

**BC Highway Reinstatement Program**

**Highway 1 - Category B Projects**

**Tank Hill Project**

**Collaborative Construction Contract**

**His Majesty The King In Right Of The Province Of British Columbia, As Represented  
By The Minister Of Transportation And Infrastructure**

**AND**

**McElhanney Engineering Services Ltd.**

**- AND -**

**Associated Engineering (B.C.) Ltd.**

**- AND -**

**Western Highways and Infrastructure Inc.**

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**Collaborative Construction Contract dated as of \_\_\_\_\_, 2024**

**Participants**

**His Majesty The King In Right Of The Province Of British Columbia, As Represented By The Minister Of Transportation And Infrastructure**

(the **Owner**)

**McElhanney Engineering Services Ltd.**

**Associated Engineering (B.C.) Ltd.**

**Western Highways and Infrastructure Inc**

(together the **NOPs**)

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**Background**

- A The Owner is delivering the Tank Hill Project consisting of the design and construction of a new bridge over the CPCK railway track and an unnamed creek channel, with associated road works, at Tank Hill on Highway 1.
- B The Owner has determined that an alliance focusing on an integrated project team motivated by a value focused performance based incentive delivery approach is needed to achieve the Project Objectives for the Project.
- C The Owner and the NOPs were parties to a Development Phase Agreement, pursuant to which a CCC Proposal was developed and accepted by the Province, including a Target Outturn cost of \$161,098,716.54.
- D The Participants have agreed to form the Alliance in the manner and on the terms set out in this Agreement.

**1. PURPOSE AND PRINCIPLES**

**Project Objectives**

- 1.1 The purpose of our Alliance is to perform the CCC Works to achieve the Project Objectives.

**CCC Principles**

- 1.2 We agree that in performing the CCC Works:
  - 1.2.1 we will act in Good Faith;
  - 1.2.2 all decisions will be made on a Best for Project basis;
  - 1.2.3 we all win, or we all lose, based on project outcomes. Win-lose outcomes are not acceptable;
  - 1.2.4 we will have a peer relationship where each Participant has an equal say in the decisions of the SLT;

- 1.2.5 all risks and responsibilities are managed collectively by the Participants;
- 1.2.6 we will have clear accountabilities within a no blame culture;
- 1.2.7 we will develop and foster a culture of trust, collaboration and innovation;
- 1.2.8 the SLT and the PMT are empowered to make decisions and take actions on behalf of all Participants;
- 1.2.9 all financial and commercial transactions are fully Open Book;
- 1.2.10 communication between us will be open and honest; and
- 1.2.11 all our dealings will be ethical and socially responsible.

## **2. OBLIGATIONS**

- 2.1 In performing the CCC Works, we will:
  - 2.1.1 achieve the Project Objectives and the KRA Objectives;
  - 2.1.2 ensure that the CCC Works at Substantial Completion and Final Completion satisfy the requirements of this Agreement and are Fit for Purpose;
  - 2.1.3 perform CCC Works in a manner consistent with the CCC Principles;
  - 2.1.4 take collective responsibility for managing all of the risks in performing the CCC Works;
  - 2.1.5 manage and mitigate all of the risks involved in bringing the CCC Works to Final Completion;
  - 2.1.6 establish an integrated collaborative team environment to encourage open, honest and efficient working;
  - 2.1.7 comply with our No Dispute commitments and obligations;
  - 2.1.8 encourage innovation and innovative thinking;
  - 2.1.9 develop and maintain a high standard of consultation and communication with our stakeholders and immediate community groups;
  - 2.1.10 create positive peer relationships in an environment of mutual support, appreciation and encouragement;
  - 2.1.11 at all times exercise Good Industry Practice in the performance of CCC Works; and
  - 2.1.12 perform the CCC Works to comply with the requirements of this Agreement.

## **3. NO DISPUTE**

- 3.1 We will work cooperatively to avoid or to identify and resolve all Disputes.

- 3.2 We will immediately notify each other of any Dispute, or potential Dispute, arising out of or in connection with this Agreement. If the PMT is unable to resolve the Dispute acting in accordance with the CCC Principles and Project Objectives, the Dispute will be promptly elevated to the SLT for resolution.
- 3.3 The SLT:
- 3.3.1 will deal proactively with any Dispute elevated to the SLT on a Best for Project basis;
  - 3.3.2 must unanimously resolve any Dispute elevated to the SLT; and
  - 3.3.3 will determine whatever action it believes is necessary to resolve the Dispute (which may include the use of the Technical Advisory Committee, or the appointment of any other independent expert, mediator or adjudicator, to assist the SLT to unanimously resolve any Dispute).
- 3.4 The rights, entitlements, obligations and liabilities set out in this Agreement (which in some cases may be determined by the SLT in the future) will exclusively govern our rights, entitlements, obligations and liabilities in relation to the CCC Works.
- 3.5 To the extent permitted by law, we agree that only an act or omission of a Participant in performing, or failing to perform, the CCC Works which amounts to a Wilful Default or an Act of Insolvency will give rise to enforceable obligations, entitlements, rights or remedies under this Agreement, including a right to claim or recover any Loss, or otherwise at law or in equity.
- 3.6 To the extent permitted by law, we release and discharge each other from any Loss, effects, claims, actions or proceedings under this Agreement or otherwise at law or in equity arising from or as a result of any act or omission in performing, or failing to perform, the CCC Works which does not amount to a Wilful Default or an Act of Insolvency in respect of which we may have otherwise had recourse under this Agreement or otherwise at law or in equity but for this release and discharge.
- 3.7 The Participants agree that nothing in this Section 3 will operate to limit a Participant's statutory motor vehicle insurer exercising a right of subrogation or statutory right of recovery, to the extent it is permitted to do so, against a Participant or a Participant's insurer.

#### **4. DIRECTIONS AND OWNER RESERVED POWERS**

##### **Directions**

- 4.1 We acknowledge and agree that the Owner (in its discretion) or the SLT (subject to Section 4.2) may, by issuing a direction in writing to the Participants in accordance with this Section 4.1, direct us to:
- 4.1.1 change the Specifications or the Owner's requirements for the whole or any part of the CCC Works;
  - 4.1.2 change the design of the whole or any part of the CCC Works;
  - 4.1.3 increase, decrease, delete or omit any part of the CCC Works;
  - 4.1.4 change the character or quality of any part of the CCC Works;
  - 4.1.5 change the levels, lines, positions or dimensions of all or any part of the CCC Works;



- 4.1.6 change the timing of the performance of all or any part of the CCC Works;
- 4.1.7 change the means, methods or techniques of the performance of all or any part of the CCC Works;
- 4.1.8 execute additional CCC Works; or
- 4.1.9 demolish or remove material, works, services or parts of the CCC Works no longer required by the Owner,

and we will immediately comply with the direction. Any direction must clearly indicate that it is a direction issued by the Owner or the SLT, as the case may be, in accordance with Section 4.1.

- 4.2 If, prior to a unanimous determination of the SLT in respect of a direction proposed to be issued in accordance with Section 4.1, any SLT representative believes (acting reasonably) that the SLT should consult with the Owner prior to issuing the direction, the SLT will:

- 4.2.1 provide the Owner with a draft of the proposed direction together with detailed reasons substantiating the need for the proposed direction;
- 4.2.2 outline the impact of the proposed direction on the Specifications or Owner's requirements for the CCC Works;
- 4.2.3 outline the impact of the proposed direction on the Project Objectives, the TOC or any KPIs; and
- 4.2.4 inform the Owner whether the proposed direction will constitute an Adjustment Event,

and the Owner and the SLT will, acting in accordance with the CCC Principles, seek to agree on the issue of the proposed direction. Any proposed direction referred to the Owner in accordance with this Section 4.2 must, subject to Section 4.3, obtain the Owner's written consent prior to the SLT issuing the direction in accordance with Section 4.1.

- 4.3 We acknowledge and accept that notwithstanding Sections 4.1 and 4.2, the Owner may by exercising an Owner Reserved Power in accordance with Section 4.5.3, refuse its consent to any proposed direction by the SLT to be issued in accordance with Section 4.1.

- 4.4 No direction issued in accordance with Section 4.1 will:

- 4.4.1 invalidate this Agreement; or
- 4.4.2 unless the direction gives rise to an Adjustment Event, give rise to any adjustment to the Compensation Framework.

#### **Owner Reserved Powers**

- 4.5 We agree that determinations in respect of the following matters are reserved to the Owner in its discretion (each, an **Owner Reserved Power**):

- 4.5.1 any decision expressly reserved to the Owner under this Agreement;

- 4.5.2 a direction by the Owner issued in accordance with Section 4.1, including a direction by the Owner to delete, decrease or omit any part of the CCC Works for any purpose;
  - 4.5.3 withholding or refusing consent to any proposed direction by the SLT to be issued in accordance with Section 4.1;
  - 4.5.4 the appointment of independent advisors in accordance with Section 7.1;
  - 4.5.5 the issue of a Defect notice by the Owner in accordance with Section 11.9;
  - 4.5.6 a suspension of the CCC Works under Section 15.4;
  - 4.5.7 termination of this Agreement for the Owner's convenience in accordance with Section 16.1;
  - 4.5.8 the rejection of, or a direction to amend, a notice issued in accordance with Section 17.8.3;
  - 4.5.9 the exercise of any statutory rights, duties, powers or functions of the Owner in accordance with Section 18.8;
  - 4.5.10 issuing any publicity or media statements or communications with respect to the Alliance or the CCC Works in accordance with Section 21.9;
  - 4.5.11 urgent protection of the CCC Works, people, other property, or the environment; and
  - 4.5.12 any other matter which the SLT unanimously agrees should be an Owner Reserved Power;
- and we will immediately implement the exercise of any of the Owner Reserved Powers.

### **Province Representative**

- 4.6 Where the Owner is acting as the client for the delivery of the CCC Works, it will perform its obligations under this Agreement through the Province Representative. The Province Representative will exercise the rights and entitlements reserved to the Owner under this Agreement. The Participants will provide all assistance necessary to enable the Province Representative to efficiently and effectively exercise the Owner's rights and entitlements and perform the Owner's role and responsibilities under this Agreement as the client for delivery of the CCC Works as opposed to acting as one of the Participants in the Alliance.
- 4.7 The Owner has initially selected the person identified in Schedule 1 as the Province Representative for the purposes of the Agreement. The Owner may, from time to time in its discretion, change the Province Representative by giving written notice to the NOPS. Any replacement Province Representative will be bound by any earlier decision or determination made by any previous Province Representative, unless otherwise agreed by the SLT.

### **Perceived contravention of Law**

- 4.8 If a Participant perceives that compliance with an Owner's direction issued under Section 4.1 would cause a Participant or a Participant's Officer, director or employee to do or omit to do anything that contravenes any Law, the Participant must immediately give notice in writing to the other Participants and the SLT providing the details of the Law and the manner so contravened. The SLT will consider the matters identified in the notice and:

- 4.8.1 satisfy the relevant Participant that the Owner's direction may be complied with, and agree to comply with the Owner's direction in such manner to avoid, manage or mitigate the risk of noncompliance; or
- 4.8.2 agree that the Owner's direction presents a real risk of contravening the Law and make a recommendation to the Owner addressing the Owner's direction and the possible contravention of the Law. The Owner will consider the SLT's recommendation and make a further direction after taking into account the SLT's recommendation.

## **5. LEADERSHIP AND MANAGEMENT**

### **SLT**

- 5.1 The Participants have, by this Agreement, established the SLT. The SLT will:
  - 5.1.1 comprise one SLT representative appointed by the Owner, one SLT representative appointed by each NOP, and one SLT representative appointed by IBC in accordance with Section 5.27;
  - 5.1.2 establish and implement the strategic leadership and direction of the Alliance;
  - 5.1.3 establish and implement transparent governance and accountability structures for the Alliance; and
  - 5.1.4 remain accountable to the Participants for the performance of the Alliance and the CCC Works.
- 5.2 The SLT will comply with the SLT Accountabilities and Responsibilities Matrix, acknowledging that certain activities will have been completed during the Development Phase.

### **Representation**

- 5.3 Each Participant has appointed the representatives identified in Schedule 4 as its SLT representative.
- 5.4 We promise to each other that our SLT representatives have, in accordance with and subject to this Agreement, the power delegated to them, or have been otherwise authorized, to represent and bind the Participant on any matter relating to the Alliance and this Agreement. Where a substitute or delegate attends an SLT meeting in accordance with Section 5.8, that substitute or delegate has the powers of an SLT representative in accordance with Section 5.4 as if they were appointed by a Participant as an SLT representative under Section 5.3.
- 5.5 Every SLT determination will be made unanimously on a Best for Project basis. Every SLT determination is binding upon the Participants.

### **SLT Meetings**

- 5.6 A quorum for an SLT meeting requires the attendance of one SLT representative of the Owner and one SLT representative appointed by each NOP.
- 5.7 Each of us acknowledge that our SLT representatives' continuous representation on, involvement in, and attendance at the SLT meetings is critical to the success of our Alliance.

- 5.8 We each commit to a principle of not removing or replacing our SLT representatives and not allowing substitutes or delegates to attend SLT meetings, other than in the event of a personal conflict of interest or in exceptional circumstances.
- 5.9 We will comply with the procedures and requirements for SLT meetings set out in Schedule 4.

#### **PMT and WPT**

- 5.10 The PMT is an integrated project management team formed by us to enable us to perform the CCC Works.
- 5.11 The APM is appointed by the SLT to lead the PMT. The APM will comply with the APM Accountabilities and Responsibilities Matrix, acknowledging that certain activities will have been completed during the Development Phase.
- 5.12 The SLT will, in consultation with the APM, appoint each member of the PMT on a best person for the job basis to create an integrated project team. Each of us will not remove any of our people appointed to the PMT or any of the Key Individuals without the SLT's consent.
- 5.13 The SLT may, as required by the progress of the CCC Works, or as recommended by the APM, alter the composition and size of the PMT.
- 5.14 The WPT is an integrated project team to perform the CCC Works on a Best for Project basis.

#### **Personnel**

- 5.15 We will ensure that all persons engaged in connection with the performance of CCC Works:
- 5.15.1 will perform their role in the Alliance acting in a manner consistent with the CCC Principles;
  - 5.15.2 are careful, skilled, qualified and experienced in their respective trades and professions and suitably qualified and experienced in the type and nature of work they are undertaking to perform the CCC Works;
  - 5.15.3 are registered and licensed as necessary under any Law for the purposes of, or incidental to, the performance of the CCC Works;
  - 5.15.4 have been inducted by the Alliance in accordance with the Alliance's orientation program; and
  - 5.15.5 will comply with this Agreement.
- 5.16 The Participants acknowledge and accept that if the SLT or the APM (in each instance acting reasonably) is of the opinion that a person does not or has not met the requirements of Section 5.15, the SLT or the APM (as the case may be) may direct the removal of any person from the Site or the CCC Works.
- 5.17 We will ensure that any person subject to a direction under Section 5.16 does not become involved in the performance of the CCC Works in any capacity without the written consent of the SLT.

## Key Individuals

- 5.18 We will ensure that the Key Individuals specified in Schedule 8 are involved in the Project until Substantial Completion or the period stated in Schedule 8.
- 5.19 If a Key Individual becomes the subject of a direction under Section 5.16, is no longer employed by a Participant or is unable to perform the CCC Works due to death, illness or incapacity, the Participant who is the employer of that person will promptly notify the SLT of that fact and provide details of an alternative, suitably qualified and experienced person to replace the relevant Key Individual.
- 5.20 The SLT will notify the Participant in writing within 10 Business Days as to whether or not it accepts the replacement individual proposed by the Participant in accordance with Section 5.19 as an acceptable replacement Key Individual. If the SLT does not accept the person proposed by the Participant as an acceptable replacement Key Individual, the Participant must nominate another person as a proposed Key Individual. We agree that that SLT is not required to state any reasons why a person proposed by a Participant is not an acceptable replacement Key Individual.
- 5.21 A Participant may only replace a Key Individual for reasons other than those outlined in Section 5.19 if the SLT is satisfied:
- 5.21.1 as to the qualifications and experience of the proposed replacement member of the Key Individual; and
  - 5.21.2 that the replacement of the Key Individual will not adversely affect the quality of the relationship between the Participants or the performance of the CCC Works in accordance with this Agreement.
- 5.22 The NOPs acknowledge that where a Key Individual is replaced for any reason, the Owner will incur additional administrative costs in considering the change and in working with the replacement in order to facilitate the transition and minimize the adverse impact on the relationship between the Participants and the CCC Works. In recognition of these additional costs, where a NOP wishes to replace a Key Individual, whether under Section 5.19 or 5.21 (but not following the death, illness, incapacity or termination of the Key Individual), it will pay to the Owner the sum of \$10,000 in order to reimburse the Owner. The SLT will not consider a replacement Key Individual until such payment has been made.
- 5.23 Unless otherwise agreed by the Owner, a replacement Key Individual, other than one appointed in the event of death or sudden or immediate illness, incapacity or termination, must be appointed to the role of the relevant Key Individual they are replacing and perform the role in conjunction with the person they are replacing no later than 20 Business Days before the replaced the Key Individual ceases to act in that capacity. The Owner's obligation is to pay a maximum 1 FTE (Full Time Equivalent) for the role performed by the relevant Key Individual during this 20 Business Day period.
- 5.24 We agree that if a Key Individual, for any of the reasons identified in Sections 5.16, 5.19 or 5.20, ceases to be involved in the CCC Works, the SLT may agree that the role previously performed by that person is no longer required to be performed.

## Infrastructure BC

- 5.25 The Owner has collaborated with IBC for the purposes of championing the alliance contracting model for the procurement and delivery of the Project.

- 5.26 The Owner has formed the view that it is in the best interest of all Participants to engage with and to leverage the expertise, experience and relationships of IBC within the Government of British Columbia and the wider construction and infrastructure market for the benefit of the delivery of the Project and the implementation of alliance contracting as a delivery model for projects in British Columbia.
- 5.27 The Owner has elected to exercise its discretion to invite IBC to nominate a permanent IBC representative to participate in all discussions, considerations and decisions of the SLT on a Best for Project basis “as if” IBC was a “Participant”.
- 5.28 By executing this Agreement the Participants acknowledge and accept:
- 5.28.1 the role of IBC under the Agreement; and
  - 5.28.2 the IBC’s representative’s participation in all discussions, considerations and decisions of the SLT.

## **6. GOVERNANCE AND MANAGEMENT SYSTEM**

### **Governance Framework**

- 6.1 The Governance Framework for the Alliance comprises:
- 6.1.1 this Agreement;
  - 6.1.2 the Owner’s reserved powers and directions in accordance with Section 4;
  - 6.1.3 the leadership and management functions of the SLT, APM and PMT in accordance with Section 5 including the obligation to comply with the:
    - (a) SLT Accountabilities and Responsibilities Matrix; and
    - (b) APM Accountabilities and Responsibilities Matrix; and
  - 6.1.4 the development and implementation of the Management System.
- 6.2 We will implement and comply with the Governance Framework.

### **Management System**

- 6.3 The Management System will:
- 6.3.1 incorporate the Management Plans outlined in Schedule 7;
  - 6.3.2 be provided to the SLT on a “rolling basis” for consideration and review as soon as practicable, and in any event within the period outlined in Schedule 7 or such other date agreed by the SLT; and
  - 6.3.3 if determined by the SLT as being acceptable for the performance of the CCC Works, be approved by the SLT.
- 6.4 Except in the case of Early Works, CCC Works will not commence on the Site until the SLT determines that all such Management Plans necessary to control, manage and govern the performance of the CCC

Works proposed to be undertaken are developed and are approved by the SLT in accordance with this Agreement.

- 6.5 If the SLT does not approve a Management Plan, the SLT will provide reasons to the APM for any Management Plan it does not approve. The PMT will amend the Management Plan to address the reasons given and resubmit the Management Plan for approval.

### **Compliance with Management System**

- 6.6 In performing the CCC Works we will comply with, and not deviate from, the Management System approved in accordance with Section 6.5 unless such deviation is determined as acceptable by the SLT in advance of any such deviation.

### **Management System Updates**

- 6.7 We will update and revise the Management System when necessary to do so as a result of any:
- 6.7.1 material change in the circumstances of the performance of the CCC Works or that otherwise necessitates or requires a change to the Management System;
  - 6.7.2 change in equipment, systems or procedures in performing the CCC Works; or
  - 6.7.3 or when directed by the SLT.

All updates and revisions to the Management System will be prepared and approved in accordance with Sections 6.3 and 6.5.

### **Post Implementation review**

- 6.8 The Participants will, progressively during the performance of the CCC Works, collect and report to the Owner such information and documentation that may be reasonably required by the Owner for the preparation of a post implementation review report.

## **7. ASSURANCE**

### **Appointment of Advisors**

- 7.1 We acknowledge that the Owner will appoint advisors including:
- 7.1.1 financial advisors, auditors or investigators;
  - 7.1.2 construction, engineering or technical advisors;
  - 7.1.3 cost planners, estimators and auditors; and
  - 7.1.4 any additional expert or advisor,
- to perform tasks requested by the Owner to report on the performance of the CCC Works in accordance with this Agreement.

