment, or for other uses of the Services.</i>	✓	
I.	<i>Costs incurred by or out-of-pocket expenses of the NOP in connection with an extension of time granted due to a Notice of suspension, or cost associated with a Notice of termination issued by Owner under this Agreement, including demobilization, winding up and/or remobilization costs.</i>	✓	
J.	<i>Project specific team building events and other special team functions.</i>	✓	

¹⁵ Under the CCC, the costs of project specific insurances will be Reimbursable Costs.

K.	<i>Manufactured products and goods at the lowest discounted market price current at the date of their supply. The cost is credited with payments received for the disposal of materials and return packaging.</i>	✓	
L.	<i>Community engagement costs directly related to the performance of the Services.</i>	✓	
M.	<i>Other corporate services or events, including any off-Site administrative support function which is not directly involved in performing the Services.</i>		✓
N.	<i>The cost of subcontracts specific to the Project, in accordance with the procurement and contracting policy approved by the SLT</i>	✓	

4. Fee - General

- (a) The Fee payable to a NOP will be deemed to fully compensate that NOP for
- (i) all direct and indirect expenditure by that NOP associated with the performance of the Services and the fulfilment of its obligations under this Agreement,
 - (ii) an appropriate contribution towards the costs and expense of its corporate overhead structure, and
 - (iii) profit,
- not otherwise covered by Reimbursable Costs.

5. Fee for KEA5 Partnership

- (a) The amount that is _____ of the Reimbursable Costs payable to KEA5 Partnership.

6. Reimbursable Costs and Fee for Peter Kiewit Sons ULC

- (a) Reimbursable Costs for Peter Kiewit Sons ULC (Employed Staff)
- (i) Subject to Section 3 of Schedule 6, the amount that is a _____ multiplier applied to the base salary costs of the employed staff of Peter Kiewit Sons ULC.
- (b) Reimbursable Costs for Peter Kiewit Sons ULC (Contracted Staff)
- (ii) Subject to Section 3 of Schedule 6, the amount that is a _____ multiplier applied to the base payments to the contracted staff of Peter Kiewit Sons ULC.
- (c) Fee for Peter Kiewit Sons ULC (Employed Staff)
- (i) Subject to Section 3 of Schedule 6, the amount that is a _____ multiplier applied to the base salary costs of the employed staff of Peter Kiewit Sons ULC.
- (d) Fee for Peter Kiewit Sons ULC (Contracted Staff)

- (i) Subject to Section 3 of Schedule 6, the amount that is a multiplier applied to the base payments to the contracted staff of Peter Kiewit Sons ULC.
- (e) For the avoidance of doubt, no Fee will be paid to Peter Kiewit Sons ULC in respect of any other Reimbursable Costs.

Schedule 7 Project Scope

The Project consists of the design and permanent replacement of three river crossings (e.g. bridges) on the Highway 5 corridor as follows:

1. Jessica Bridge

Jessica Bridge is located approximately 20 kilometres northeast of Hope, B.C. (49.447, -121.270) along Highway 5. Jessica Bridge includes two identical bridges – one carrying northbound traffic and one carrying southbound. Each bridge was originally constructed with two lanes and three spans with total length of 85.4 metres. The main bridge span is 54 metres long with north and south jump spans of 15.7 metres each.

The extreme rainfall events resulted in both structures collapsing along the southwest end. The Province has demolished all collapsed spans and constructed temporary 4.5 metre long precast concrete slabs supported by an interlocking concrete block wall to replace the collapsed spans on each bridge and anticipates the following rehabilitation work:

- (a) demolition of the temporary interlocking concrete block wall and temporary concrete spans;
- (b) design and construction of piled foundations, abutments and superstructure, including girders and cast-in-place concrete deck, to replace the temporary jump spans;
- (c) design and construction of new piled foundations and abutments at the north end of each bridge to replace the existing spread-footing abutments that did not collapse during the extreme rainfall events, including required demolition and associated repairs to the existing abutments and bridge superstructure.
- (d) demolition of the temporary MSE wall and temporary concrete spans;
- (e) design and construction of new jump spans;
- (f) embankment armouring; and
- (g) paving of approaches.

2. Juliet Bridge

Juliet Bridge is located approximately 50 kilometres south of Merritt, B.C. (49.747, -121.010) along Highway 5. The site includes two identical bridges. Each bridge was originally constructed with two lanes and three spans with total length of 89.0 meters. The centre span is 36.0 meters long with a north jump span of 35.5 meters and a south jump span of 17.5 meters.

The extreme rainfall events resulted in the north jump span of the southbound bridge to collapse, and the north abutment of the northbound bridge to be compromised. The Province has demolished the collapsed span and stabilized the north abutment of the northbound bridge and anticipates the following rehabilitation work:

- (a) design and construction of a piled foundation, abutment and superstructure, including girders and cast-in-place concrete deck, for the north jump span of the southbound bridge;
- (b) design and construction of new piled foundations and abutments to replace the three existing spread-footing abutments that did not collapse during the extreme rainfall events, including required demolition and associated repairs to the existing abutments and bridge superstructure.
- (c) embankment armouring; and

- (d) paving of approaches.

3. Bottle Top Bridge

Bottle Top Bridge is located approximately 50 kilometres south of Merritt, B.C. (49.768, -121.000) along Highway 5. Bottle Top Bridge includes two identical bridges – one carry northbound traffic and one southbound. Each bridge was originally constructed with two lanes and three spans with total length of 82.7 meters. The centre span is 43.7 meters long with a north jump span of 23.0 meters and a south jump span of 16.0 meters.

The extreme rainfall events resulted in the north jump spans of both structures collapsing as well as the south jump span of the northbound bridge collapsing. The Province has demolished all collapsed spans and constructed a temporary 3.0 meter long precast concrete slab supported by a geosynthetic reinforced soil (GRS) wall to replace the collapsed span on the southbound bridge and anticipates the following rehabilitation work:

- (a) demolish temporary GRS wall and temporary concrete span;
- (b) design and construction of piled foundations, abutments and superstructure, including girders and cast-in-place concrete deck, to replace the three collapsed spans;
- (c) design and construction of new piled foundations and abutments at the south end of the southbound bridge to replace the existing spread-footing abutment that did not collapse during the extreme rainfall events, including required demolition and associated repairs to the existing abutments and bridge superstructure.
- (d) embankment armouring; and
- (e) paving of approaches.

In addition to the construction work identified above, the project requires the following engineering and design services:

- Geotechnical;
- Roads;
- Bridges; and
- Hydrological