- 7.2 We acknowledge and accept that any advisor appointed under Section 7.1:
- 7.2.1 is accountable to the Owner to assist the Owner's governance and oversight of the Alliance;
  - 7.2.2 may be replaced or have its role amended by the Owner;
  - 7.2.3 will be paid by the Owner and such cost or expense will not be an Owner Alliance Cost or aggregated into the TOC or AOC; and
  - 7.2.4 notwithstanding that the Owner's advisors will closely interact with the NOPs, does not owe any duty of care or any other legal duty, liability or obligation to a NOP.

### **Maintenance of Records**

- 7.3 The Participants acknowledge and agree that:
- 7.3.1 the Owner, as a public body, has obligations to maintain control of all documentation and Records prepared by us for the purposes of performing the CCC Works to substantiate the expenditure of public monies; and
  - 7.3.2 the Owner retains legal and beneficial ownership and custody of all documentation and Records prepared by us for the purposes of performing the CCC Works.
- 7.4 We will, during the performance of the CCC Works and for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date:
- 7.4.1 ensure that Records are properly and accurately created and maintained:
    - (a) on an Open Book basis;
    - (b) in a form that is capable of audit; and
    - (c) in accordance with GAAP;
  - 7.4.2 not destroy or discard Records except with the Owner's prior written consent;
  - 7.4.3 ensure that Records are available for inspection and verification by the Owner or any of its officers, agents, employees, or advisors upon reasonable notice being provided;
  - 7.4.4 provide all other reasonable assistance requested by the Owner or any of the Owner's officers, agents, employees, and advisors for the purposes of inspecting the Records or conducting an audit; and
  - 7.4.5 provide the Owner, upon reasonable notice being provided, with copies of all Records that the Owner determines (acting reasonably) it requires for the purposes of investigating, inspecting or auditing Records in accordance with Section 7.4 or 7.9 or the expenditure of public monies with respect to the performance of CCC Works.
- 7.5 The Participants acknowledge that:



- 7.5.1 the Owner does not assume or owe any duty of care to any Participant to review Records for errors, omissions or compliance with the requirements of this Agreement or by Law; and
- 7.5.2 an inspection of Records will not:
- (a) limit or relieve the Participants of, any obligation or liability under this Agreement;
  - (b) limit any right of the Owner under this Agreement;
  - (c) constitute acceptance by the Owner of the performance of the Participants' obligations under this Agreement; or
  - (d) be considered as a representation or acknowledgement by the Owner that the document complies with the requirements of this Agreement.
- 7.6 Notwithstanding any other provision of this Section 7, each NOP may retain its working papers and one copy of the Records, subject to the provisions of this Agreement relating to ownership, confidentiality and Intellectual Property persisting.
- 7.7 To enable the Owner to comply with its obligations we will, for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date:
- 7.7.1 maintain a full and accurate set of:
- (a) accounting Records following GAAP recording all Limb 1 Reimbursable Costs incurred in performing the CCC Works; and
  - (b) all other documentation and Records prepared or received by us for the purposes of performing the CCC Works; and
- 7.7.2 maintain all documentation and Records prepared by us for the purposes of performing the CCC Works in a format which satisfies the Owner's requirements and supports access, preservation, accessibility and audit.
- 7.8 We will:
- 7.8.1 provide the Owner access to all documentation and Records prepared for the purposes of performing the CCC Works (including any copies) for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date; and
- 7.8.2 transfer to the Owner all documentation and Records prepared for the purposes of performing the CCC Works of the type and at the intervals set out in the document control and Records management plan and in any event prior to the Final Completion Date.

## **Audit**

- 7.9 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 S1.6 of Schedule 1 from the Final Completion Date audit, inspect or investigate Records, the Site or any Other Site prepared or maintained by a Participant for the purpose of the CCC Works.

- 7.10 We will provide whatever access or facilities are necessary to conduct any such audit, inspection or investigation.
- 7.11 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 Sections 21.1 to 21.4.
- 7.12 We acknowledge and agree that:
- 7.12.1 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 Participant for the purposes of performing the CCC Works; and
  - 7.12.2 subject to Law, Sections 7.9 to 7.12 inclusive will apply to any such audit, inspection or investigation by the Auditor General of British Columbia.
- 7.13 If an audit, inspection or investigation in accordance with Section 7.9 identifies that any payments under this Agreement are less than, or exceed, a Participant's entitlement, then, as the case may be:
- 7.13.1 the Owner will pay the NOPs any shortfall; or
  - 7.13.2 the relevant NOP will reimburse the Owner any excess,
- in accordance with this Agreement, plus any GST paid or payable in respect of the shortfall or excess.
- 7.14 If an audit, inspection or investigation in accordance with Section 7.9 identifies that the Owner's Alliance Costs advised by the Owner to the APM are less than or exceed the actual Owner's Alliance Costs incurred by the Owner, the Owner will allocate any shortfall to the Alliance or set off or deduct any excess against the AOC.
- 7.15 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 Sections 7.13 and 7.14 apply notwithstanding that Final Completion has occurred, this Agreement has been terminated and whether an audit, inspection or investigation is carried out under this Agreement or otherwise.

## **8. COMPENSATION FRAMEWORK AND PAYMENT**

### **Overview of Compensation Framework**

- 8.1 Each NOP will be compensated in accordance with the Compensation Framework.

### **Payment Application**

- 8.2 At the end of each month, by a date determined by the SLT, each NOP will prepare a monthly progress payment report (in a format and including such information and documentation determined by the SLT) detailing the amount payable to that NOP in accordance with Compensation Framework and submit the monthly progress payment reports to the APM. Each progress payment report will contain at least the information set out in Schedule 18.

8.3 Within five Business Days of the NOPs' submission of the monthly progress payment reports to the APM, the APM will:

- 8.3.1 consolidate the monthly progress payment reports;
- 8.3.2 prepare and sign a Progress Payment Schedule substantially in the form set out in Schedule 6;
- 8.3.3 ensure that the Financial Auditor signs the Progress Payment Schedule signed by the APM; and
- 8.3.4 for any monthly progress payment report that includes any Limb 3 payment of gainshare by the Owner to the NOPs or Limb 3 payment of painshare by the NOPs to the Owner (as the case may be) ensure that the SLT representative of each Participant signs the Progress Payment Schedule signed by the APM and the Financial Auditor:

and issue the signed Progress Payment Schedule to the Owner certifying the amounts payable to each NOP in accordance with this Agreement.

8.4 Within two Business Days of the date of issue of the signed Progress Payment Schedule, the APM will obtain an invoice from each NOP in the amount certified as payable in accordance with Section 8.3 and submit the payment certificate and the invoices to the Owner for payment.

8.5 The Owner, subject to the Owner's entitlement in Section 8.7 and within 15 Business Days of receiving the Progress Payment Schedule in accordance with Section 8.3, will pay to each NOP the amount certified for payment to each NOP in the Progress Payment Schedule plus any amount payable for GST by electronic funds transfer to the bank account or bank accounts (as the case may be) nominated in writing to the Owner. If Section 168(3)(c) of the *Excise Tax Act* is applicable on any payment remaining to be invoiced by a NOP to the Owner at Substantial Completion a NOP will have the right, and the Owner will be required to pay, the GST applicable to the payment subject to Section 168(3)(c) of the *Excise Tax Act*.

### **Payments on Account**

8.6 We acknowledge and accept that:

- 8.6.1 the payment process in this Section 8, other than Section 8.3, 8.7 and 8.8, may be adjusted by the SLT from time to time; and
- 8.6.2 payments by the Owner are payments on account and:
  - (a) are not evidence that the whole or any part of the CCC Works have been performed in accordance with this Agreement; and
  - (b) are subject to audit in accordance with the procedure set out in Sections 7.9 to 7.13 inclusive.

### **Set-Off**

8.7 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.

- 8.8 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.

### **Passing of Title**

- 8.9 Unless otherwise directed by the SLT in respect of any plant, materials, equipment, assets or items (for the purpose of Section 8.9 and 8.10 **Materials**) that are to be imported to Canada, we will ensure that all rights, title and ownership in each part of any Materials that form part of, or are to be incorporated into, the CCC Works, will pass to the Owner unencumbered and free of any liens, charges and encumbrances held or claimed by any third party, upon the earlier of:

8.9.1 installation or affixing of the Materials into or on the Site; or

8.9.2 payment by the Owner of the payment application of which the relevant Materials form part.

### **Payment for Unfixed Materials**

- 8.10 We will ensure that when payment is requested for any unfixed or off-site plant, materials, equipment or goods that the SLT is satisfied that:

8.10.1 in respect of Materials supplied directly by a NOP:

- (a) clear and unencumbered title will pass to the Owner upon payment; and
- (b) the unfixed Materials are properly stored, labelled and identified as the property of the Owner and that they are adequately insured noting the interests of the Owner;

8.10.2 in respect of Materials supplied directly by a Subcontractor, unless otherwise determined by the SLT, that:

- (a) the Subcontractor has paid for the Materials and that clear and unencumbered title will pass to the Owner upon payment; and
- (b) the Subcontractor has provided security in the form of an unconditional bank undertaking, unconditional letter of credit or performance bond in the form approved by, and in favour of, the Owner equal to the amount claimed for the Materials. Any unconditional bank undertaking or unconditional letter of credit (as the case may be) will be released upon delivery of the relevant Materials to the Site and the Subcontractor providing evidence and documentation which establishes that unencumbered ownership has passed to the Owner; and
- (c) the Materials are properly stored, labelled and identified as the property of the Owner and that they are adequately insured noting the interests of the Owner.

### **Owner Alliance Costs**

- 8.11 The Owner Alliance Costs will be treated in the manner set out in the Compensation Framework.

## **9. CCC WORKS**

### **Commencement**

- 9.1 Except in the case of any Early Works, the CCC Works will not commence prior to a date advised by the Owner, which in any case will be no earlier than the Commencement Date.

### **Design Development**

- 9.2 In performing the CCC Works we will ensure that any designs for the CCC Works:
- 9.2.1 satisfy the Owner's requirements for the CCC Works and the Project;
  - 9.2.2 are such that, when constructed, the CCC Works will be Fit for Purpose and of the quality and standard of work required by this Agreement;
  - 9.2.3 satisfy the performance and operational requirements required by this Agreement;
  - 9.2.4 are performed by personnel who, at all times, remain suitably qualified and experienced and exercise Good Industry Practice;
  - 9.2.5 optimize whole of life cost for the CCC Works having regard to the various design lives of each component of the CCC Works and the Owner's requirements; and
  - 9.2.6 are developed and submitted to the Owner in accordance with the Design Management Plan and in a structured and timely manner to enable the Participants to seek all necessary review and approvals for the CCC Works.

### **Standard of Construction**

- 9.3 In performing construction works or services forming part of the CCC Works we will ensure that:
- 9.3.1 the CCC Works will be Fit for Purpose and of the quality and standard of work required by this Agreement;
  - 9.3.2 they are performed by personnel who, at all times, remain suitably qualified and experienced and exercise Good Industry Practice; and
  - 9.3.3 they satisfy the performance and operational requirements, and are otherwise performed, in accordance with this Agreement.

### **Project Labour Agreement**

- 9.4 In carrying out the CCC Works we will comply with and will ensure that all Subcontractors comply with the Project Labour Agreement and in particular the NOPS will engage, and cause all Subcontractors to engage, employees to carry out all CCC Works comprising "Capital Works" (as defined in the PLA) only in accordance with the PLA, and with the terms of the PLA governing all such CCC Works.

## **Access to the Site**

- 9.5 We will ensure that:
- 9.5.1 to the extent that we enjoy rights of access to the Site we will provide such access to each other and any person engaged, or employed by us or any one of us, as is necessary or appropriate for the performance of the CCC Works;
  - 9.5.2 to the extent that we do not enjoy rights of access to the Site we will secure sufficient access that is necessary or appropriate for the performance of the CCC Works on a Best for Project basis; and
  - 9.5.3 the Site and the CCC Works and the means of access to and egress from the Site and the CCC Works are such that persons who are at the Site and the CCC Works, or use the Site and the CCC Works or a means of access to or egress from the Site and the CCC Works, are not exposed to hazards.
- 9.6 Where the Owner provides access to any part of the Site such access is provided on the basis that:
- 9.6.1 we will comply with all reasonable requirements, restrictions and directions of the Owner;
  - 9.6.2 we will maintain the Site and any other lands and places required to perform the CCC Works in a safe, clean and tidy condition;
  - 9.6.3 at Substantial Completion we will remove all Construction Plant, Temporary Works, surplus materials and rubbish from the Site and leave them in a safe, clean and tidy condition; and
  - 9.6.4 the Owner, its employees and agents and any other person nominated by the Owner, may at any time, subject to compliance with the Management System, have access to any part of the Site for any purpose.
- 9.7 Unless otherwise determined by the Owner or in respect of any Early Works, we will not mobilize our resources or establish any accommodation, facilities or presence on any part of the Site before the date determined by the Owner in Section 9.1.

## **Protection of people and property**

- 9.8 In performing the CCC Works we will:
- 9.8.1 provide all things and take all measures necessary to protect people and property;
  - 9.8.2 avoid unnecessary interference with people or property;
  - 9.8.3 prevent damage to and unlawful obstruction or unlawful interference with people or property;
  - 9.8.4 prevent nuisance and unnecessary obstruction, interference or disturbance with people or property;
  - 9.8.5 ensure that so far as is reasonably practicable persons are not exposed to risks to their health and safety arising from the CCC Works; and

9.8.6 prevent unlawful environmental damage or pollution.

### **Subcontracting**

- 9.9 If any of us enter into a Subcontract with a Subcontractor for the performance of any part of the CCC Works, we will do so in accordance with the Procurement and Contracting Management Plan within the Management System.
- 9.10 Where a Participant enters into a Subcontract with a Subcontractor for the performance of any part of the CCC Works:
- 9.10.1 the Participant will do so in its own right as principal;
- 9.10.2 if required by the Owner, the Participant will require the third party to enter into a direct agreement with the Owner, so that the Owner may exercise all rights under the Subcontract on and from Substantial Completion;
- 9.10.3 to the extent that Section 9.10.2 does not apply, the Participant will ensure that prior to Substantial Completion, the benefit of the Subcontract is assigned, or otherwise transferred, to the Owner, so that the Owner may exercise all rights under the contractual arrangement or agreement on and from Substantial Completion;
- 9.10.4 we collectively assume the risk of the performance of the Subcontractor under the Subcontract; and
- 9.10.5 the performance of the Subcontractor under the Subcontract will not relieve us of our obligations under the Agreement.

### **Stakeholder and Community Relations**

- 9.11 We are committed to developing deeply engaged stakeholder consultation and communication practices with genuine commitment and responsiveness.
- 9.12 We are committed to doing everything within our power to ensure that our employees, subcontractors, consultants and agents are genuinely sensitive and responsive to all local and broader community issues that may arise during the performance of the CCC Works.
- 9.13 We will immediately inform the SLT and the Owner of any local or broader community issue which relates to the performance of the CCC Works and will promptly follow any instructions from the Owner in respect of that issue.
- 9.14 We will take all steps necessary to meet the Owner's obligations and commitments to our local community and stakeholders as they relate to the performance of the CCC Works.

### **Testing and Commissioning**

- 9.15 We will ensure that all testing and commissioning of the CCC Works is carried out in accordance with the Commissioning Plan and completed as required by and in accordance with this Agreement and any applicable Laws.

- 9.16 All testing and commissioning which is required to be performed in accordance with this Agreement will be:
- 9.16.1 performed and completed by the Participants;
  - 9.16.2 certified and or licensed in accordance with the requirements of Law; and
  - 9.16.3 certified by the APM as having been performed and successfully completed,
- prior to Substantial Completion.

### **Maintenance during Construction**

- 9.17 Following the start of construction, we will maintain the Site in accordance with the Province's maintenance specifications and electrical maintenance standards.
- 9.18 The Owner will arrange for routine winter maintenance services described in chapter 3 of the Province's maintenance specifications to be performed by the applicable road and bridge maintenance contractor engaged by the Province. Any amounts incurred by the Owner in relation to such services in excess of the applicable Maintenance Services Fee payable to the road and bridge maintenance contractor under the applicable Highway Maintenance Contract shall be treated as Owner Alliance Costs, whether or not such services are classified as Additional Maintenance Services, Quantifiable Maintenance Services (both as defined in the applicable Highway Maintenance Contract) or otherwise.

## **10. COMPLIANCE**

### **Laws**

- 10.1 We will satisfy and comply with all Laws relating to the CCC Works. We will obtain all permits, approvals, authorizations and consents required by any Laws necessary for the performance of the CCC Works.
- 10.2 We understand and acknowledge that the Owner has obtained or may obtain, for the purposes of the CCC Works a number of licences, permits or regulatory approvals. We will, in performing the CCC Works, observe the requirements and obligations of these licences, permits or regulatory approvals and will ensure that we, and our employees, subcontractors and agents, do not do anything that in any way prejudices or affects the Owner's rights and obligations and entitlements under these licences, permits or regulatory approvals.

### **Work Health and Safety**

- 10.3 Throughout the performance of the CCC Works we are committed to:
- 10.3.1 the development of a safe and respectful workplace to ensure the health, safety and wellbeing of our people;
  - 10.3.2 proactively preventing any form of bullying, harassment or discrimination, and actively encouraging diversity and inclusion in each workplace performing any part of the CCC Works;
  - 10.3.3 safety being as equally important as any commercial objective; and



- 10.3.4 creating a safe workplace and doing everything necessary to maintain a workplace free of accidents and injury.
- 10.4 We will ensure the health and safety of all persons engaged by us, including all workers, as defined in the OHS Legislation, to perform any aspect of the CCC Works, including taking all steps necessary to:
- 10.4.1 provide and maintain a working environment where, whenever possible, people are not exposed to hazards and are at all times protected against hazards;
- 10.4.2 provide and maintain workplaces, plant and systems of work of a kind that, whenever possible, do not expose people to hazards and that at all times people are protected against hazards;
- 10.4.3 provide information, instruction, training and supervision of all people as is necessary to enable them to perform their work or services in such a manner that, whenever possible, does not expose people to hazards and that at all times protects people against hazards;
- 10.4.4 provide people with adequate personal protective clothing and equipment so as to protect them against hazards to their occupational health and safety;
- 10.4.5 consult with workers and consult, co-operate and co-ordinate with other duty holders in accordance with the OHS Legislation;
- 10.4.6 ensure that:
- (a) the use, operation, cleaning, maintenance, transportation and disposal of plant; and
- (b) the use, handling, processing, storage, transportation and disposal of substances,
- are carried out in such a manner that, whenever possible, people are not exposed to hazards and are at all times protected against hazards;
- 10.4.7 develop procedures for dealing with emergencies that may arise while persons are at work;
- 10.4.8 ensure so far as is reasonably practicable that the health and safety of members of the public are not placed at risk by the performance of the CCC Works; and
- 10.4.9 do all things necessary to ensure that, in respect of any plant or equipment to be used in the performance of any CCC Works:
- (a) a system is implemented and maintained to identify any hazards associated with any plant or equipment, and assess the risks of a person being exposed to those hazards; and
- (b) all practical measures are taken to reduce those risks,
- in order to ensure that the duties of employers to provide and maintain a safe working environment in relation to plant and equipment is performed successfully and effectively.
- 10.5 Prior to commencing the CCC Works, each Participant will provide the SLT with satisfactory written evidence of compliance by it with all requirements under the OHS Legislation, including payments of

assessments due under it to WorkSafeBC. Without limiting the foregoing, the SLT may at any time require that any Participant provide evidence of compliance with all applicable requirements under the OHS Legislation, or payment of assessments due under it to WorkSafeBC, or both.

### **Prime Contractor**

- 10.6 We acknowledge and accept that for the purposes of the performance of the CCC Works:
- 10.6.1 the Owner appoints Western Highways and Infrastructure Inc. as the 'Prime Contractor' for the purposes of the performance of the CCC Works;
  - 10.6.2 the Owner gives all necessary authority to Western Highways and Infrastructure Inc. to discharge the duties of a Prime Contractor under the OHS Legislation and to enable it to manage or control any workplace to the extent necessary to discharge the duties imposed on a Prime Contractor;
  - 10.6.3 subject to Section 10.6.7, Western Highways and Infrastructure Inc. acknowledges and agrees that it accepts the appointment and will be responsible for, and bear the responsibility of, all obligations as the 'Prime Contractor';
  - 10.6.4 Western Highways and Infrastructure Inc. will:
    - (a) exercise and fulfil the functions and obligations of the Prime Contractor;
    - (b) file any documents necessary to comply with the OHS Legislation, including a notice of project;
    - (c) comply with all Laws and other requirements of this Agreement concerning the OHS Legislation;
    - (d) ensure that we perform our obligations under this Agreement in a manner which ensures we satisfy our obligations under the OHS Legislation and all occupational health and safety requirements established by Western Highways and Infrastructure Inc. to fulfil Western Highways and Infrastructure Inc.'s obligations as Prime Contractor;
    - (e) ensure that all Participants and Subcontractors comply with their respective obligations under the OHS Legislation and with all occupational health and safety requirements established by Western Highways and Infrastructure Inc. to fulfil Western Highways and Infrastructure Inc.'s obligations as Prime Contractor, and will ensure that all Subcontractors coordinate and schedule their construction activities at the Site in accordance with the reasonable instructions of Western Highways and Infrastructure Inc.;
    - (f) at all reasonable times provide the Owner and any relevant Authority with access to any Records necessary to establish Western Highways and Infrastructure Inc.'s compliance with its obligations under this Section and the OHS Legislation;
    - (g) immediately inform the SLT and the Owner of all incidents involving injury to any person arising out of or in connection with the performance of the CCC Works; and

- (h) provide the SLT and the APM with a copy of any document, notice or report that Western Highways and Infrastructure Inc., as the Prime Contractor, is required to author or that it receives;
- 10.6.5 we will coordinate and schedule our construction activities at the Site in accordance with the reasonable instructions of Western Highways and Infrastructure Inc.;
- 10.6.6 each Participant will do anything, and will refrain from doing all things, necessary to allow Western Highways and Infrastructure Inc. to fulfil and exercise its obligations and functions as Prime Contractor; and
- 10.6.7 if Western Highways and Infrastructure Inc., for any reason, is no longer capable of discharging its obligations as 'Prime Contractor', the Owner will revoke the appointment of Western Highways and Infrastructure Inc. and will appoint a replacement 'Prime Contractor'.

### **Protection of the Environment**

- 10.7 We are committed to implementing and pursuing environmental practices in a manner consistent with Good Industry Practice in performing the CCC Works and will do everything reasonably necessary to ensure that we minimize all environmental impacts.
- 10.8 We will take all steps necessary to minimize impacts on the environment in performing the CCC Works including by:
  - 10.8.1 providing and maintaining systems, means, methods and techniques of working that minimize environmental impact;
  - 10.8.2 ensuring that any plant or equipment used on the Site is so arranged, designed, made and maintained so that it minimises environmental impact;
  - 10.8.3 ensuring that environments that we encounter or engage with are not exposed to risks of unlawful damage or pollution;
  - 10.8.4 developing and complying with procedures for:
    - (a) avoiding and responding to environmental hazards or emergencies (or potential environmental hazards or emergencies); and
    - (b) avoiding or mitigating risks of unlawful damage or pollution that may arise; and
  - 10.8.5 developing procedures for engaging with any Authority regarding the environment.

### **Indigenous and cultural heritage**

- 10.9 We are committed to the protection of indigenous and cultural heritage and indigenous rights and will ensure that our employees, subcontractors, consultants and agents are genuinely sensitive and responsive to any indigenous and cultural heritage issues or indigenous rights that may arise during the performance of the CCC Works. This will include cultural safety and respectful workplace training for all persons performing CCC Works.

- 10.10 Upon discovery at the Site of any fossils, remains, coins, articles of value or antiquity, including all heritage objects (as defined in the *Heritage Conservation Act* (British Columbia)), we will:
- (a) immediately notify the Owner;
  - (b) take all steps not to disturb the item and, if necessary, suspend construction activities to the extent required if performing those construction activities would endanger the item or prevent or impede its excavation;
  - (c) take all necessary steps to preserve the item in the same position and condition in which it was found; and
  - (d) comply with all Laws and all requirements of governmental authorities with respect to such discovery, including pursuant to the *Heritage Conservation Act* (British Columbia).

## 11. CARE, INTERIM COMPLETION, SUBSTANTIAL COMPLETION AND FINAL COMPLETION

### Care of CCC Works

- 11.1 From and including the Commencement Date until 4:00pm on the Substantial Completion Date we are responsible for the care of the CCC Works and the Site.
- 11.2 From 4:00pm on the Substantial Completion Date until Final Completion, we are responsible for:
- 11.2.1 the care of any outstanding CCC Works, Defects, Construction Plant or Temporary Works remaining on the Site and other such work as provided by this Agreement; and
  - 11.2.2 any loss or damage to:
    - (a) the CCC Works or the Site;
    - (b) any property of the Owner or BCTFA on or adjacent to the Site; and
    - (c) any property of any third party,arising out of or in connection with a Defect or the rectification of Defects or the CCC Works.
- 11.3 At all times until Final Completion our obligations in Sections 11.1 and 11.2 mean that we:
- 11.3.1 are responsible for any loss or damage to any property of a Participant or any third party arising out of or in connection with the CCC Works;
  - 11.3.2 are responsible for any loss of use arising as a consequence from such loss or damage; and
  - 11.3.3 will repair or reinstate any such loss or damage.
- 11.4 The cost to rectify, repair, reinstate or make good any loss, damage or Defect or to take care under Sections 11.1 to 11.3 will be Limb 1 Reimbursable Costs in accordance with Schedule 5.

## **Completion of CCC Works**

- 11.5 We will perform the CCC Works to achieve:
- 11.5.1 Interim Completion by the Target Interim Completion Date; and
  - 11.5.2 Substantial Completion by the Target Substantial Completion Date.
- 11.6 When the PMT is satisfied that Interim Completion or Substantial Completion has been achieved the APM will deliver an Interim Completion Report or a Substantial Completion Report to the SLT:
- 11.6.1 certifying that the CCC Works have achieved Interim Completion or Substantial Completion; and
  - 11.6.2 documenting that the Alliance has complied with the requirements of this Agreement.
- 11.7 The SLT will meet as soon as practicable after receipt of the Interim Completion Report or Substantial Completion Report to consider whether Interim Completion or Substantial Completion has been achieved. If the SLT considers that Interim Completion or Substantial Completion:
- 11.7.1 has been achieved, the SLT will issue a Certificate of Interim Completion or Certificate of Substantial Completion stating the Interim Completion Date or Substantial Completion Date; or
  - 11.7.2 has not been achieved, the SLT will identify those matters or things which need to be addressed before Interim Completion or Substantial Completion can be achieved and the process in Sections 11.6 and 11.7 will be repeated until the SLT issues a Certificate of Interim Completion or Certificate of Substantial Completion stating the Interim Completion Date or Substantial Completion Date.

## **Defect Rectification**

- 11.8 We will rectify and make good any Defect in the CCC Works prior to Final Completion.
- 11.9 The Owner or the SLT may:
- 11.9.1 at any time prior to Final Completion, direct us in writing to attend to the rectification of any Defect; and
  - 11.9.2 state a date for the commencement of the rectification of a Defect and whether there will be a separate Defect Correction Period for that Defect (which if so, will commence at 4:00pm on the date the rectification of the Defect is completed and will expire six months after that date), provided that a separate Defect Correction Period shall not expire later than 30 months after the Substantial Completion Date.
- 11.10 The cost of making good any Defect acting in accordance with Section 11.9 will be a Limb 1 cost (for costs incurred by a NOP) and an Owner Alliance Cost (for costs incurred directly by the Owner) in accordance with the Compensation Framework.

## **Final Completion of the CCC Works**

- 11.11 The PMT will notify the SLT when the APM is satisfied that Final Completion has been achieved.

- 11.12 The SLT will meet as soon as practicable after receipt of the notice in Section 11.11 to consider whether Final Completion has been achieved. If the SLT considers that Final Completion:
- 11.12.1 has been achieved, the SLT will issue a Certificate of Final Completion stating the Final Completion Date;
  - 11.12.2 has not been achieved, the SLT will identify those matters or things which need to be addressed before Final Completion can be achieved and the process in Sections 11.11 will be repeated until issue a Certificate of Final Completion stating the Final Completion Date.
- 11.13 The Participants acknowledge and agree that prior to, and as a precondition to:
- 11.13.1 Substantial Completion, the NOPs will provide the Owner with all Records required by the Owner to conduct a post implementation review and prepare a post implementation report ; and
  - 11.13.2 Final Completion, the NOPs will provide the Owner with any supplementary or additional Records required by the Owner to finalize the post implementation report.

### **Separable Portions**

- 11.14 The Owner may determine that any part of the CCC Works will be a separable portion and the interpretations of:
- 11.14.1 CCC Works;
  - 11.14.2 Defect Correction Period;
  - 11.14.3 Certificate of Interim Completion;
  - 11.14.4 Certificate of Substantial Completion;
  - 11.14.5 Interim Completion
  - 11.14.6 Substantial Completion;
  - 11.14.7 Target Interim Completion Date;
  - 11.14.8 Target Substantial Completion Date;
  - 11.14.9 Interim Completion Date;
  - 11.14.10 Substantial Completion Date;
  - 11.14.11 Defects; and
  - 11.14.12 Final Completion,
- will apply separately to each separable portion.

## **12. ADJUSTMENT EVENTS**

### **Adjustment Events**

- 12.1 When the SLT is considering whether an event or circumstance is an Adjustment Event, they will act consistently with this Section 12.
- 12.2 The Participants have agreed to share all risks and opportunities associated with the CCC Works, regardless of whether:
- 12.2.1 those risks or opportunities are within the control of the Participants;
  - 12.2.2 the Participants could (or should) reasonably have foreseen or made allowance for them; or
  - 12.2.3 any provision that was made for them in the Target Outturn Cost,
- except for those risks or opportunities (or portions of such types of risks or opportunities) that the Participants have specifically agreed will be retained solely by the Owner as indicated in the Adjustment Event Guidelines.
- 12.3 The Participants acknowledge that:
- 12.3.1 the types of scenarios in the Adjustment Event Guidelines for which a risk or opportunity is shared are not exhaustive;
  - 12.3.2 the types of scenarios in the Adjustment Event Guidelines for which a risk or opportunity is retained unilaterally by the Owner is exhaustive; and
  - 12.3.3 there are no other types of events or circumstances for which a risk or opportunity is retained unilaterally by the Owner, except for events or circumstances expressly stated elsewhere in this Agreement to be an Adjustment Event.

### **Adjustment Event Approval Process**

- 12.4 No adjustment to the Compensation Framework in respect of an Adjustment Event will be made unless and until the SLT has approved the Adjustment Event.
- 12.5 Any adjustment to the Compensation Framework in respect of an Adjustment Event that has been approved by the SLT will be calculated in accordance with the Compensation Framework.

## **13. INTELLECTUAL PROPERTY**

### **Intellectual Property Rights and obligations**

- 13.1 The Participants' rights and obligations relating to Intellectual Property are set out in Schedule 11.

### **Perpetual obligation**

- 13.2 The NOPs' obligations set out in Schedule 11 are perpetual, and survive the suspension, termination, expiry or completion of this Agreement. If a NOP sells any NOP's Existing IPR or any Enhancement to a

NOP's Existing IPR, the NOP will ensure that these obligations bind each successor in title to the NOP's IPR, so far as is relevant to, or required by, this Agreement.

### **Non-Infringement**

13.3 In performing the CCC Works we promise to each other that:

13.3.1 our Existing IPR and the use of our Existing IPR; or

13.3.2 the Enhancement by us of Existing IPR; or

13.3.3 the use of New IPR,

for the purposes of the CCC Works or to use, support, maintain, repair, renovate, or operate the CCC Works or the Project, do not and will not infringe the IPR of any third party.

## **14. INSURANCE**

### **General**

14.1 The Participants will obtain and maintain the insurance specified for each of them under the Insurance Conditions, and will otherwise comply with the Insurance Conditions.

14.2 Before beginning the CCC Work, each Participant will deliver to each other Participant copies of all insurance coverage obtained by the Participant in accordance with the Insurance Conditions, or such other proof of that insurance as is satisfactory to the SLT.

### **Cross liabilities and waiver of Subrogation**

14.3 Where an insurance policy under this Agreement is obtained and maintained in more than one name, the policy of insurance must provide that:

14.3.1 except with respect to the limits of insurance, and any rights or duties specifically assigned to the indemnified entities and insofar as the policy may cover more than one indemnified entity, all insurance policy agreements and endorsements will operate in the same manner as if there were a separate policy of insurance covering each party comprising the indemnified entity and that a failure by one indemnified entity to disclose all material circumstances will not prejudice the rights of any other indemnified entity to indemnity under the policy or cover; and

14.3.2 that the insurer waives all rights, remedies or relief arising out of or in connection with this Agreement to which it might become entitled by way of subrogation against any of the parties constituting the indemnified entity and that failure by any indemnified entity to observe and fulfil the terms of the policy or covers will not prejudice the insurance or covers in regard to any other indemnified entity.

### **Pass Through**

14.4 To the extent that any Participant receives payment under an insurance policy that reimburses any cost loss or expense that was reimbursed or is reimbursable under this Agreement, that Participant must pass



on that payment to the Owner in full, and within a further 28 days the Owner must do each of the following:

- 14.4.1 arrange for an audit in accordance with Section 7.9 to 7.14 inclusive to take account of the insurance pass through amount received under the policy; and
- 14.4.2 issue further payments to the NOP, if required by the audit, in accordance with Section 7.13.

### **Maintaining insurance and notices**

- 14.5 In relation to the policies to be effected by a Participant under our Agreement each Participant will:
  - 14.5.1 ensure that insurance premiums are paid on time and ensure the conditions of cover are otherwise complied with;
  - 14.5.2 promptly notify the SLT of any proposed variation, amendment or endorsement to any insurance policy which adversely affects the amount, scope or terms of such policy and not effect, or consent to, any such variation, amendment or endorsement without the SLT's written approval;
  - 14.5.3 immediately notify the Participants of any event which may result in any insurance policy lapsing (other than by expiry of the period of insurance and, where such policy is renewable or is renewed) or being cancelled or avoided;
  - 14.5.4 promptly give written notice to the Participants if an insurer gives notice of cancellation, avoidance or other notice in respect of any insurance policy; and
  - 14.5.5 immediately give written notice to the Participants of any intention by a Participant to cancel or intentionally let lapse any insurance policy.
- 14.6 In relation to the insurance policies required to be effected by a Participant under this Agreement the Participant:
  - 14.6.1 will not do, or omit to do, anything which might vitiate, impair or derogate from the cover or prejudice any claim under any such insurance policy;
  - 14.6.2 will give notice to the Participants as soon as practicable after discovery that a term, condition or section of any insurance policy has been breached;
  - 14.6.3 will as soon as practicable notify the Participants of any occurrence that may give rise to a claim and which could materially reduce the available limit under any such insurance policy and thereafter keep the Participants informed of developments concerning the claim; and
  - 14.6.4 will promptly notify the Participants if, at any point, it fails to comply with any of its obligations under this Agreement.
- 14.7 In relation to the insurance policies required to be effected by a Participant under this Agreement other than owned automobile insurance the Participant will require each policy of insurance will bear an endorsement to the effect that the insurer will not effect any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to the Owner and each of the other named insureds and loss payees, provided that the Wrap-up Liability Insurance and the Course of Construction Insurance

will each bear an endorsement providing that the policy is non-cancellable by the insurer except for the following:

- 14.7.1 non payment of the premium;
- 14.7.2 bankruptcy or insolvency of the named insured;
- 14.7.3 termination of the Project prior to the expiry date of the policy (termination does not refer to the early completion of the Project); or
- 14.7.4 indefinite suspension of the Project,

and the Wrap-up Liability Insurance and the Course of Construction Insurance will each bear an endorsement providing that the insurers will not effect any material adverse change to either such policy

### **Insurances and covers primary**

- 14.8 The Participants intend that any insurance policy required under the Insurance Conditions is to be primary to, and not coordinate, or be secondary or subordinate to, any other indemnity or payment required to be granted or made by the Owner or another Participant under, or in connection with, this Agreement.
- 14.9 The Participants acknowledge that if a claim is made by the Owner under an insurance policy required under the Insurance Conditions, it is the Participants' intention that the insurer cannot require the Owner to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.

### **No Release**

- 14.10 The Participants acknowledge that whether an insurance policy responds or not (irrespective of the reason for that failure to respond) does not in any way release the Participants from any of their obligations under this Agreement.

### **Wilful Default**

- 14.11 In respect of any insurance policy effected by a Participant under the Insurance Conditions any act or omission by a Participant, or any of a Participant's officers, employees, agents or any other Person for whom a Participant is solely responsible, including:
  - 14.11.1 any misrepresentation, non-disclosure of material circumstances or breach of the duty of utmost good faith; or
  - 14.11.2 a deliberate or reckless failure to observe and fulfil the terms and conditions of any such insurance policy or cover,  
that causes, in whole or in part:
  - 14.11.3 a Participant's rights or entitlements in respect of any such insurance policy to be adversely affected or prejudiced; or
  - 14.11.4 the insurance policy to be cancelled or avoided, or the benefits under the insurance policy to be reduced,

will be a Wilful Default for the purposes of this Agreement.

### **Notice of Potential Claims or Claims**

- 14.12 The Participants must ensure that the SLT notifies the Owner of potential and actual claims on any insurance policy to be obtained and maintained in accordance with this Agreement. Where the potential or actual claim is made under any insurance policy obtained and maintained by the Owner in accordance with the Insurance Conditions, the SLT will ensure that the Participants comply with any reasonable requirements of the Owner (including the Owner's insurers and legal advisors) with respect to the management, administration and defence (as the case may be) of the potential or actual claim.
- 14.13 The Participants must ensure that the SLT keeps the Owner informed of subsequent developments or updates concerning potential and actual claims on an insurance policy obtained and maintained by the Owner in accordance with the Insurance Conditions.

### **Fires**

- 14.14 The Participants will take special precaution to prevent fires occurring in or about the CCC Works and will observe, and comply with, all insurance policy warranties and all laws and regulations in force respecting fires.

## **15. SUSPENSION**

### **Suspension**

- 15.1 Subject to Sections 15.3 and 15.4, the performance of the whole or any part of the CCC Works will not be suspended by us unless the APM, the SLT or Western Highways and Infrastructure Inc. in its capacity as the Prime Contractor considers suspension is necessary to prevent:

15.1.1 personal injury or death of people or loss of or damage to any property;

15.1.2 an adverse impact upon the environment, public health or safety or the community; or

15.1.3 a breach of a Law.

If we suspend the whole or any part of the CCC Works for any of the above reasons we will recommence the performance of the CCC Works when directed to do so by the SLT in accordance with Section 15.2.

- 15.2 As soon as:

15.2.1 the SLT is satisfied that the reasons for suspension in Section 15.1 no longer exist or have been appropriately managed or addressed, the SLT will direct us to recommence the suspended work as soon as reasonably practicable and we will promptly comply with that direction; or

15.2.2 Western Highways and Infrastructure Inc. in its capacity as the Prime Contractor is satisfied that the reasons for suspension in Section 15.1 no longer exist or have been appropriately managed or addressed, Western Highways and Infrastructure Inc. will notify the SLT to issue a direction under Section 15.2.1.

- 15.3 Other than in the event of an urgent event or circumstance which requires an immediate suspension of the whole or any part of the CCC Works, Western Highways and Infrastructure Inc. will consult with and

use its best efforts to obtain the agreement of the SLT to any proposed exercise of its suspension right under Section 15.1.

### **Owner suspension**

- 15.4 The NOPs accept that the Owner may without cause and for any reason at any time at the Owner's discretion issue a written notice directing the Participants to suspend the performance of the whole or any part of any CCC Works for any time period as the Owner decides.
- 15.5 If the Owner issues a written notice of suspension under Section 15.4:
- 15.5.1 we will immediately suspend the performance of the CCC Works that are the subject of the direction;
  - 15.5.2 the APM will, within five Business Days of the direction, prepare for the SLT's consideration and approval, an appropriate Best for Project recommendation to manage our resources and protect the CCC Works during the period of suspension; and
  - 15.5.3 we will only recommence the performance of the suspended CCC Works when directed to do so by the Owner.
- 15.6 We will use our best efforts to mitigate any Limb 1 Reimbursable Costs and Owner Alliance Costs incurred during any period of suspension.

## **16. TERMINATION FOR CONVENIENCE**

### **Notice of Termination**

- 16.1 Notwithstanding anything else in this Agreement the Owner may, by written notice, without cause and for any reason at any time in its discretion terminate this Agreement effective immediately or at any time thereafter identified in the notice upon service of the notice on the NOPs.

### **Compliance with Notice of Termination**

- 16.2 Upon receipt of a notice of termination under Section 16.1, the NOPs will:
- 16.2.1 cease performing the CCC Works and take all measures necessary to protect people, property and the CCC Works; and
  - 16.2.2 comply with any directions by the Owner to bring about an immediate winding down and cessation of the CCC Works, such winding down to include:
    - (a) the protection and return of property (including the CCC Works) in the possession or control of the Participants in which the Owner has, or may acquire, an interest;
    - (b) termination, assignment, transfer or novation to the Owner (at the Owner's determination) of all rights, benefits and obligations of any agreements or any interests in any arrangements entered into, acquired or created by the Participants, a NOP or the NOPs for the performance of any part of the CCC Works;

- (c) giving the Owner possession of all materials and other things on or about the Site which are owned or leased by the Participants and which are reasonably required by the Owner to achieve Substantial Completion of the CCC Works, provided that the Owner will compensate the NOPs for the use of any such materials and other things to the extent the Owner has not paid for them in accordance with this Agreement;
- (d) giving the Owner ownership and possession of all items reasonably required by the Owner to achieve Substantial Completion of the CCC Works which have formed, or will form, part of any payment made or to be made by the Owner;
- (e) vacating the Site of all Engaged Persons, Temporary Works, Construction Plant and other belongings of the Participants; and
- (f) giving to the Owner any Records which the NOPs or any of their Engaged Persons have prepared prior to or as at termination as required by this Agreement. We agree that the Owner may use any such Records in its discretion.

### Termination Payments

16.3 Subject to any rights the Owner has arising out of or in connection with this Agreement, including a right to withhold or set off payment and recover all amounts to which any of the NOPs may be liable under this Agreement, and subject to Section 16.8, in the event of termination in accordance with Section 16.1 the Owner will pay the NOPs, or the NOPs will pay the Owner as the case may be, the difference between:

16.3.1 the sum of:

- (a) for the CCC Works performed prior to the date of termination, amounts payable in accordance with the Compensation Framework in respect of:
  - (i) Limb 1 Reimbursable Costs;
  - (ii) Limb 2; and
  - (iii) Limb 3 (if any) determined on a just and equitable basis (including consideration of any relevant Owner Alliance Costs) by the SLT having regard to the performance of the Participants up to the point in time of the issue of the notice of termination, as if a notice of termination under Section 16.1 had not been issued;
- (b) the Limb 1 Reimbursable Costs and Limb 2 for costs reasonably incurred by the NOPs for materials, plant and equipment reasonably ordered by the NOPs which the NOPs are legally liable to accept and pay for, but only if the materials, plant and equipment become the unencumbered property of the Owner upon payment or the underlying contract for the supply of the materials, plant or equipment is unconditionally novated to the Owner;
- (c) the Limb 1 Reimbursable Costs and Limb 2 for costs reasonably incurred by the NOPs in the reasonable expectation of performing the whole of the CCC Works which the NOPs are legally liable to pay, including costs or damages incurred by reason of the NOPs having to terminate contractual arrangements with third parties that were entered into for the purposes of the CCC Works;

- (d) the reasonable Limb 1 Reimbursable Costs and Limb 2 for costs incurred in demobilizing from the Site; and
- (e) the reasonable Limb 1 Reimbursable Costs and Limb 2 for costs incurred by the NOPs as a result of complying with any direction given by the Owner on or after termination; and

16.3.2 an amount equal to any amounts which the Owner has previously paid to the NOPs under this Agreement;

and the NOPs will not otherwise be entitled to recover, and release and discharge the Owner from, any and all Loss arising out of or in connection with this Agreement, the CCC Works or the termination of this Agreement save and except for any entitlement to be indemnified by the Owner in accordance with Sections 16.6 and 17.13.

16.4 We will mitigate any costs, loss, expense or damages incurred or arising out of or in connection with a termination for convenience in accordance with Section 16.1.

#### **Termination Documentation**

16.5 In the event of termination in accordance with Section 16.1 the Participants will execute any documentation, including appropriate confidentiality requirements, licences and releases, reasonably requested by the Owner, to deal with and close out any acts, events, circumstances or issues arising out of or in connection with the termination of this Agreement.

16.6 We acknowledge and accept that, in the event of termination in accordance with Section 16.1, the Owner may use any documentation or information prepared by us for the purposes of, or arising out of or in connection with, the CCC Works, including any Records, for any purpose whatsoever including engaging any third party or any NOP to perform all or any part of the CCC Works. The Owner accepts the risk of, and subject to Sections 13.3 and 17.9, indemnifies the NOPs against the risk of using, or providing to third parties for their use, any such documentation or information.

#### **Continuation of CCC Works**

16.7 Without prejudice to any of the Owner's rights, entitlements or powers under this Agreement, the Owner may, upon termination of this Agreement under Section 16.1, itself or by third parties, continue to perform and complete any incomplete CCC Works.

#### **Termination arising from Wilful Default**

16.8 The participants acknowledge and agree that:

16.8.1 if a NOP commits a Wilful Default and fails to rectify the Wilful Default within the period stated in the Default Notice, the Owner may terminate this Agreement in accordance with Section 16.1 because of, in response to, as a consequence of, or to manage or mitigate the effects of the Wilful Default and/or the failure to rectify the Wilful Default;

16.8.2 if the Owner terminates this Agreement on the basis set out in Section 16.8.1:

- (a) all references to the “NOPs” or a “NOP” in Section 16.3 will exclude the Defaulting NOP; and
- (b) the Owner may without prejudice to any other rights it may have under the Agreement or otherwise at law at any time thereafter, by giving further written notice to the Defaulting NOP, exercise one or more of the following rights:
  - (i) wholly or partly suspend any payment, or any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 due or that may become due to the Defaulting NOP, whether or not the entitlement to payment arose on, before or after the date of the Default Notice; or
  - (ii) terminate any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or any Limb 3 to the Defaulting NOP occurring, or that may otherwise occur but for this Section 16.8.2(b)(ii), on and from the date of the Default Notice.

## **17. WILFUL DEFAULT AND INSOLVENCY**

### **NOP Wilful Default**

17.1 If a NOP prior to Final Completion commits a Wilful Default the Owner, after consultation with the SLT, may issue a written notice to the Defaulting NOP:

17.1.1 specifying details of the Wilful Default; and

17.1.2 requiring the Defaulting NOP to rectify the Wilful Default within 10 Business Days of the date of the Default Notice.

The Owner may prior to the expiry of the period stated in the Default Notice, extend in writing the period in the Default Notice to a longer period determined by the Owner (in its discretion) if the Owner is satisfied (acting reasonably) that the Defaulting NOP has demonstrated:

17.1.3 a genuine need for a period longer than 10 Business Days to rectify the Wilful Default; and

17.1.4 a bona fide intention and/or effort (as the case may be) to rectify the Wilful Default,

and such later period extended in writing by the Owner will be deemed to be the “period stated in the Default Notice” for the purposes of Section 17.2 or Section 16.8.1 (as the case may be).

### **Failure to Remedy a Wilful Default**

17.2 If the Defaulting NOP fails to remedy the Wilful Default identified in the Default Notice within the period stated in the Default Notice, the Owner, after consultation with the SLT and without prejudice to any other rights it may have under the Agreement (including under Section 16.8.1) or otherwise at law, may at any time thereafter, by giving written notice to the Defaulting NOP, exercise one or more of the following rights:

17.2.1 wholly or partly suspend any payment, or any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 due or that may become due to the Defaulting NOP, whether or not the entitlement to payment arose on, before or after the date of the Default Notice, until the Default has been remedied;

- 17.2.2 exclude the Defaulting NOP from further participation in the Alliance or this Agreement; or
  - 17.2.3 terminate any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or any Limb 3 to the Defaulting NOP occurring, or that may otherwise occur but for this Section 17.2.3, on and from the date of the Default Notice until the Default has been remedied.
- 17.3 Any notice issued to the Defaulting NOP under Section 17.2 will (subject to the terms of the notice) be effective immediately and is without prejudice to the Non-Defaulting Participants' rights against the Defaulting NOP under this Agreement or otherwise at law.
- 17.4 Notwithstanding any Wilful Default by a Defaulting NOP, but subject to any notice under Section 16.1, the Non-Defaulting Participants will continue to perform the CCC Works.

### **NOP Act of Insolvency**

- 17.5 If an Act of Insolvency occurs in respect of a NOP or its Guarantor the Owner, after consultation with the SLT, may at any time thereafter by giving written notice to the Defaulting NOP, exercise one or more of the following rights:
- 17.5.1 wholly or partly suspend any payment, or any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 due or that may become due to the Defaulting NOP whether or not the entitlement to payment arose on, before or after the date of the Default Notice until the Default has been remedied;
  - 17.5.2 exclude the Defaulting NOP from further participation in the Alliance or this Agreement; or
  - 17.5.3 terminate any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 to the Defaulting NOP occurring, or that may otherwise occur but for this Section 17.5.3, on and from the date of the Default Notice until the Default has been remedied.
- 17.6 Any notice issued to a Defaulting NOP under Section 17.5 will (subject to the terms of the notice) be effective immediately and is without prejudice to the Non-Defaulting Participants' rights against the Defaulting NOP under this Agreement or otherwise at law.
- 17.7 Notwithstanding any Act of Insolvency occurring in respect of a NOP or its Guarantor, but subject to any notice under Section 16.1, the Non-Defaulting Participants will continue to perform the CCC Works.

### **Exclusion**

- 17.8 If the Owner excludes a Defaulting NOP from further participation in the Alliance in accordance with Sections 17.2.2 or 17.5.2:
- 17.8.1 the Owner may:
    - (a) suspend until Final Completion any payment, or any entitlement to payment, of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 to the Defaulting NOP whether or not the entitlement to payment arose on or before the date of the Default Notice;



- (b) terminate any future entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 to the Defaulting NOP occurring, or that may otherwise occur but for this Section 17.8.1(b);
- (c) use all Temporary Works and materials provided by the Defaulting NOP to perform the remaining CCC Works, without incurring any liability to pay or reimburse the Defaulting NOP for the use of such all Temporary Works and materials;
- (d) use all Construction Plant provided by the Defaulting NOP to perform the remaining CCC Works, provided that unless such Construction Plant has been purchased by the Defaulting NOP for the purpose of the CCC Works and the purchase price has been reimbursed by the Owner, the Owner will compensate the Defaulting NOP its Reimbursable Costs and Fee in relation to the use of such Construction Plant, subject to the rights of the Owner to set off such compensation against amounts owed by the Defaulting NOP; and

17.8.2 the Defaulting NOP:

- (a) will promptly, as and when required by the SLT, assign, transfer or novate (as directed by the Owner) to the Non-Defaulting Participants without payment the benefit of any agreements or arrangements or any interests in any agreements or arrangements entered into by the Participants or any IPR owned or held by the Defaulting NOP required by the Non-Defaulting Participants for the performance of any part of the CCC Works;
- (b) will promptly, as and when required by the SLT, deliver to the SLT any documentation or information prepared by, or on behalf of, the Participants under this Agreement prior to the Default;
- (c) will, as and when directed by the SLT (but not before), remove from the Site at the cost of the Defaulting NOP any Temporary Works, Construction Plant and other property of the Defaulting NOP. If the Defaulting NOP fails to do so then, not less than five Business Days after written notice to the Defaulting NOP of the intention to do so (but without being responsible for any loss or damage) the Non-Defaulting Participants may remove and/or sell any such Temporary Works, Construction Plant or other property and the proceeds of such sale will be available to be set-off, or accounted for by the Non-Defaulting Participants to reduce the AOC;
- (d) will no longer be entitled to be represented on the SLT or the PMT or otherwise participate in our Alliance or the Project;
- (e) will have no interest in the Alliance, this Agreement or the CCC Works from the date of the Default Notice;
- (f) waives any objection to any determination or decision under Section 17.8;
- (g) releases and discharges the Non-Defaulting Participants from any Loss and any claims of lien or certificates of pending litigation arising out of or in connection with any decision under Section 17.8 which it may have had but for this release and discharge;

- (h) acknowledges and agrees that the Defaulting NOP appoints the Non-Defaulting Participants to act as agent for and on the Defaulting NOP's behalf (but excluding any duty of good faith as an agent) to do all such things on its behalf as are necessary for the performance of the CCC Works; and
- (i) notwithstanding Section 17.8.2(h), will execute such deeds and documents that the Non-Defaulting Participants decides are necessary for the completion of the CCC Works; and

17.8.3 the SLT will notify the Owner of the manner by which the SLT proposes that the Non-Defaulting Participants will continue with the performance of the CCC Works, including whether (and to what extent) any additional parties or resources may need to be engaged by the Non-Defaulting NOPs or the Owner (as the case may be) as a result of the exclusion of the Defaulting NOP.

### **Indemnity and Release**

17.9 Notwithstanding any other provision of this Agreement, the Defaulting NOP will be liable for and will indemnify each Non-Defaulting Participant and BCTFA for:

17.9.1 any Loss suffered or incurred by the relevant Non-Defaulting Participant or BCTFA arising out of or in connection with the:

- (a) relevant Wilful Default or Act of Insolvency by the Defaulting NOP;
- (b) exclusion of the Defaulting NOP in accordance with this Section 17; and
- (c) termination of this Agreement in accordance with Section 16.8.1;

17.9.2 the Defaulting NOP's share of any Limb 3 (as determined in accordance with the Compensation Framework) for the period prior to the relevant Wilful Default or Act of Insolvency which is payable by the Defaulting NOP; and

17.9.3 the Defaulting NOP's share of any Limb 3 suffered or increased (as determined in accordance with the Compensation Framework) or Limb 3 foregone or reduced (as determined in accordance with the Compensation Framework) for the period after the relevant Wilful Default or Act of Insolvency which is payable by the relevant Defaulting NOP as if:

- (a) the Defaulting NOP had not been excluded from further participation in the Alliance;
- (b) the Compensation Framework in place at the time of the Wilful Default or the Act of Insolvency remained in place and continued to operate with respect to the Defaulting NOP until Final Completion; and/or
- (c) this Agreement had not been terminated as a result of the Wilful Default.

17.10 The Defaulting NOP releases and discharges each Non-Defaulting Participant and BCTFA from any Loss arising out of or in connection with:

17.10.1 a Wilful Default notified under Section 17.1;

17.10.2 an Act of Insolvency notified under Section 17.5;

17.10.3 any exercise by the Owner of any of the rights in Sections 17.2 or 17.5;

17.10.4 termination of this Agreement in accordance with Section 16.8.1; and

17.10.5 the indemnity in Section 17.9,

which the Defaulting NOP may have had but for the release in this Section 17.10.

17.11 For the purpose of this Section 17 any reference to the SLT, the Alliance or each Non-Defaulting Participant excludes:

17.11.1 the Defaulting NOP; and

17.11.2 any representatives of the Defaulting NOP appointed to the SLT in accordance with Section 5.3.

### **Owner Wilful Default**

17.12 If the NOPs, acting in Good Faith as if they were the SLT in the absence of the Owner, unanimously determine that the Owner has committed a Wilful Default, the NOPs may give a unanimous written notice to the Owner specifying details of the Wilful Default and requiring the Wilful Default to be remedied by the Owner within 20 Business Days of the date of the notice.

17.13 If the NOPs, acting in Good Faith as if they were the SLT in the absence of the Owner, unanimously determine that the Owner has committed a Wilful Default, the Owner will indemnify the NOPs for:

17.13.1 Limb 1 Reimbursable Costs incurred;

17.13.2 Limb 2 on any Limb 1 Reimbursable Costs in Section 17.13.1; and

17.13.3 Limb 3 suffered or increased or forgone or reduced;

arising out of or in connection with the Wilful Default.

17.14 The NOPs acknowledge and accept that the indemnity by the Owner in Section 17.13 will be the limit of the NOPs' entitlements, and the Owner's liability or obligation, arising out of or in connection with an Owner Wilful Default. Each NOP releases and discharges the Owner and BCTFA from any Loss arising out of or in connection with the Owner's Wilful Default which the NOPs may have had but for this release in this Section 17.14.

### **Exclusion of Negligence Act**

17.15 To the extent permitted by law, the Participants agree that *Negligence Act* (British Columbia) has no operation in relation to the obligations of a Participant under this Agreement.

## 18. RIGHTS AND OBLIGATIONS

### Our Relationship

- 18.1 By forming the Alliance and by executing this Agreement we do not intend, and nor should we be understood, to have created any express or implied partnership, joint venture or fiduciary relationship between us.
- 18.2 We do not, except as may otherwise be set out in this Agreement or determined by the SLT, confer a right in any of us to enter any commitment on our behalf or to otherwise act as our agent.
- 18.3 Each of us is an independent entity and, for the purposes of this Agreement, the employees or agents of one of us will not be considered to be employees or agents of another, unless as otherwise deemed by Law, and we will each pay all costs associated with our respective employees.

### Exclusive

- 18.4 To the extent permitted by law, we intend that the rights, obligations and liabilities set out in this Agreement will exclusively govern our rights and liabilities in relation to the CCC Works. We agree that it is our intention that we will have no other rights or remedies arising out of or in connection with the CCC Works at law or in equity other than as set out in this Agreement.

### Enforceable

- 18.5 It is our intention that this Agreement create rights between us enforceable only in accordance with the terms of this Agreement despite the fact that certain matters are to be determined by the SLT in the future.
- 18.6 Any provision of this Agreement which seeks to limit or exclude a right or liability is to be construed as doing so only to the extent permitted by law.
- 18.7 With the exception of:
- 18.7.1 an Act of Insolvency;
  - 18.7.2 an act or omission that amounts to a Wilful Default; or
  - 18.7.3 a liability under an indemnity in Sections 17.9 or 17.13,
- we will not pursue the recovery of any Loss arising out of or in connection with any act or omission by a Participant in performing the CCC Works.

### No Constraint or Fetter

- 18.8 We acknowledge and accept that nothing in, implied by, or any document contemplated by, this Agreement has the effect of placing any fetter, constraint or limitation on the exercise by the Owner of any of its statutory rights, duties, powers or functions.

## Other Agreements

- 18.9 We agree not to enter into any agreement, arrangement or understanding which may affect the rights, obligations or liabilities of any Participant in connection with this Agreement, without the prior approval of the SLT.

## 19. PARENT COMPANY GUARANTEE

### Parent Company Guarantee

- 19.1 Each of Western Highways and Infrastructure Inc. and McElhanney Engineering Services Ltd. will on or before the Commencement Date require its holding company, Ledcor Industrial/Mining Group Ltd. for Western Highways and Infrastructure Inc. and McElhanney Ltd. for McElhanney Engineering Services Ltd., to execute the Parent Company Guarantee substantially in the form of Schedule 14.
- 19.2 Associated Engineering (B.C.) Ltd. will not be required to provide a Parent Company Guarantee on or before the Commencement Date.
- 19.3 If during the Term, the Guarantor who executes the Parent Company Guarantee (**First Parent Company Guarantee**) ceases to be the ultimate holding company or an Affiliate of the NOP, the relevant NOP will provide a substitute Parent Company Guarantee (**Substitute Parent Company Guarantee**) in the form of the Parent Company Guarantee in Schedule 14 (or equivalent security as determined by the Owner) by a party determined as acceptable by the Owner. Upon the Owner's receipt of the Substitute Parent Company Guarantee:
- 19.3.1 the Owner will release and discharge the substituted guarantor from any and all liabilities in respect of the First Parent Company Guarantee; and
- 19.3.2 the Owner will simultaneously return the First Parent Company Guarantee to the substituted guarantor.
- 19.4 Any agreement between the Guarantor and the Owner with respect to any amounts to be paid to the Owner under a Parent Company Guarantee is without prejudice to the Owner's right to make continuing claims against the NOPs or any guarantor under a Parent Company Guarantee in relation to any matters covered by the Parent Company Guarantee.

### Return of security

- 19.5 Any Parent Company Guarantee provided in accordance with this Section 19, will expire 120 days after Final Completion, except to the extent of any claims for which written notice has been given by the Owner prior to that date in accordance with the terms of the Parent Company Guarantee.

### Financial Statements

- 19.6 Each year until the expiry of the Term each NOP will procure that their Guarantor will provide, and Associated Engineering (B.C.) Ltd. will provide, to the Owner:
- 19.6.1 audited or unaudited half yearly financial statements;

- 19.6.2 audited annual statements or if audited annual financial statements are not prepared by the Guarantor or Associated Engineering (B.C.) Ltd. as the case may be, unaudited annual financial statements and such additional information requested by the Owner, acting reasonably; and
- 19.6.3 to the extent that the Guarantor or Associated Engineering (B.C.) Ltd. has a credit rating, confirmation of the current credit rating provided by a recognised rating agency acceptable to the Owner (acting reasonably),

of the Guarantor or Associated Engineering (B.C.) Ltd. within 20 Business Days of the latter of the date they are signed off by the relevant auditor, accepted by the board of the Guarantor or Associated Engineering (B.C.) Ltd. or lodged with the relevant Authority or securities exchange, as the case may be. The NOPs acknowledge and accept that if the Guarantor or Associated Engineering (B.C.) Ltd. does not have audited annual statements it will provide such additional information or documentation reasonably requested by the Owner or the Financial Auditor.

- 19.7 If at any time prior to the Final Completion Date in relation to Associated Engineering (B.C.) Ltd. the Financial Auditor, on the request of the Owner or the SLT, determines from any information provided in accordance with Section 19.6 that there has been a material deterioration, or there is a credible threat of a material deterioration, in the financial strength, capacity or performance of Associated Engineering (B.C.) Ltd., the Owner may direct Associated Engineering (B.C.) Ltd. to provide a Parent Company Guarantee from its ultimate holding company.
- 19.8 The Owner will withhold any further payment of Limb 2 to Associated Engineering (B.C.) Ltd. until the Owner receives a Parent Company Guarantee in accordance with Section 19.7.

#### **Irrevocable Letter of Credit**

- 19.9 If at any time prior to the Final Completion Date in relation to a Guarantor of one of the NOPs (for the purpose of Sections 19.9 and 19.10, the “**relevant NOP**”):
- 19.9.1 the Financial Auditor, on the request of the Owner or the SLT, determines from any information provided in accordance with Section 19.6 that there has been a material deterioration, or there is a credible threat of a material deterioration, in the financial strength, capacity or performance of a Guarantor of the relevant NOP; or
- 19.9.2 an Act of Insolvency occurs with respect to the Guarantor of the relevant NOP,
- the Owner may direct the relevant NOP to provide within 10 Business Days of a direction by the Owner under this Section 19.9:
- (a) issued prior to the Substantial Completion Date, an irrevocable letter of credit in an amount equal to 50% of the Limb 2 Fee identified in the TOC at the Commencement Date as payable to the relevant NOP for the performance of the CCC Works in accordance with the Agreement; or
- (b) issued after the Substantial Completion Date but prior to the Final Completion Date, an irrevocable letter of credit in an amount equal to 25% of the Limb 2 Fee identified in the TOC at the Commencement Date as payable to the relevant NOP for the performance of the CCC Works in accordance with the Agreement,

to secure the relevant NOP's performance under the Agreement, including any liability to pay Limb 3 painshare, where the irrevocable letter of credit will be in the form set out in Schedule 16 from a bank listed under Schedule I of the *Bank Act* (Canada) that has the Required Rating.

19.10 The Owner will:

19.10.1 withhold any further payment of Limb 2 to the relevant NOP until the Owner receives an irrevocable letter of credit on the basis set out in Section 19.9.2(a) or Section 19.9.2(b);

19.10.2 for any irrevocable letter of credit provided by the relevant NOP in accordance with Section 19.9.2(a):

- (a) release 50% of the value of the irrevocable letter of credit within 40 Business days after the interim determination of Limb 3 painshare or gainshare determined in accordance with Schedule 5; and
- (b) release the remaining value of the irrevocable letter of credit within 60 Business Days after the Final Completion Date; and

19.10.3 for any irrevocable letter of credit provided by the relevant NOP in accordance with Section 19.9.2(b) release the irrevocable letter of credit within 60 Business Days after the Final Completion Date.

### **Convert Irrevocable Letter of Credit**

19.11 Each NOP acknowledges and agrees that if the NOP fails to pay the Owner monies due under this Agreement, including monies due under any indemnity under this Agreement, within 20 Business Days (or such longer period agreed in writing by the Owner) of such monies becoming due under this Agreement, the Owner may immediately make a demand under any irrevocable letter of credit provided by the NOP in accordance with Section 19.9.2(a).

## **20. GENERAL**

### **Assignment and Novation**

20.1 The NOPs will not assign, transfer or novate to any third party any of their obligations or entitlements under this Agreement without the prior written approval of the Owner, which consent may be given or withheld by the Owner in its discretion.

20.2 An approval given by the Owner permitting the NOPs to assign, transfer or novate any of their obligations or entitlements under this Agreement does not relieve the NOPs from their obligations and liabilities pursuant to this Agreement, and the NOPs will be responsible for acts and omissions of any assignee or novatee.

20.3 The Owner may assign, transfer or novate its rights or obligations to any person or entity that the Owner can demonstrate to the reasonable satisfaction of the SLT has the resources to perform the Owner's obligations or entitlements under this Agreement, including participation in the Alliance and the SLT.

## **Costs**

- 20.4 Each Participant 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.

## **Entire agreement**

- 20.5 The Agreement contains everything we have agreed to in relation to our Alliance. None of us will rely on any earlier document prepared, or statement made, by one of us before this Agreement was executed. For the avoidance of doubt, this Agreement supersedes and replaces the Development Phase Agreement and all Participants' obligations, and liabilities thereunder shall be governed under this Agreement.

## **Governing law**

- 20.6 The 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 Participants 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.

## **Severability**

- 20.7 Any provision of this Agreement which is or becomes illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate the remaining provisions and will be read in such a way as to make it consistent with, and ensure the integrity of, our commitments in Section 2, our CCC Principles and Project Objectives.

## **Further Assurances**

- 20.8 We 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.

## **Variation**

- 20.9 The Participants agree that with the exception of the Exhibits attached to Schedules, which can be amended, replaced or added by agreement in writing of the Participants' respective SLT representatives, this Agreement may not be changed or modified in any way after it has been signed except in writing signed by or on behalf of the Participants.

## **Counterparts**

- 20.10 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 Participant may deliver an executed copy of this Agreement by facsimile or other electronic means.



## **Taxes**

- 20.11 Except as provided by Section 20.12 and the Compensation Framework all taxes, duties, excises, levies, assessments and other charges of any kind levied by any government or government body arising out of or in connection with the CCC Works will be Limb 1 Reimbursable Costs. If Section 182 of the *Excise Tax Act* is applicable to any amount payable by the Owner to a NOP as compensation on termination or settlement under this Agreement, such amounts will be increased such that after remitting the applicable GST, the NOP will be in the same position it would have been in as if Section 182 of the *Excise Tax Act* did not apply.
- 20.12 Notwithstanding Section 20.11 we agree that:
- 20.12.1 any corporate or personal income tax or capital gains tax imposed on a Participant;
- 20.12.2 GST; and
- 20.12.3 any penalties and/or fines on any of the matters referred to in Section 20.11,
- are not Limb 1 Reimbursable Costs.
- 20.13 At any time and from time to time upon the Province's request, each NOP shall provide a current tax verification letter issued by the Province of British Columbia's Ministry of Finance verifying that the NOP meets its applicable British Columbia corporate income tax filing obligations and provincial sales tax filing and payment obligations.

## **Currency**

- 20.14 All amounts payable under this Agreement will be paid in Canadian Dollars.

## **Waiver**

- 20.15 Any waiver or relaxation of any part of this Agreement will be determined by the unanimous written agreement of the SLT expressly acknowledged as a waiver or relaxation of that part of this Agreement. Any waiver or relaxation will only apply to a particular occasion unless determined by the SLT to be continuing. It will not constitute a waiver or relaxation of any other term of this Agreement.

## **Authority**

- 20.16 We each represent and warrant to each other that we have full power to enter into and perform our obligations under this Agreement so as to constitute a legally valid and binding obligation upon us in accordance with its terms.

## **Indemnities**

- 20.17 Each indemnity given by us under this Agreement is a continuing obligation separate and independent from our other obligations under this Agreement and notwithstanding anything else in this Agreement is intended to be enforceable and to survive the termination, completion or expiry of this Agreement. An indemnified Participant will take all reasonable steps to mitigate any amounts payable pursuant to the indemnity. Despite any other provision in this Agreement, a Participant's liability under an indemnity will be reduced proportionally to the extent that the indemnified Participant has caused or contributed to the relevant cost, loss, expense, damage or liability.

### **No Representation or Reliance**

20.18 Each of us acknowledges and agrees that:

20.18.1 none of us have made any representations or other inducements, other than those incorporated into this Agreement, to induce us to enter into this Agreement;

20.18.2 we did not enter into this Agreement in reliance upon any representation or other inducement, other than those incorporated into this Agreement; and

20.18.3 we will not bring any claim against another Participant for any misrepresentation or misleading conduct unless the misrepresentation or misleading conduct amounts to an act of Wilful Default.

### **Successors and Assigns**

20.19 This Agreement enures to the benefit of and binds the Owner, its successors and its assigns and all other Participants and their successors and permitted assigns.

### **Joint and several liability**

20.20 Where a Participant comprises two or more persons, each of them are jointly and severally liable for all of that Participant's liabilities and obligations under or arising out of or in connection with this Agreement.

### **Financial Difficulties**

20.21 Each Participant will immediately notify each Participant in writing if it becomes reasonably likely that the Participant may not 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.

### **Early Works**

20.22 The Participants acknowledge that prior to the Commencement Date the Participants may have agreed on the performance of Early Works under the Development Phase Agreement. The Participants agree that any such Early Works not completed as at the Commencement Date will continue to be performed as if specifically authorized and agreed on by the Participants pursuant to this Agreement. All Early Works, whether completed prior to or after the Commencement Date, will be deemed to be CCC Works "as if" the Early Works were performed under the Agreement by the Participants.

20.23 The Participants acknowledge and agree that for the purposes of the Agreement and the Compensation Framework the costs incurred by the Participants performing Early Works prior to the Commencement Date will be considered Owner Alliance Costs or Limb 1 Reimbursable Costs, as the case may be, and, together with any Limb 2 Fee that is paid in relation to the Early Works, will form part of the TOC and the calculation of AOC.

### **Impact of performance on other projects**

20.24 The NOPs acknowledge that the Owner may take into account the performance of the NOPs under this Agreement when evaluating proposals submitted by any of the NOPs in relation to any other project that forms part of the Program.

## **BCTFA**

- 20.25 The Participants acknowledge that BCTFA is the holder of the government of British Columbia's right and title in and to the soil and freehold of provincial public highways in British Columbia in accordance with the *Transportation Act*. We agree that although BCFTA is not a part of the Alliance:
- 20.25.1 to the extent permitted by law, we release and discharge BCTFA from any Loss, effects, claims, actions or proceedings at law or in equity relating in any way to the CCC Works or this Agreement in respect of which we may have otherwise had recourse at law or in equity but for this release and discharge; and
- 20.25.2 we will not pursue any claim against BCTFA for any Loss relating in any way to the CCC Works.
- 20.26 The provisions of Section 20.25 and each other section of this Agreement which is expressed to be for the benefit of BCTFA are intended for the benefit of BCTFA and shall be enforceable by BCTFA.
- 20.27 The Owner shall hold the rights and benefits of Section 20.25 and each other section of this Agreement which is expressed to be for the benefit of BCTFA in trust for and on behalf of BCTFA and may enforce such provisions on behalf of BCTFA, provided that nothing in this Agreement shall prevent an NOP from availing itself to any applicable defences, limitations and exclusions of liability as set out in this Agreement in respect of such enforcement.

## **21. CONFIDENTIALITY AND PERSONAL INFORMATION**

### **Confidentiality**

- 21.1 We will not, and we will ensure that those for whom we are responsible, will not:
- 21.1.1 disclose to any person any Confidential Information; or
- 21.1.2 publish any documentation or Confidential Information,
- without the prior written consent of the Participant that designated the information as Confidential Information and/or the Owner (as the case may be). We will ensure that any recipient to whom Confidential Information is disclosed will be subject to confidentiality obligations acceptable to the Participant that designated the information as Confidential Information and/or the Owner (as the case may be).
- 21.2 We will, if requested by the Owner, execute a confidentiality agreement in relation to any Confidential Information obtained by us for the purposes of this Agreement or the Project.
- 21.3 The obligations in Section 21.1 will not extend to:
- 21.3.1 any disclosure that has prior written consent from the Owner;
- 21.3.2 any disclosure required by FIPPA;
- 21.3.3 Confidential Information already in the public domain other than due to a breach of this Agreement;
- 21.3.4 any disclosure to our auditors, legal advisers or third parties necessary for the performance of our obligations under this Agreement;

- 21.3.5 any disclosure that is required to a stock exchange licenced to trade securities;
  - 21.3.6 any disclosure of information reasonably required in order to comply with a request for information made by the Auditor-General for British Columbia or any use of such information or publication, disclosure or release of any report, finding, conclusion or recommendation by the Auditor-General of British Columbia arising from any such information or disclosure;
  - 21.3.7 any disclosure to an employee, agent or Subcontractor of a Participant when the disclosure is reasonably necessary for the conduct of the CCC Works;
  - 21.3.8 information reasonably required in order to publish appropriate and comprehensive performance data relating to the CCC Works; and
  - 21.3.9 Confidential Information required by, or provided to, any provincial ministry, Infrastructure BC and any other government department, statutory authority or senior officer of a government department or a statutory authority or any use, release, announcement, publication or disclosure of such information by any of them in any forum in any media or medium.
- 21.4 If we are or become required by law to disclose any documentation or Confidential Information we will:
- 21.4.1 immediately inform the SLT;
  - 21.4.2 take all reasonable steps to lawfully resist or narrow the requirement of disclosure; and
  - 21.4.3 assist and co-operate with the Owner if it seeks to limit or resist the requirement for the disclosure.

## **Privacy**

- 21.5 Each Participant will only collect, hold, process, use, store and disclose Personal Information:
- 21.5.1 with the prior consent of the Owner; or
  - 21.5.2 to the extent necessary to perform its obligations under this Agreement and in circumstances where the Owner itself could collect, hold, process, use, store and disclose Personal Information if the Owner itself performed such obligations, and
- in accordance with applicable Laws, including FIPPA, as if the provisions of such Laws applied directly to the Participants.
- 21.6 The NOPs acknowledge that they are each a “service provider” as defined in FIPPA.
- 21.7 The NOPs will allow the Owner on reasonable notice to inspect the measures of the NOPs and the Subcontractors to protect Personal Information.
- 21.8 The Owner may from time to time provide guidance to the NOPs on the requirements of Sections 21.5 to 21.7. For greater certainty, the provisions of Sections 21.5 to 21.7 that refer to FIPPA will apply to the NOPs and the Subcontractors only to the extent necessary to fulfil the Owner’s obligations under FIPPA.

## Publicity or media statements

21.9 We:

21.9.1 accept that the Owner is responsible for all media for the Project;

21.9.2 accept that we are responsible for the development and implementation of a media and communications plan for the Project that satisfies the Owner's requirements;

21.9.3 acknowledge and accept that we will not issue any information, publication, document or article relating to our Alliance or the Project without the prior written approval of the Owner;

21.9.4 will immediately refer to the Owner any media enquiries relating to the Alliance or the Project;

21.9.5 agree to comply with any reasonable request by the Owner regarding the media communications or media liaison for the Alliance or the Project, including ensuring that all communications comply with the Owner's brand and logo guidelines;

21.9.6 will comply with the media and communications strategy, including the disclosure of any information, publication, document or article relating to the Alliance, the performance of the CCC Works or the Project and refer any media enquiries relating to the Alliance or the Project to the Owner; and

21.9.7 wherever practicable ensure that all communications material is printed on recycled paper.

21.10 We will develop a communication and engagement plan in accordance with the provisions set out in Schedule 7 which is consistent with the provisions of Section 21.9.

## Compliance

21.11 We will, during the performance of the CCC Works and for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date, comply with the requirements of this Section 21.

## 22. NOTICES

### Giving a communication

22.1 A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement will be in writing in English and is properly given or served by a Participant if that Participant:

22.1.1 delivers it by hand;

22.1.2 transmits it by electronic mail; or

22.1.3 transmits it by other electronic means,

to the address of the relevant Participant specified in Section S1.6 of Schedule 1, marked to the attention of the relevant person specified in Section S1.6 of Schedule 1.

## **Change of Address**

22.2 Each Participant will advise the others of any change in the address or identity of the relevant person to whom Notices are to be addressed.

## **Deemed Receipt**

22.3 A Notice is deemed to be received if:

22.3.1 delivered by hand during business hours (and in any event at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by the Participant who sent the notice of a receipt for the Notice signed by a person employed at the physical address for service, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

22.3.2 sent by electronic mail during business hours (and in any event, at or before 3:00 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:

(a) the other Participant acknowledges receipt by any means; or

(b) within 24 hours after sending the notice, the notifying Participant has also delivered a copy of such notice to the receiving Participant by hand delivery; or

22.3.3 sent by any other electronic means, only in the event that the other Participant acknowledges receipt by any means.

## **23. TERM AND SURVIVAL**

### **Term**

23.1 We agree that this Agreement will commence on the Commencement Date and will continue until the later of the date that:

23.1.1 this Agreement is terminated by the Owner;

23.1.2 each and every obligation under this Agreement is complete, satisfied or discharged; and

23.1.3 the Owner issues the Certificate of Final Completion.

### **Survival**

23.2 This Agreement does not affect any rights or liabilities which have accrued to any Participant before or at termination or expiry, nor any liabilities which may arise from damages deriving from a breach of this Agreement before or at termination.

23.3 The obligations in Sections 3, 5.1 to 5.8, 5.25 to 5.28, 7, 8, 9.2, 9.3, 9.10, 11.1, 12, 13, 14, 16.2 to 16.8, 17, 18, 19, 20.1 to 20.21, 20.24 to 20.27, 21, 22, 23 and 24, and Schedule 1, Schedule 5, Schedule 11, Schedule 13 and Schedule 17, or parts of schedules necessary to give effect to the Participant's intention with respect to this Section 23, are continuing obligations and those Sections survive rescission, termination, completion or expiration of this Agreement.

## **24. CHANGE IN CONTROL**

24.1 Subject to Section 24.2, the NOPs will:

24.1.1 provide the Owner with reasonable prior notice of any proposed Change in Control of a NOP or its Guarantor; and

24.1.2 obtain the Owner's prior written agreement to any Change in Control in respect of a NOP or its Guarantor.

24.2 Where the Change in Control has occurred as a result of a Change in Control of a corporation listed on a stock exchange, and the NOP or Guarantor the subject of the Change in Control is unable to, or it is not practicable to, comply with Section 24.1, the NOP or Guarantor the subject of the Change in Control will:

24.2.1 provide the Owner with notice of the Change of Control as soon as possible following the Change in Control; and

24.2.2 obtain the Owner's written agreement to any Change in Control which has occurred in respect of it.

and the relevant Change in Control will not be a Wilful Default.

24.3 The NOP or Guarantor the subject of the Change in Control will provide the Owner with any documentation or information requested by the Owner and attend any meetings (including, where reasonably requested by the Owner with any third party acquiring or exercising control over the NOP or Guarantor) arising out of or in connection with the proposed Change in Control.

24.4 The NOP or Guarantor the subject of the Change in Control will use its best efforts to procure any third party involved in the Change in Control to execute any documentation requested by the Owner (which may include an appropriate parent company undertaking or guarantee) to enable the Owner to determine whether the proposed Change in Control will have any prejudicial effect on the Owner's interests or the CCC Works.

24.5 The NOP the subject of the Change in Control will use its best efforts to make all necessary administrative arrangements so as to minimize any adverse impact of a Change in Control on the Owner's interests or the CCC Works.

24.6 In the event of any Change in Control of a NOP or Guarantor, the NOP the subject of the Change of Control agrees, and will procure its Guarantor the subject of a Change in Control to agree, that it will use its best efforts to make all necessary administrative arrangements so as to minimize any adverse impact on the Project.

24.7 Any costs incurred by the NOPs arising out of or in connection with a Change in Control and performing their obligations under Section 24 will not be reimbursed by the Owner as a Limb 1 cost.

## SCHEDULE 1 DEFINITIONS AND INTERPRETATION

### Definitions

S1.1 In this Agreement the following definitions apply:

**Act of Insolvency** 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 a NOP or its Guarantor;
- (b) any proceedings with respect to a NOP or its Guarantor being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if such proceedings are commenced against a NOP or its Guarantor and are disputed by that NOP or its Guarantor, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days;
- (c) a NOP or its Guarantor 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 a NOP or its Guarantor under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against a NOP or its Guarantor and are disputed by that NOP or Guarantor, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) a NOP or its Guarantor ceases to carry on business,

or any conduct, act, event or circumstance that has substantially the same effect as any of the conduct, acts, events or circumstances identified above.

**Actual Outturn Costs (AOC)** has the meaning in Schedule 5.

**Adjustment Event** means an event or circumstance that may justify an adjustment to the Compensation Framework targets governing Limb 3 Gainshare/Painshare, being either:

- (a) an event or circumstances expressly stated in this Agreement to be an Adjustment Event;
- (b) an event or circumstance stated in Schedule 5 to be an Adjustment Event; or
- (c) an event or circumstance determined by the SLT to be an Adjustment Event by reference to the Adjustment Event Guidelines in accordance with Section 12.

**Adjustment Event Guidelines** means the guidelines with that name set out in Schedule 17.

**Affiliate** in respect of a Person means 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.

**Agreement** means this agreement between the Participants.

**Alliance** means this alliance which is a collaborative team established to perform the CCC Works.

**Alliance Project Manager (APM)** means the leader of the PMT appointed by the SLT.

**APM Accountabilities and Responsibilities Matrix** means the APM accountabilities and responsibilities matrix set out in Schedule 10.

**Authority** means any statutory or government body or organisation or any non-government body or organisation (and their respective departments, agencies, authorities or officers or representatives) in Canada that have authority or jurisdiction over:

- (a) all or part of the CCC Works;
- (b) a Participant;
- (c) the Site; or
- (d) any land external to the Site on which CCC Works may be carried out.

**BCTFA** means the BC Transportation Financing Authority.

**Best for Project** means an outcome, decision, solution or result that is consistent with our CCC Principles, achieves the Project Objectives, enables or facilitates the efficient performance of the CCC Works and which is arrived at or taken for the ultimate purpose of providing Fit for Purpose assets to the Owner.

**Bridge** has the meaning given in Schedule 2.

**Business Day** means a day means a day that is not a Saturday, Sunday, or statutory holiday in British Columbia.

**CCC Principles** are set out in Section 1.2.

**CCC Proposal** means the proposal submitted by the NOPS in accordance with the Development Phase Agreement as accepted by the Owner.

**CCC Works** means the:

- (a) performance of the works, services and undertakings required to perform our obligation under this Agreement; and
- (b) permanent works to be delivered to the Owner on Substantial Completion in accordance with this Agreement,

as the case may be, and the circumstances under this Agreement require.

**Certificate of Final Completion** means the certificate issued in accordance with Section 11.12.

**Certificate of Interim Completion** means the certificate issued in accordance with Section 11.7.

**Certificate of Substantial Completion** means the certificate issued in accordance with Section 11.7.

**Change in Control** means with respect to a relevant Person:

(a) any direct or indirect change by contract or otherwise (other than as set out in (b)) which results in a Person or group of Persons having the ability to direct or cause the direction of the management, actions or policies of the relevant Person; or

(b) any:

(i) direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the relevant Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization; or

(ii) other direct or indirect change,

which results in a Person or group of Persons, other than the equity holders of the relevant Person immediately prior to the change, directly or indirectly:

(A) controlling the composition of the majority of the board of directors of the relevant Person or of a general partner or manager of the relevant Person;

(B) controlling the decisions made by or on behalf of the relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;

(C) holding equity (either beneficially or otherwise) of the relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of the relevant Person with more than one half of the voting rights; or

(D) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person.

**Commencement Date** means the date this Agreement is executed by the Owner.

**Compensation Framework** is set out in Schedule 5.

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

**Construction Plant** means plant, equipment and appliances used in the performance of the CCC Works which do not form part of the permanent CCC Works.

**Default** for the purposes of Section 17 means either a Wilful Default or an Act of Insolvency.

**Default Notice** for the purposes of Section 17 means a notice issued under Section 17.1 or Section 17.5, as the case may be.

**Defaulting NOP** means a NOP:

- (a) who has committed a Wilful Default; or
- (b) in respect of which an Act of Insolvency has occurred; or
- (c) in respect of whose Guarantor, an Act of Insolvency has occurred.

**Defect** means any defective, non-complying, incomplete or omitted works or services in the CCC Works other than any defective, non-complying or incomplete or omitted works or services:

- (a) caused by fair wear and tear; or
- (b) arising out of or in connection with a failure to perform operations and maintenance activities in accordance with operations and maintenance manuals approved by the SLT prior to Substantial Completion as satisfying the requirements of this Agreement.

**Defect Correction Period** means in respect of the CCC Works:

- (a) a 24 month period for the rectification of Defects under Section 11.8 commencing on the Substantial Completion Date; and
- (b) where the Owner determines that there will be a separate Defect Correction Period for a Defect, the Defect Correction Period for that Defect will be the later of the expiry of the period described in sub-paragraph (a) of this definition and the separate Defect Correction Period calculated in accordance with Section 11.9.2.

**Design Basis Manual** means the design basis manual developed by the Alliance for the Project, which was attached as Appendix A.1 to the CCC Proposal.

**Design Management Plan** means the design management plan referred to in Schedule 7.

**Design NOPs** means McElhanney Engineering Services Ltd. and Associated Engineering (B.C.) Ltd.

**Development Phase** has the meaning given to that term in the DPA.

**Development Phase Agreement** or **DPA** means the agreement entered into between the Owner and the NOPs dated December 16, 2022 under which the NOPs and the Owner developed and submitted the CCC Proposal.

**Dispute** means any real or perceived conflict, difference of opinion, dispute or unresolved issue in connection with the CCC Works or this Agreement.

**Early Works** means all work carried out by the Participants pursuant to the DPA, including the Services and any “Early Works” as defined in the DPA, irrespective of whether such Services or Early Works were completed or not prior to the Commencement Date.

**Engaged Person** means any individual engaged by any one of the Participants to perform any works, services or activities forming part of the CCC Works.

**Enhancement** has the meaning given to that term in Schedule 11.

**Establishment Audits** has the meaning given in Section S5.4(a).

**Existing Intellectual Property Rights** or **Existing IPR** means all Intellectual Property Rights owned or held by any of the Participants as at the Commencement Date or created by a Participant independently of the performance of the CCC Works.

**Financial Auditor (FA)** means a financial auditor appointed by the Owner for the purposes of this Agreement.

**Final Completion** means that stage in the performance of CCC Works when Substantial Completion has occurred, all Defect Correction Periods have expired, all Defects are rectified and each and every obligation under this Agreement is complete, satisfied or discharged (other than an obligation to pay, or an entitlement to receive payment of, Limb 3 in accordance with Schedule 5.

**Final Completion Date** means the date certified in the Certificate of Final Completion that the CCC Works achieved Final Completion.

**FIPPA** means the *Freedom of Information and Protection of Privacy Act* (British Columbia).

**Fit for Purpose** an asset is fit for purpose when it achieves:

- (a) 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
- (b) 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.

**First Parent Company Guarantee** has the meaning given in Section 19.3.

**GAAP** means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants (which may include ASPE or IFRS).

**Good Faith** means:

- (a) acting fairly, reasonably, honestly and with integrity at all times;
- (b) doing all proper and reasonable things to enable each other to perform the CCC Works; and
- (c) doing all proper and reasonable things to give effect to the spirit and intent of this Agreement.

**Good Industry Practice** means practices, procedures, means, methods and techniques followed when works and services are performed:

- (a) in a sound and competent manner;
- (b) with due skill, care and diligence;
- (c) with due expedition and without unnecessary or unreasonable delay;
- (d) in a manner which allows for this Agreement to be efficiently performed;
- (e) using materials of new merchantable quality which are Fit for Purpose;
- (f) to the standard expected of a person experienced and competent in the performance of works similar to the CCC Works;
- (g) in accordance with all applicable Laws; and

consistently with accepted industry practice for the design, procurement, supply, construction, testing and commissioning of works similar to the CCC Works.

**Governance Framework** is the framework set out in Section 6.1.

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

**Guarantor** means the party that executes a Parent Company Guarantee in accordance with Section 19.1 or 19.3 as the case may be.

**Infrastructure BC (IBC)** means Infrastructure BC Inc., being a provincial crown corporation providing planning and procurement expertise for major infrastructure projects in the public sector in British Columbia.

**Initial TOC** has the meaning given in Section S5.5.

**Insurance Conditions** are set out in Schedule 13.

**Intellectual Property Rights (IPR)** means all intellectual property rights and interests (including common law rights and interests), including but not limited to all:

- (a) patents, trademarks, copyrights, registered and unregistered designs, trade names, domain names, symbols and logos;
- (b) patent applications and applications to register trademarks, and designs;

- (c) methods, plans, data, drawings, specifications, characteristics, inventions, improvements, know how, experience, trade secrets, confidential information or other information; and
- (d) licences or similar user rights in respect of any such rights and interests,

in Canada and the world, whether registered or unregistered for the duration of the rights and interests.

**Interim Completion** means that stage in the performance of the CCC Works when all the construction of Bridge has been satisfactorily completed save for minor incomplete work or the deficiencies, with two lanes available for traffic to travel, and the following matters have been satisfactorily completed for the Bridge:

- (a) paving of all road surfaces;
- (b) all temporary pavement markings and layout of all the permanent markings at all intersections and on all major roads;
- (c) installation of all regulatory, warning and guide signing; and
- (d) installation roadside barrier and other safety devices.

**Interim Completion Date** means the date certified in the Certificate of Interim Completion that the CCC Works achieved Interim Completion.

**Interim Completion Report** means the report referred to in Section 11.6 setting out the basis upon which the APM has certified that the CCC Works have achieved Interim Completion.

**Key Individual** means any person nominated in Schedule 8.

**Key Performance Indicator (KPI)** means the measures used to assess performance against the KRAs, as outlined in the KRA Performance Management Plan.

**Key Result Areas (KRAs)** and the **KRA Objectives** against which our performance will be measured are:

No	Key Result Area (KRA)	KRA Objective
1	Schedule	<ul style="list-style-type: none"> <li>• Improve upon baseline schedule</li> </ul>
2	Culture and Engagement	<ul style="list-style-type: none"> <li>• Facilitate and optimize the supply of a diverse, skilled and safe workforce.</li> <li>• Creation of career development opportunities to grow a diverse and local trade and professional workforce.</li> <li>• Create a project workplace that fosters meaningful cultural awareness and engagement by providing worksite trainings to create professional workforce</li> </ul>
3	Business opportunities for identified Indigenous	<ul style="list-style-type: none"> <li>• Increase subcontracting and employment opportunities for identified Indigenous Groups beyond minimums</li> </ul>

	Groups	
4	Traffic Management	<ul style="list-style-type: none"> <li>Maintaining an appropriate level of service on temporary or permanent roads and highways during construction</li> </ul>

**KRA Performance Management Plan** means the performance management plan prepared by the Alliance to measure performance against the KRAs and KPIs, as approved from time to time by the SLT and endorsed by the Province.

**Law** means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Authority having the force of law from time to time.

**Limb 1 Reimbursable Costs** (also referred to as **Limb 1** and/or **Reimbursable Costs**) has the meaning given in Schedule 5.

**Limb 2** has the meaning given in Schedule 5.

**Limb 3** has the meaning given in Schedule 5.

**Loss** includes any loss, cost, expense, damage or liability (including any fine or penalty) whether direct, indirect or consequential (including revenue loss and pure economic loss), present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of this Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty, to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution).

**Management Plans** are the management plans prepared by the PMT to comply with the Management Plan Requirements as approved by the SLT in accordance with Section 6.3.

**Management Plan Requirements** are set out in Schedule 7.

**Management System** or **MS** has the meaning in Schedule 7.

**Materials** has the meaning given in Section 8.9.

**Minimum Conditions of Satisfaction (MCOS)** means the minimum acceptable level of performance nominated in this Agreement for each KPI or KRA as the case may be.

**New Intellectual Property Rights** or **New IPR** means all Intellectual Property Rights created by a Participant for the purposes of performing the CCC Works.

**No Dispute** means our commitments to, and agreement with, each other set out in Section 3 to resolve all disputes, disagreements or differences of opinion unanimously at and within the SLT in accordance with this Agreement.

**Non-Defaulting NOP or Non-Defaulting NOPs** means the NOPs other than the Defaulting NOP.

**Non-Defaulting Participants** means the Owner and the Non-Defaulting NOPs.

**Non-Owner Participant and Non-Owner Participants (NOP or NOPs)** means McElhanney Engineering Services Ltd., Associated Engineering (B.C.) Ltd. and Western Highways and Infrastructure Inc.

**officer/Officer** means an “officer” as such term is used in the *Business Corporations Act* (British Columbia);

**OHS Legislation** means the *Workers Compensation Act* (British Columbia), the *Occupational Health and Safety Regulation* and all other regulations made under that Act, as may be amended from time to time.

**Open Book** is a reference to the Participants' commitments to share on a transparent and full and continuing disclosure basis all information and documentation of the financial costs of performing the CCC Works to ensure the highest standards of fairness and integrity are achieved so that only the true and bona fide costs of performing the CCC Works are sought to be, and are in fact, reimbursed under this Agreement as Limb 1 Reimbursable Costs.

**Other Site** means any lands or areas other than the Site made available by the Owner to the Participants for the purposes of performing the CCC Works and any land which the Participants enter in or on, or occupy, for the purposes of the CCC Works.

**Owner Alliance Costs** or (**OAC**) has the meaning given in Schedule 5.

**Owner Reserved Power** has the meaning given in Section 4.5.

**Parent Company Guarantee** means a guarantee to be executed in accordance with Section 19.

**Participants** means the Owner and each NOP that executes the Agreement.

**Person** includes an individual, a body corporate, company, firm, joint venture, partnership, trust, association or unincorporated body.

**Personal Information** means “personal information” as defined in FIPPA, which is collected, acquired, obtained by a Participant in relation to or in the course of providing the CCC Works under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in FIPPA.

**Prime Contractor** has the same meaning given to that term under the OHS Legislation.

**Program** means the BC Highway Reinstatement Program, of which the Project forms a part.

**Progress Payment Schedule** means the payment certificate in the form set out in Schedule 6.

**Project** means the Tank Hill Project.

**Project Labour Agreement or PLA** is the agreement dated April 13, 2022 between the Province and the Construction Labour Relations Association of BC.

**Project Objectives** the Owner will assess the efficacy of the Alliance based on the ability of the Participants to achieve the following objectives:



- (a) deliver the CCC Works expediently;
- (b) recognize and respect the Indigenous territories on which the CCC 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 Management Team (PMT)** means the management team established under Section 5.10.

**Project Team Charter** has the meaning given in Schedule 9.

**Province Representative** means the person identified in Section S1.6 of Schedule 1 or any other person nominated by the Owner to the Participants as the Province Representative in accordance with Section 4.7.

**PST** means the tax imposed pursuant to the *Provincial Sales Tax Act* (British Columbia).

**Records** includes any and all records or documents relating to this Agreement or the performance of the CCC Works which include both electronic or physical versions of data, ledgers, payroll, quality records, correspondence, information, software (including source code and object code versions) manuals, diagrams, instructions, measurements, calculations, drawings, plans, graphs, charts, projections, specifications, estimates, concepts, accounts, plans, formulae, designs, methods, techniques, processes, correspondence, invoices, dockets, receipts, vouchers, letters and papers of every description including all copies of and extracts from the same disclosed or produced in connection with or pursuant to this Agreement or the performance of the CCC Works but excluding documents the subject of a valid claim of legal professional privilege (except in circumstances of common interest privilege), tax records (including taxation structuring advice), documents relating to the determination of Limb 2 and the NOPs' board papers or minute books.

**Reimbursable Costs** (also referred to as **Limb 1** and/or **Limb 1 Reimbursable Costs**) has the meaning given in Schedule 5.

**Required Rating** means a Rating of at least either A- (in respect of Standard & Poor's) or A3 (in respect of Moody's Investor Service).

**Senior Leadership Team (SLT)** means the leadership team established under Section 5.1.

**Separable Portion** means any part of the CCC Works identified as Separable Portions in this Agreement or those parts of the CCC Works determined by the Owner in accordance with Section 11.14 to be a Separable Portion of the CCC Works.

**Site** means the lands identified in Schedule 3 as the Site, made available by the Owner to the Participants for the purposes of performing the CCC Works.

**SLAT** means single lane alternating traffic.

**SLT Accountabilities and Responsibilities Matrix** means the SLT accountabilities and responsibilities matrix set out in Schedule 9.

**Specification** means the specifications, codes, standards, guidelines and technical circulars that will generally govern the design and construction of the CCC Works in the Province of British Columbia as on the Commencement Date, as may be proposed by the PMT and accepted by the SLT and the Province.

**Subcontract** means a subcontract, supply consultancy, works or services agreement or other arrangement which the Participants have entered into with a Subcontractor for the performance of any part of the CCC Works.

**Subcontractor** means any Person engaged as a subcontractor to perform any part of the CCC Works pursuant to the Subcontract and includes an agent, manufacturer, operator, professional advisor, contractor, supplier, consultant or service provider and any other provider of goods, materials, services or works.

**Substantial Completion** means that stage in the performance of the CCC Works when:

- (a) the CCC Works are complete except for minor omissions and minor Defects which the SLT determines:
  - (i) do not prevent the CCC Works from being safely used for their intended purpose; and
  - (ii) the rectification of which will not adversely affect the safe and convenient use or operation of the CCC Works;
- (b) the SLT determines that all inspections, testing, verification, commissioning and certifications that are required to be carried out prior to or as a precondition to the use of the CCC Works by the public have been satisfactorily completed;
- (c) the following matters have been satisfactorily completed:
  - (i) paving of all road surfaces;
  - (ii) completion of all structures and drainage infrastructure;
  - (iii) full operation of all traffic lighting and signalization;
  - (iv) all permanent pavement markings at all intersections and on all major roads;
  - (v) installation of all regulatory, warning and guide signing;
  - (vi) installation of all median and roadside barrier and other safety devices;
  - (vii) completion of all utility work;
- (d) all construction staging areas located on the Site are in a condition acceptable to the SLT;

- (e) all debris, superfluous materials and equipment have been removed from the Site, and the Site have been satisfactorily cleared;
- (f) the requirements of all relevant certifying and permitting authorities in respect of the CCC Works that are required to be provided prior to or as a precondition of Substantial Completion have been met;
- (g) the benefit of all material or substantial Subcontracts essential for the use, operation and maintenance of the CCC Works have been assigned, or otherwise transferred, to the Owner, so that the Owner may exercise all rights under the Subcontract on and from Substantial Completion in the manner required by Section 9.10.3;
- (h) all documents and other information associated with the CCC Works and essential for all use, operation and maintenance of the CCC Works, including standard operating procedures, unit process guidelines, operations and maintenance manuals, and technical design data have been supplied to, and accepted by, the SLT; and
- (i) each NOP has delivered a statutory declaration in the form of CCDC 9A, as adapted by the Financial Auditor in consultation with the SLT.

**Substantial Completion Date** means the date certified in the Certificate of Substantial Completion that the CCC Works achieved Substantial Completion.

**Substantial Completion Report** means the report referred to in Section 11.6 setting out the basis upon which the APM has certified that the CCC Works have achieved Substantial Completion.

**Substitute Parent Company Guarantee** has the meaning given in Section 19.3.

**Target Outturn Cost (TOC)** is the estimate accepted by the Owner of all costs and expense (including risk and contingency provisions) for us to perform our obligations under this Agreement as summarised in the Compensation Framework.

**Target Cost Estimate (TCE)** has the meaning given in Section S5.5.

**Target Interim Completion Date** means the date identified in Section S1.6 of Schedule 1.

**Target Substantial Completion Date** means the date identified in Section S1.6 of Schedule 1.

**Technical Advisory Committee** means the committee formed by the Owner to provide assistance to the Project and other projects within the Program in resolving Disputes.

**Temporary Works** means work performed under this Agreement but not forming part of the CCC Works.

**Term** has the meaning given in Section 23.

**Wider Project Team (WPT)** means the personnel managed by and reporting to the PMT in order to perform the CCC Works.

**Wilful Default** means any of the following:

- (a) an intentional or reckless act or omission by a Participant, or any of its officers or directors, or any of a Participant's representatives appointed to the SLT or PMT, which the Participant, or the relevant officer, director or representative knew or ought reasonably to have known:
  - (i) was dishonest, illegal, fraudulent or wrongful; or
  - (ii) would likely have harmful consequences or was carried out with disregard to harmful consequences;
- (b) a failure by a Participant to pay monies within 20 Business Days (or such longer period agreed by the SLT) of monies becoming due under this Agreement including under any indemnity under this Agreement;
- (c) an intentional or reckless act or omission by a Participant or any of its officers or directors or any of its representatives appointed to the SLT or PMT that:
  - (i) is a breach of any Law; or
  - (ii) prevents a Non-Defaulting Participant from performing a role, responsibility or function or discharging an obligation under any Law;
- (d) a refusal of, or failure by, a Participant to effect and maintain, or to comply with, an insurance policy which it is required to effect and maintain under Section 14;
- (e) a refusal of, or failure by, a Participant to ensure that all financial and commercial transactions are fully Open Book;
- (f) a refusal of, or failure by, a Participant to comply with its audit obligations under Sections 7.9 to 7.15;
- (g) an intentional or reckless refusal of, or an intentional or reckless failure by, a Participant to honour its confidentiality and publication obligations under Section 21.1;
- (h) an intentional or reckless refusal of, or an intentional or reckless failure by, a Participant to honour its privacy obligations under Section 21.5;
- (i) an intentional or reckless refusal of or an intentional or reckless failure by:
  - (i) a Participant or any of its officers or directors to act in Good Faith; or
  - (ii) any officer or representative of a Participant appointed to the SLT or PMT to act in Good Faith;
- (j) a repudiation of this Agreement by a Participant;
- (k) a failure by a NOP to comply with Section 13.3 (Infringe IPR);
- (l) a failure by a NOP to comply with Section 20.1 (assignment or novation without consent);
- (m) a failure by a NOP to comply with Section 20.25 (BCTFA);
- (n) a failure by a NOP to comply with Section 24.2 (Change of Control without Owner consent);

- (o) a failure by a relevant NOP (as that term is defined in Section 19.9) to comply with a direction by the Owner issued in accordance with Section 19.9 (failure to provide an irrevocable letter of credit); or
- (p) a Wilful Default as set out in Section 14.11 (breach of insurance policy),

but, with the exception of paragraph (p), does not mean any act, omission, mistake or error of judgement, whether negligent or not, by a Participant or any of a Participant's officers or directors or any of its representatives appointed to the SLT or PMT acting in Good Faith.

## Interpretation

S1.2 We agree that when interpreting this Agreement interpretations which are Best for Project and consistent with our CCC Principles and our commitments in Section 2 are to be adopted.

S1.3 In this Agreement, unless the context otherwise requires:

- (a) words or acronyms in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a Section to the disadvantage of a party merely because that party put forward the Section or would otherwise benefit from it;
- (f) if the date on or by which any act will be done under this Agreement is not a Business Day, the act will be done on or by the next Business Day;
- (g) where the use of the acronym NOP in this Agreement is grammatically incorrect this Agreement will be interpreted as if the acronym NOPs replaced the acronym NOP; and
- (h) a reference to:
  - (i) 'we', 'us' or 'our' is a collective reference to the Participants and, to the extent necessary in the circumstances, includes representatives of IBC participating in the governance of the alliance and/or the performance of the CCC Works;
  - (ii) a Person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (iv) '\$', 'dollars' or 'CAD' is a reference to the lawful currency of Canada;
  - (v) this Agreement is a reference to this entire agreement including all Schedules, appendices and exhibits to it and any obligation of a party included in, expressly or by reference, or referred to in the agreement or any Schedule, appendix or exhibit to this Agreement;

- (vi) a Section, a Schedule or an exhibit is, unless otherwise stated, a reference to a Section, Schedule or an exhibit of or to this Agreement;
- (vii) references and cross-references to provisions of this Agreement prefaced with "S" are a reference to the corresponding provision in a Schedule to this Agreement;
- (viii) proceedings includes reference, litigation, arbitration, and investigation;
- (ix) time is a reference to the time in Victoria, British Columbia;
- (x) a period of time is specified and dates from, after or before, a given day or the day of an act or event, and is to be calculated exclusive of that day;
- (xi) any agreement or document is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time;
- (xii) anything (including any right) includes any part of that thing, but nothing in this paragraph (xii) implies that performance of part of an obligation constitutes performance of the entire obligation;
- (xiii) any legislation includes all subordinate or delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them all as modified or replaced;
- (xiv) liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (xv) the obligation to comply with any document referenced in this Agreement remains an obligation, but the document so referenced will not form part of this Agreement; and
- (xvi) 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.

### **Language**

S1.4 All information and documentation prepared and/or delivered by us under this Agreement will be in English.

### **Ambiguity, Discrepancy and Inconsistency**

S1.5 The SLT will promptly notify the Owner of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement together with the SLT's recommendation to resolve the ambiguity, discrepancy or inconsistency. The Owner will determine the resolution of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement.

### **Detailed Particulars**

S1.6 The detailed particulars of the Collaborative Construction Contract are set out below:

Section	Term/Description	Details
S1.1	The Province Representative	Kevin Richter
S1.1	Target Substantial Completion Date	December 19, 2025
S1.1	Target Interim Completion Date	October 23, 2025
7.4, 7.7 and 7.8	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 Final Completion Date, the expiry of seven years after Final Completion
21	Period that Confidentiality and Personal Information provisions apply	Five years after the Final Completion Date
7.9	Period for Audit	Seven years after the Final Completion Date.
22	Address for notices	<p><b>The Owner</b></p> <p>Ministry of Transportation and Infrastructure  P.O. Box 9850 STN PROV GOVT,  4th Floor, 940 Blanshard Street  Victoria, BC, V8W 9T5</p> <p>For the attention of: Vicki Willow</p> <p>Email: <a href="mailto:Vicki.Willow@gov.bc.ca">Vicki.Willow@gov.bc.ca</a></p> <p><b>NOPs</b></p> <p>Associated Engineering (B.C.) Ltd.  #500 – 2889 East 12<sup>th</sup> Avenue  Vancouver, BC, V5M 4T5</p> <p>For the attention of: Leslie Mihalik</p> <p>Email: <a href="mailto:mihalikl@ae.ca">mihalikl@ae.ca</a></p> <p>McElhanney Engineering Services Ltd.  Suite 200-858 Beatty Street  Vancouver, BC, V6B 1C1</p> <p>For the attention of: Tanya Sadlo</p> <p>Email: <a href="mailto:tsadlo@mcelhanney.com">tsadlo@mcelhanney.com</a></p> <p>Western Highways and Infrastructure Inc.</p>

Section	Term/Description	Details
		<p>1500 – 1067 West Cordova Street, Vancouver, BC V6C 1C7</p> <p>For the attention of: Rick Berg</p> <p>Email: <a href="mailto:Rick.Berg@ledcor.com">Rick.Berg@ledcor.com</a></p> <p>With a copy to: Chastine.Taerum@ledcor.com</p>



## SCHEDULE 2 CCC WORKS AND PROJECT DESCRIPTION

The scope of the Project will generally include the following:

- Design and construction of an approximately 15.64m wide, 290m long bridge structure (the “**Bridge**”) overtop of CPKC’s railway and Unnamed Creek channel including provisions for future expansion of CPKC’s infrastructure to accommodate an additional track (rail twinning). The Bridge is to meet the minimum 7.01m vertical clearance over the CPKC railway.
- Permanent MSE walls at the west and east bridge approaches. The MSE approaches are approximately 290 m total length with 160.5 m long west approach and 129.1 m long east approach.
- Piers and abutments for the Bridge constructed on a combination of drilled piles with permanent casings embedded into bedrock and spread footings founded on rock. Pier columns are constructed outside of CPKC’s 7.925m horizontal clearance limits from the railway, eliminating the need to erect of crash walls.
- Providing a new 2-lane (3.6m wide lanes) Highway 1 for approximately 845m with additional one lane (3.6m wide) in westbound direction for truck climbing, complete with 2.0m wide outside shoulders with 1.5m wide outside shoulder adjacent to truck climbing lane. The roadway will be able to accommodate WB20 design vehicles.
- Providing adequate horizontal and vertical alignments to accommodate a minimum design speed of 70 km/h with a maximum vertical grade of 7.5%.
- Permanent pavement designed to provide a 20-year design life for the roadway.
- Roadway drainage systems which utilize catch basins, culverts, concrete drainage barriers (CBDs), and ditches to convey runoff from the highway and surrounding areas. Deck drains will be incorporated into the bridge with downspouts, as required.
- Design and construction of a permanent access road to the Site 1 drainage channel on the east side the channel.
- Temporary detours designed to provide a shorter design life of approximately 2 years.
- Permanent rockfall protection measures for protection of the new highway alignment. This includes rock scaling, attenuators, rockfall fencing, and lock block catchment walls.
- Temporary access and temporary lock block walls for viaduct construction.
- Coordination and site support services for the temporary and permanent relocations of third-party utilities by others (BC Hydro, TELUS, and Rogers).

The above proposed works will be designed as outlined in the Design Basis Manual.

**SCHEDULE 3  
CCC PROPOSAL**

Withheld in Entirety

## **SCHEDULE 4 GOVERNANCE, LEADERSHIP AND MANAGEMENT**

### **SLT membership and accountabilities**

S4.1 The representative of the Owner is:

- (a) Mike Lorimer
- (b) Jennifer Fraser

S4.2 The representatives of the NOPs are:

- (a) McElhanney Engineering Services Ltd. - Allan Russell
- (b) Associated Engineering (B.C.) Ltd. - Leslie Mihalik
- (c) Western Highways and Infrastructure Inc. - Rick Berg

S4.3 The IBC representative to attend at and participate in meetings of the SLT is David Hubner.

### **SLT Meetings**

S4.4 The Owner will convene the first SLT meeting and the Owner's SLT representative will act as chair to manage the conduct of the first SLT meeting

S4.5 The SLT has determined that the following protocols will regulate the business of SLT meetings:

- (a) there will be a secretariat appointed for the SLT;
- (b) we will hold SLT meetings at times determined by the SLT;
- (c) at the first SLT meeting, the SLT will agree on the appointment of the chair of the SLT and any protocol or procedure relating to the replacement of the chair of the SLT;
- (d) the Participants agree that the SLT may delegate any general administrative function, including any part of its functions under Section 8 of this Agreement, to the Owner SLT representative;
- (e) the SLT will agree a schedule of future SLT meetings on a three to six month forward schedule;
- (f) whilst the SLT has a declared preference to meet in person, a representative may, provided adequate notice is provided to all SLT representatives, participate in an SLT meeting by video or telephone conference or another form of instantaneous electronic communication platform;
- (g) an SLT representative may not attend an SLT meeting in the manner permitted under Section S4.5(f):
  - (i) if another SLT representative requests personal attendance; or

- (ii) for two SLT meetings in succession without the consent of the chair of the SLT;
- (h) the SLT meetings will be characterised by a commitment to a peer relationship amongst the SLT representatives where all participants have an equal say; and
- (i) each SLT Representative will, prior to each SLT meeting, do all that they are reasonably able to do to ensure that they have the power to represent and bind their Participant at any SLT meeting in respect of any item of business on the SLT agenda.

### **SLT agenda**

S4.6 The SLT agenda will be determined in accordance with the following requirements:

- (a) the APM, after consultation with the PMT, will provide the SLT with the SLT agenda and discussion papers for any item on the SLT agenda no later than four calendar days prior to the SLT meeting or as otherwise agreed by the SLT. The SLT secretariat will immediately distribute the SLT agenda to all SLT representatives;
- (b) a Participant may, within three calendar days of receipt of the SLT agenda, request the SLT secretariat to add a new item of business to the SLT agenda;
- (c) the SLT secretariat will add the new item of business to the SLT agenda and immediately distribute the amended SLT agenda to all SLT representatives;
- (d) the Participant proposing the new item of business will, no later than two calendar days prior to the next SLT meeting, provide the SLT secretariat with a discussion paper and any relevant information regarding the new item of business added to the SLT agenda; and
- (e) the SLT secretariat will immediately provide the SLT members with any discussion paper or relevant information provided for any new item of business added to the SLT agenda.

### **Principles of SLT agenda**

S4.7 The SLT agenda and discussion papers will be prepared on the principle that:

- (a) early, open and honest communication with “no surprises” should be achieved; and
- (b) an SLT representative will not be expected to unanimously agree on any material issue not set out in the SLT agenda.

### **SLT minutes**

S4.8 The secretariat will attend all SLT meetings and prepare minutes to record all decisions and actions arising out of an SLT meeting. For the purposes of the first SLT meeting, the Owner will appoint a person to perform the secretarial functions.

S4.9 The secretariat will distribute the minutes of an SLT meeting within two Business Days. We will inform the secretariat within two Business Days of any objection we have to the minutes. Any objection to the minutes will be the first agenda item at the next SLT meeting.

## **APM and PMT**

S4.10 The APM will be appointed by the SLT on a Best for Project basis. The PMT will be recommended by the APM and confirmed by the SLT to perform our obligations under this Agreement.

## **APM Responsibilities**

S4.11 We agree that the:

- (a) APM will report exclusively to the SLT;
- (b) SLT will conduct periodic performance and development reviews of the APM's performance of its role in the Alliance; and
- (c) the APM will comply with the APM Accountabilities and Responsibilities Matrix in Schedule 10.

## **Personal conflicts of interest**

S4.12 We will ensure that each representative appointed to the PMT or the SLT will fully disclose any actual or potential personal conflict of interest he or she may have in respect of any action, decision or determination to be taken or made by the SLT or PMT (collectively referred to as "a personal conflict of interest"). We agree that a representative's employment by one of us, or directorship of or shareholding in one of us, by itself, will not amount to a personal conflict of interest.

S4.13 The SLT, in the absence of the relevant representative, will determine, adopting best corporate governance practices, whether the representative has a personal conflict of interest and the Best for Project solution to resolve it.

S4.14 Where a representative, on the grounds of a personal conflict of interest, is excluded from any discussion or determination arising out of or in connection with the acts, events or circumstances creating a personal conflict of interest, then any such discussion or determination cannot proceed at the:

- (a) PMT until the person who is excluded on the ground of a personal conflict of interest excuses him or herself and is replaced by an appropriate person on a Best for Project basis; and
- (b) SLT until the quorum required by Section 5.6 can be formed by representatives from each Participant not affected by the personal conflict of interest attending the SLT meeting.

S4.15 Each representative appointed to the PMT or the SLT from the NOPs will execute the conflict of interest declaration as set out in Schedule 12.

## **Corporate conflict of interest**

S4.16 Each SLT representative will fully disclose any actual or potential conflict of interest of which that SLT representative is aware that the Participant it represents may have in respect of any action, decision or determination to be taken or made by the SLT.

S4.17 The SLT will consider the disclosure of the corporate conflict of interest and determine, adopting best corporate governance practices, on a Best for Project basis, the resolution of the conflict of interest.

**SCHEDULE 5  
 COMPENSATION FRAMEWORK**

**Overview and General Provisions**

S5.1 Overview of NOP compensation

- (a) The compensation to each NOP for carrying out the CCC Works will comprise three 'limbs' as summarised in **Table 1** below:

<b>Limb 1</b> Reimbursable Costs	Reimbursement of actual direct costs and Project-specific overheads incurred in performing the CCC Works (including mistakes, rework and wasted effort) determined in accordance with Sections S5.10 and S5.11
<b>Limb 2</b> The Fee	A fee to cover profit and a contribution towards NOPs' non-Project-specific overheads, determined in accordance with Sections S5.12 to S5.14
<b>Limb 3</b> Gainshare/Painshare	Payment of Gainshare by the Owner to the NOPs, or payment of Painshare by the NOPs to the Owner as the case may be, depending on how actual outcomes compare with pre-agreed targets in cost and non-cost performance areas, determined in accordance with Section S5.15 to S5.20

**Table 1 – Overview of compensation to NOPs**

S5.2 Application of GST

- (a) All references to amounts and payments in this schedule are exclusive of GST and inclusive of PST and all other taxes. GST must be applied in accordance with Section 8.5.

S5.3 Financial Administration Act

- (a) The NOPs acknowledge that they are aware of the provisions of the *Financial Administration Act* (British Columbia).

S5.4 Payments subject to validation

- (a) Prior to the execution of this Agreement the Financial Auditor conducted audits (the **Establishment Audits**) on the financial records of each of the NOPs 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 Limb 2 Fee and therefore not directly reimbursed.
- (b) All payments made are subject to investigation by the Financial Auditor pursuant to Sections 7.9 to 7.15. In attempting to resolve any issue between the Participants relating to compensation to the NOPs under this Agreement the SLT and the Financial Auditor will have regard to the requirements of this Schedule 5 and the principles of reimbursement determined during the Establishment Audits or those principles as amended by the SLT.

S5.5 Target Cost Estimate (TCE)

- (a) The CCC Proposal included a detailed build-up of the Target Cost Estimate (TCE). The Target Outturn Cost (TOC) is a figure extracted from the TCE. The amount of the TOC prior to any changes arising from Adjustment Events (**Initial TOC**) along with a high-level summary of the make-up of the TOC are shown in Table 3 in **Appendix 1**.

**Owner Alliance Costs**

S5.6 Owner Alliance Costs are costs incurred directly by the Owner in relation to the CCC Works (**Owner Alliance Costs**) other than payments made to a NOP in accordance with this Agreement. Owner Alliance Costs include costs incurred by the Owner in the following categories:

- (a) provision of staff to the PMT and WPT;
- (b) costs of procuring goods or services required to perform the CCC Works;
- (c) costs and expenses incurred by the Owner in effecting and maintaining the insurance policies to be effected and maintained by the Owner in accordance with Schedule 13;
- (d) costs associated with claims from third parties against the Owner or BCTFA arising out of the performance of the CCC Works by the Participants, to the extent that such costs are not covered by insurances in accordance with Section 14;
- (e) other out-of-pocket expenses necessarily incurred by the Owner in performing or supporting the CCC Works; and
- (f) any other cost which is specified in this Agreement to be an Owner Alliance Cost or which the SLT agrees is an Owner Alliance Cost.

S5.7 Any funds received or receivable by the Owner in relation to the CCC Works in the form of refunds, rebates, discounts, proceeds of insurance, third party settlements and the like (but excluding amounts received from the federal government by way of Disaster Financial Assistance Arrangements or similar contributions towards the costs of the CCC Works) will be credited in the reduction of Owner Alliance Costs to the extent that they are a reimbursement to the Owner of costs that are Owner Alliance Costs.

S5.8 The Participants acknowledge and agree that in the event of:

- (a) claims from third parties against the Owner or BCTFA arising out of the performance of the CCC Works where costs associated with such third party claims would be Owner Alliance Costs in accordance with S5.6(d); and
- (b) funds received or receivable by the Owner in relation to the CCC Works in the form of refunds, rebates, discounts, proceeds of insurance and third party settlements that would be credited in reduction of Owner Alliance Costs in accordance with S5.7,

the Owner will consult with the SLT in preparing for any settlement of such costs or funds. Where the Owner proposes, or the SLT reasonably believes that, a proposed settlement of such costs or funds is more than (in respect of costs) or less than (in terms of funds) that might reasonably be considered to be a commercial arms' length settlement between commercially prudent parties (including for public policy or stakeholder considerations), the SLT will determine a reasonable modification to the AOC to return the NOPs to the position they would have been in but for a

settlement considered less than a commercial arms' length settlement between commercially prudent parties.

- S5.9 If it is not clear whether an item is an Owner Alliance Cost, an assessment will be made by the Financial Auditor based on interpretation of this Agreement (including this Schedule 5) and the Establishment Audits, having regard to the principles mentioned in Section S5.6. If a Participant does not agree with the Financial Auditor's assessment the matter shall be referred to the SLT for a determination.

### **Limb 1 – Reimbursable Costs (RCs)**

#### S5.10 Reimbursable Costs - overview

- (a) Reimbursable Costs are costs that are wholly and specifically incurred by the NOPs in performing the CCC Works and which have been approved by the Alliance Project Manager in line with policies approved by the SLT. 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 CCC Works. 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 CCC Works (other than payments received from the Owner for Limb 2 Fee and Limb 3 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; and
  - (v) costs and expenses associated with off-site administrative or functional support not directly involved in the performance of the CCC Works and under the immediate control/direction of the Alliance Project Manager will not be Reimbursable Costs unless stated otherwise in this Agreement or otherwise approved by the SLT.
- (b) In determining the quantum of a Reimbursable Cost, the below items shall be included:
- (i) all cash, trade and other discounts, allowances and credits received by, or payable to, a NOP arising out of or associated with the performance of the CCC Works shall be treated as a deduction from Reimbursable Costs;
  - (ii) statutory liabilities such as accrued entitlement to annual leave, public holidays, sick leave etc. for employees will be Reimbursable Costs, but only to the extent that such liabilities are likely (based on historical evidence) to be eventually paid out by the NOP; and



- (iii) statutory taxes (excluding GST) duties and rebates, including customs duty and sales tax payable by a NOP will be treated as Reimbursable Costs.
- (c) Where unfixed materials, minor plant and the like treated as a Reimbursable Cost and held by the Alliance on behalf of the Owner become excess to what is required to complete the CCC Works, the Alliance Project Manager 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 Outturn Cost.
- (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 Agreement (including this Schedule 5) and the Establishment Audits, having regard to the principles mentioned in Sections S5.4 and S5.11. If a Participant does not agree with the Financial Auditor's assessment the matter shall be referred to the SLT for a determination.

#### S5.11 Reimbursable Costs - details

- (a) The table in **Appendix 2** identifies which categories of cost will be Reimbursable Costs for Western Highways and Infrastructure Inc., any category-specific conditions, and details of how each category will be treated for the purposes of Limb 1. Where category-specific conditions identified in **Appendix 2** are not precisely consistent with the principles mentioned in Section S5.10(a), in the absence of manifest error **Appendix 2** will prevail to the extent of such category-specific inconsistencies. Regardless of whether a cost is incurred in connection with the CCC Works, unless the item is stated to be a Reimbursable Cost in **Appendix 2**, or is expressly stated to be a Reimbursable Cost elsewhere in this Agreement, the item will be deemed to be covered by the Limb 2 Fee and will not be a Reimbursable Cost.
- (b) For the Design NOPs Reimbursable Costs will be limited to:
  - (i) the actual salaries paid to their employees and contracted staff and a mark up of 105% on those salaries;
  - (ii) the actual amounts paid to third party contractors and subconsultants, without a mark up; and
  - (iii) other third party disbursements as approved by the SLT, without a mark up.

#### Limb 2 - Fee

##### S5.12 The Fee - general

- (a) The Fee payable to a NOP determined under Sections S5.13 and S5.14 will be deemed to fully compensate that NOP for
  - (i) all direct and indirect expenditure by that NOP associated with the performance of CCC Works 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 as a Limb 1 Reimbursable Cost or Limb 3 Gainshare/Painshare.

S5.13 Fees for Western Highways and Infrastructure Inc.

(a) The Fee payable to Western Highways and Infrastructure Inc. ( $Fee_{CON}$ ) will be calculated as follows:

➤  $Fee_{CON} = RC_{CON} \times Fee\%_{CON}$ , where:

$RC_{CON}$  = the total amount of Reimbursable Costs payable to Western Highways and Infrastructure Inc.; and

$Fee\%_{CON}$  = the mark-up percentage stated in Appendix 1

S5.14 Fee for the Design NOPs

(a) The Fee payable for the Design NOPs ( $Fee_{DESIGN}$ ) will be calculated as follows:

➤  $Fee_{DESIGN} = (RC\text{-}staff_{DESIGN} \times Fee\%\text{-}staff_{DESIGN})$

where:

$RC\text{-}staff_{DESIGN}$  = the total amount of Reimbursable Costs payable to the Design NOPs in respect of salaries and wages for the Design NOPs' employed staff, but not contracted staff, as calculated in accordance with Section S5.11(b)(i);

$Fee\%\text{-}staff_{DESIGN}$  = the mark-up percentage stated in **Appendix 1**.

**Limb 3 – Gainshare/Painshare**

S5.15 Overview of Gainshare/Painshare

(a) The Gainshare/Painshare regime will comprise two components as set out in Table 2 below. Each component is explained in detail further below.

1) TOC underrun / overrun	A sharing of cost underrun or overrun determined in accordance with Section S5.17 by comparing the Actual Outturn Cost ( <b>AOC</b> ) with the final TOC
2) Performance in key result areas (KRAs)	KRA-related Gainshare/Painshare payments determined in accordance with Section S5.19 to incentivise performance against targets (other than TOC) that the Owner regards as being of significant value to the Owner and the Project

**Table 2 - Gainshare/Painshare components**

(b) **Appendix 4** contains charts and worked examples to illustrate the operation of the Gainshare/Painshare regime. All charts and examples assume there are no Adjustments Events – i.e. the final TOC is identical to the Initial TOC.

S5.16 NOP downside risk cap

- (a) Notwithstanding how poor the actual outcomes are or what figures are derived by the application of the various formulae set out in Sections S5.15 to S5.20, the maximum Painshare payable by each NOP ( $Pain_{Max}$ ) will be a sum equal to the Fee paid/payable to the NOP under this Agreement pursuant to Sections S5.12 to S5.14, including for the avoidance of doubt amounts paid to the NOP as a Fee pursuant to the DPA.

S5.17 TOC underrun / overrun

- (a) Subject to Section S5.16(a), where the AOC exceeds the final TOC, the overrun will be shared between the Owner and the NOPs collectively in the proportions stated in **Appendix 1**.
- (b) Where the AOC is less than the final TOC the underrun will be distributed in the proportions stated in **Appendix 1** between the Owner and the NOPs collectively.

S5.18 KRA-related Gainshare/Painshare

- (a) The KRA Performance Measurement Plan sets out the details of the methods and procedures that will be used to measure performance in various key result areas (KRAs).
- (b) Pursuant to the KRA Performance Measurement Plan:
  - (i) A KRA score between the limits of -100 and +100 will be determined for each KRA using the KPI parameters stated in Appendix 1. Each KRA score reflects actual performance in respect of that KRA across the following spectrum:
    - a) Minus 100, indicating very poor Alliance performance for which maximum KRA-related Painshare will be payable;
    - b) Zero, representing an outcome and Alliance performance in line with the agreed minimum conditions of satisfaction (MCOS) target for which there will be no KRA-related Gainshare/Painshare; and
    - c) Plus 100, indicating outstanding Alliance performance for which maximum KRA-related Gainshare will be payable.
  - (ii) An overall KRA performance score (OKS) between the limits of -100 and +100 will be calculated as the weighted aggregate of the KRA scores, using the KRA weightings stated in Appendix 1.

S5.19 KRA-related Gainshare/Painshare payments

- (a) Where the value of OKS determined in accordance with Section S5.18(b) is greater than zero, the NOPs collectively will be entitled to an OKS Gainshare amount ( $Gain_{OKS}$ ) calculated as follows:

- $\text{Gain}_{\text{OKS}} = \frac{\text{OKS}}{100} \times \text{OKS}_{\text{Seed}}$  Where:  
 OKS = the value determined in accordance with Section S5.18(b); and  
 OKS<sub>Seed</sub> = the amount stated in Appendix 1; and
- (b) Subject to Section S5.16(a), if OKS is less than zero the NOPs collectively will be obliged to pay the Owner an OKS Painshare amount (Pain<sub>OKS</sub>) calculated as follows:
- $\text{Pain}_{\text{OKS}} = \frac{\text{OKS}}{-100} \times \text{OKS}_{\text{Seed}}$ , where:  
 OKS has the same meaning as in Section S5.19(a); and  
 OKS<sub>Seed</sub> = the amount stated in **Appendix 1**.

S5.20 Sharing of gain or pain amongst NOPs

- (a) Any amounts the Owner has to pay to the NOPs collectively (Gainshare) under Sections S5.15 to S5.20 will be distributed amongst the NOPs in the proportions stated in **Appendix 1**.
- (b) Any amounts the NOPs collectively have to pay to Owner (Painshare) under Sections S5.15 to S5.20 will be paid by the respective NOPs in the proportions stated in **Appendix 1**.

**Impact of Adjustment Events**

S5.21 Adjustment to performance targets

- (a) For each Adjustment Event (AE) that it approves pursuant to Section 12 the SLT will determine adjustments to targets impacting Limb 3 in accordance with Sections S5.21 to S5.23 such that Gainshare/Painshare is not materially affected by the Adjustment Event – i.e. the position in respect of Gainshare/Painshare remains as it would have been if the Adjustment Event had not occurred.

S5.22 Adjustment to TOC including Limb 2 Fees

- (a) For each Adjustment Event the SLT will determine what adjustment (up, down or nil) will be made in respect of Owner Alliance Costs (OACs) and Reimbursable Costs (RCs) arising from the Adjustment Event (AE<sub>Δ-L1</sub>) based on an estimate of the impact of the Adjustment Event on the CCC Works. The estimate must be based on the same estimating principles that were used to develop the TCE. Where Monte Carlo analysis is used to model uncertainties in the estimate, AE<sub>Δ-L1</sub> will be the point that matches a probability of 50% (the P50 point) on the cost probability distribution curve. Where possible, additional work arising from an Adjustment Event will only be carried out after AE<sub>Δ-L1</sub> has been determined by the SLT. Where additional costs arising from an Adjustment Event are incurred before AE<sub>Δ-L1</sub> has been determined, those costs will be included in the estimate as known actual costs.
- (b) The estimate will include a breakdown into the various elements necessary to enable adjustments to Limb 2 Fees to be calculated in accordance with Section S5.22(d).

- (c) A Participant or the SLT may require a third-party estimator appointed in accordance with Section 7.1.3 to confirm that  $AE_{\Delta-L1}$  conforms with the requirements of this Agreement and is a reasonable estimate of the likely additional or reduced costs arising as a result of the Adjustment Event, the allowances for risk and opportunity within  $AE_{\Delta-L1}$  are reasonable and  $AE_{\Delta-L1}$  represents value for money (VFM) for the Owner.
- (d) The TOC will be adjusted (up or down) for each Adjustment Event ( $AE_{\Delta-TOC}$ ) using the following formula:
- $AE_{\Delta-TOC} = AE_{\Delta-L1} + AE_{\Delta-L2}$  where:
    - $AE_{\Delta-L1}$  = The sum of estimated adjustments to OACs and RCs determined in accordance with Section S5.22(a); and
    - $AE_{\Delta-L2}$  = the sum of the estimated additional Fee for each NOP associated with the Adjustment Event calculated by applying the applicable formulae in Sections S5.13 and S5.14 to their respective RC amounts within  $AE_{\Delta-L1}$ .
- (e) The final TOC for the purposes of determining cost-related Gainshare or Painshare in accordance with Section S5.17 will be calculated as:
- $\text{Initial TOC} + \Sigma AE_{\Delta-TOC}$  where:
    - Initial TOC = the amount stated in **Appendix 1**; and
    - $\Sigma AE_{\Delta-TOC}$  = the cumulative total for all Adjustment Events of  $AE_{\Delta-TOC}$  determined in accordance with Section S5.22(d) for each Adjustment Event.

#### S5.23 Adjustment to KRA performance targets

- (a) For each Adjustment Event the SLT will determine the adjustment, if any, to each of the KRA-related performance targets having regard to the principle mentioned in Section S5.21(a).

## Actual Outturn Cost (AOC)

### S5.24 Calculation of AOC

(a) The Actual Outturn Cost (AOC) will be determined as follows:

➤  $\Sigma RC + \Sigma OAC + \Sigma Fee - \Sigma \$in$ , where:

- $\Sigma RC$  = The total aggregate amount of actual Limb 1 Reimbursable Costs paid/payable under this Agreement across all NOPs;
- $\Sigma OAC$  = The total aggregate amount of Owner Alliance Costs (OACs) incurred under this Agreement;
- $\Sigma Fee$  = The total aggregate Limb 2 Fee paid/payable to the NOPs under this Agreement pursuant to Sections S5.12 to S5.14; and
- $\Sigma \$in$  = The net income receivable by any of the Participants from the following sources:
- a) proceeds of an insurance policy under Section 14;
  - b) recovery from claims against 3<sup>rd</sup> parties to the extent that such claims relate to costs that have been treated as Owner Alliance Costs or NOP Reimbursable Costs under this Agreement.
  - c) disposal of items or other adjustments pursuant to Sections S5.10(b) and S5.10(c).

## Quantum of Payments

### S5.25 Overriding principle of cash neutrality

(a) Notwithstanding the various formulae set out below in Sections S5.26 to S5.29, the amounts allowed for accruals within each progress application/payment will be adjusted to ensure that the NOPs remain so far as is reasonably practicable approximately 'cash neutral' in respect of Reimbursable Cost expenditure and reimbursement (including recognition of any interest incurred or earned), as determined by the Financial Auditor.

#### S5.26 Progress payments

- (i) Except as provided in Sections S5.28 and S5.29 and subject to Section S5.27, progress payments pursuant to Section 8.2 will comprise amounts for each NOP calculated as follows:

➤  **$[(RC_{TD} + Fee_{TD}) - \Sigma Paid]$** , where:

$RC_{TD}$  = Reimbursable Costs up to the cut-off date for the invoice, based on the Reimbursable Cost of items which have already been invoiced to and/or paid by that NOP;

$Fee_{TD}$  = A payment calculated by applying the applicable Fee%(s) in accordance with Sections S5.12 to S5.14 to that NOP's Reimbursable Costs to date;

$\Sigma Paid$  = The total amount (excluding GST) previously paid to that NOP up to that time under this Agreement.

#### S5.27 Interim Limb 3 payments

- (a) We are committed to avoiding a situation arising at any time where a Painshare amount payable by a NOP to the Owner exceeds the aggregate of the Limb 1 and Limb 2 amounts that remain payable by the Owner to that NOP.
- (b) If it becomes likely at any stage that the situation contemplated in Section S5.27(a) could arise, the SLT will take all steps reasonably necessary to give effect to Section S5.27(a), which may include a direction that:
  - (i) an interim payment of Painshare be included in monthly progress payments; and/or
  - (ii) security, in a form acceptable to the Owner, be provided by the relevant NOPs.
- (c) The SLT may at any time direct that an interim payment of Limb 3 be made, but in doing so must:
  - (i) be satisfied that the consistent trend of Alliance performance and current forecast cost to complete the CCC Works support the interim Limb 3 payment;
  - (ii) act consistently with Sections S5.27(a) and S5.27(b), and with conservative accounting principles and practices; and
  - (iii) minimise unnecessary volatility in payments under this Agreement.

#### S5.28 Following Substantial Completion Date

- (a) As soon as practical and no more than 40 Business Days after the Substantial Completion Date, the following amounts will be payable to each NOP:

➤  **$[(RC_{TD} + Fee_{TD} + G/P_{Prov}) - \Sigma Paid]$** , where

$RC_{TD}$ , and  $Fee_{TD}$  have the same meaning as in Section S5.26(i);

$G/P_{Prov}$  = A provisional estimate of the net amount of Gainshare or Painshare payable to or by that NOP as determined by the SLT in accordance with Section S5.27 and having made a reasonable allowance for the cost of attending to defects up to the expiry of the relevant Defects Correction Period; and

$\Sigma Paid$  = The total amount previously paid (excluding GST) previously paid to that NOP up to that time under this Agreement.

#### S5.29 Final Payment

(a) As soon as practical and no more than 60 Business Days after the Final Completion Date, the Financial Auditor will complete and finalize all investigations in accordance with Section S5.4 and the following amounts will be payable to each NOP:

➤  **$[(RC + Fee + G/P) - \Sigma Paid]$** , where:

$RC$  = Total actual Reimbursable Costs payable to that NOP pursuant to Section Sections S5.10 to S5.11 (accruals are not acceptable);

$Fee$  = The Fee payable to that NOP pursuant to Sections S5.12 to S5.14;

$G/P$  = The Gainshare/Painshare payable to or by that NOP as determined by the SLT pursuant to Sections S5.15 to S5.20; and

$\Sigma Paid$  = The total amount (excluding GST) previously paid to that NOP up to that time under this Agreement.



**Appendix 1 - Compensation Particulars**

Ref	Particulars														
S5.5	The TOC is the amount shown in cell AA122 in Table 3 immediately below.														
	A	E	F	H	I	J	M	N	O	P	R	S	Y	Z	AA
			Unit	MOTI	Western Highways	C-NOPs Total	McElhanney Eng.	Associated Eng.	D-NOPs Total	All NOPs Total	All Participants Total				
101															
103			\$												
105			\$												
106															
107			\$												
108			\$												
110			\$												
111			\$												
112			\$												
113			\$												
114															
115			%												
116			%												
119															
120			\$												
121															
122			\$	5,016,809	139,750,287	139,750,287	7,897,820	8,433,801	16,331,621	156,081,908	161,098,717				
123															

**Table 3 – Summary of the build-up of the TOC**

S5.13(a)	Fee% <sub>CON</sub>				
S5.14(a)	Fee%-staff <sub>DESIGN</sub>				
S5.17(a)	Sharing of cost overruns between Owner and NOPs	Owner	50%		
		NOPs (collectively)	50%		
S5.17(b)	Sharing of cost underruns between Owner and NOPs	Owner	50%		
		NOPs (collectively)	50%		
S5.18(b)	KRA weightings	KRA1: Schedule	40%		
		KRA2: Culture and Engagement	20%		
		KRA3: Business Opportunities for Indigenous Groups	20%		
		KRA4: Traffic	20%		
S5.18(b)	Essential KPI parameters				
		<b>Summary KPI definition</b>	<b>KPI weight within KRA</b>		
			<b>Performance for KPI score of:</b>		
			<b>Minus 100</b>	<b>Nil (MCOS)</b>	<b>Plus 100</b>
	KRA1	Improve on Target Interim Completion Date			
		Improve on Target Substantial Completion Date (with the exception of items (d), (e) and (f) from the definition of Substantial Completion)			

Ref	Particulars	
	KRA2	Underrepresented Workforce <sup>1</sup> Hours  Training and Engagement (Cultural Awareness Video & Be More than a Bystander)
	KRA3	Indigenous <sup>2</sup> Business Opportunities
		Indigenous Workforce Opportunities
	KRA4	Improvement on planned SLAT (days)
S5.19(a)	OKS <sub>Seed</sub>	
S5.20(a)	Gainshare will be distributed amongst the NOPs:	In proportion to the total Limb 2 Fee payable to each NOP
S5.20(b)	Painshare will be distributed amongst the NOPs:	In proportion to the total Limb 2 Fee payable to each NOP

<sup>1</sup> Underrepresented workers are women, people with disabilities, youth (16-24) and other groups traditionally underrepresented in the construction workforce, as described in the Performance Management Plan.

<sup>2</sup> The PLA defines Qualified Indigenous Resources as a business included on one or more list(s) of businesses associated with the Identified Indigenous Groups that will be provided to the Tank Hill Alliance.

**Appendix 2 – Reimbursable Costs –( Western Highways and Infrastructure Inc.)**

<b>Table A</b>			
<b>Overhead and Corporate Office Costs</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Cost</b>	<b>Fee (Profit and Overhead)</b>
A.	<i>Corporate Office and corporate overhead costs</i>		✓
B.	<i>Franchises, royalties, patent licence fees required by a NOP to perform the Services</i>	✓	
C.	<i>Unrecoverable sales taxes on items that are themselves Reimbursable Costs</i>	✓	
D.	<i>All other taxes (e.g. property tax, business tax, income tax, etc.)</i>		✓
E.	<i>Interest, financing charges, banking charges</i>		✓
F.	<i>Corporate or entity accounting / auditing costs</i>		✓
G.	<i>Research and development costs (unless specifically approved by the Owner)</i>		✓
H.	<i>Premiums for the insurances required to be taken out and maintained by the NOPs under this Agreement, except for corporate insurance</i>	✓	
I.	<i>Premiums for corporate insurances</i>		✓
J.	<i>Corporate Office<sup>3</sup> paper, printing and stationery</i>		✓
K.	<i>Marketing, sales, and industry conferences</i>		✓
L.	<i>The costs associated with pursuing, defending or settling claims or civil lawsuits brought by or made against third parties (including any Subcontractor or insurer, but not including any statutory or regulatory fines) arising out of or in connection with the CCC Works, including legal and experts costs and any award of damages will be Reimbursable Costs provided that they are specifically approved by the</i>	✓	

<sup>3</sup> **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.

**Table A**  
**Overhead and Corporate Office Costs**

Ref	Cost Element	Cost Category	
		Reimbursable Cost	Fee (Profit and Overhead)
	<i>SLT and incurred in accordance with SLT-approved procedures. Any award of damages made against a third party (including any Subcontractor or insurer) in favour of the NOPs arising out of or in connection with the Early Works will be credited or paid to the Owner.</i>		
M.	<i>Other legal advice, fees and services</i>		✓
N.	<i>Advertising, including agency fees and publication costs</i>		✓
O.	<i>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</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 in relation to CCC Works 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 this Agreement or required by 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>		✓

**Table A**  
**Overhead and Corporate Office Costs**

<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Cost</b>	<b>Fee (Profit and Overhead)</b>
Z.	<i>Travel expenses incurred by SLT Members to attend the SLT meetings and workshops as set out in the Site Specific Mobility Policy or approved by SLT</i>	✓	
AA.	<i>Cost of the time allocated to the fulfillment of SLT Member duties</i>		✓

<b>Table B</b>			
<b>Designated Project Specific<sup>4</sup> Costs of NOP's Employed Staff</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
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"> <li><i>i. actual salaries and wages;</i></li> <li><i>ii. payments in respect of public holidays and pre-authorized vacation;</i></li> <li><i>iii. pre-authorized overtime pay (in accordance with the NOP's standard HR policies);</i></li> <li><i>iv. employer contributions to private health/dental insurance, accidental death and dismemberment (AD&amp;D) and life insurance as per the employee's contract of employment;</i></li> <li><i>v. employer contributions to Employer Health Tax premiums in accordance with applicable Laws;</i></li> <li><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);</i></li> </ul>	✓	

<sup>4</sup> **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.

<b>Table B</b>			
<b>Designated Project Specific<sup>4</sup> Costs of NOP's Employed Staff</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
	<p>vii. employer contributions in respect of Canada Pension Plan (CPP) and Employment Insurance (EI) in accordance with applicable Law; and</p> <p>viii. WorkSafe BC premiums.</p> <p>The staff payroll burden for the Construction NOP to encompass all of the above items has been established in the Establishment Audit and this percentage shall be used as set out in the Establishment Audit.</p>		
<i>D.</i>	<i>Employee stock or share purchase plans</i>		✓
<i>E.</i>	<i>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.</i>	✓	
<i>F.</i>	<i>Except as set out in Table B, Ref G, costs and expenses for travel, accommodation, meals, housing and laundry expenses for the NOP or any of its Personnel to the extent as set out in the Site Specific Mobility Policy or approved by the SLT. Where applicable, mileage will be charged as per the CRA rates.</i>	✓	
<i>G.</i>	<i>Travel, accommodation and subsistence costs that are in excess of those set out in the Site Specific Mobility Policy</i>		✓
<i>H.</i>	<i>Travel (domestic), accommodation and subsistence costs (including location allowances) for Corporate Office based personnel (excluding identified Project specific staff per Ref A)</i>		✓
<i>I.</i>	<i>Maternity or parental leave payments</i>		✓
<i>J.</i>	<i>Long term sickness payments in excess of 3 months or applicable Law</i>		✓
<i>K.</i>	<i>Long term sickness payments up to 3 months or applicable Law</i>		✓
<i>L.</i>	<i>Project specific bonus or incentive payments, not related to the profitability of the NOP's broader business</i>		✓

<b>Table B</b>			
<b>Designated Project Specific<sup>4</sup> Costs of NOP's Employed Staff</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
<i>M.</i>	<i>Laptop computers (hardware and software), tablets and mobile phones assigned to Project specific Staff</i>		✓
<i>N.</i>	<i>Reimbursement of mobile phone usage for full time personnel</i>	✓	
<i>O.</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"> <li>i. <i>Worker's total earnings, including pre-authorized overtime (excluding bonuses);</i></li> <li>ii. <i>Payments in respect of public holidays and pre-authorized vacation;</i></li> <li>iii. <i>Sickness or injury payments (not recovered by insurance);</i></li> <li>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></li> <li>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></li> <li>vi. <i>Personal protective equipment and clothing (subject to standard NOP's policy); and</i></li> <li>vii. <i>Project specific employee training inclusive of time spent and course fees, subject to prior written authorisation by the SLT.</i></li> </ul>	✓	
B.	<i>Labour only sub-contract.</i>	✓	
C.	<i>Layoff and severance payments, unless required by the Project Labour Agreement</i>		✓
D.	<i>Layoff and severance payments required by the Project Labour Agreement</i>	✓	
E.	<i>Project specific bonus or incentive payments, not related to the profitability of the NOP's broader business</i>		✓

<b>Table C</b>			
<b>NOP's Site Labour</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
<i>F.</i>	<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 the Site Specific Mobility Policy or approved by the SLT and subject to the Project Labour Agreement</i>	✓	
<i>G.</i>	<i>Flight and travel expenses not included in Site Specific Mobility Policy or approved by the SLT</i>		✓

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

**Table D**

**Project Office(s), Site Establishment and Site Charges**

<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
<i>R.</i>	<i>Lunch rooms, drying and messing rooms as may be required including maintenance</i>	✓ *	
<i>S.</i>	<i>Road-sweeping, waste disposal</i>	✓ *	
<i>T.</i>	<i>Project specific technical equipment for surveying and testing, etc.</i>	✓ *	
<i>U.</i>	<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>	✓ *	
<i>V.</i>	<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.

<b>Table E</b>			
<b>Other NOP Machinery and Equipment for the Services</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
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 CCC 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 CCC Works.</i></p> <p><i>Where the equipment is hired or rented by the NOP from an Affiliate, the costs should be consistent with those charged by the Affiliate on other projects and in any event be at or below the relevant Blue Book rates in aggregate across all equipment types and when compared on a similar basis, in each case as confirmed by the Financial Auditor and 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 CCC Works, the costs should be consistent with those charged by the NOP on other projects and in any event be at or below the relevant Blue Book rates in aggregate across all equipment types and when compared on a similar basis, in each case as confirmed by the Financial Auditor and approved 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>	✓	

<i>F.</i>	<i>Spare parts and maintenance for NOP's own and hired or rented machinery and equipment</i>	✓	
<i>G.</i>	<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>			

<b>Table F</b>			
<b>Materials</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
A.	<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>	✓ *	
B.	<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>	✓	
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>			

<b>Table G</b>			
<b>Miscellaneous</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Reimbursable Costs</b>	<b>Fee (Profit and Overhead)</b>
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.</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 this Agreement.</i>	✓	
F.	<i>Cost incurred by the NOP in undertaking its responsibility for the care and protection of any Early Works, Owner's property, the Site, the work of other contractors and existing infrastructure, in accordance with this Agreement.</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 Services.</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 this Agreement, including demobilization, winding up and/or remobilization costs.</i>	✓	
K.	<i>Project specific team building events and other special team</i>	✓	



	<i>functions.</i>		
<i>L.</i>	<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>	✓	
<i>M.</i>	<i>Community engagement costs directly related to the performance of the Services.</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 Services.</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>	✓	

The Establishment Audit for the Construction NOP contains specific provisions dealing with both Reimbursable Costs and the Fee. To the extent those provisions differ from the Tables above, the provisions in the Establishment Audit shall govern.

### Appendix 3 – Owner Alliance Costs (OACs)

Table 11 below identifies items which will be treated as Owner Alliance Costs (in both TOC and AOC) and the basis on which those costs will be quantified.

OAC category	Basis of costing	Quantification parameters
Owner employees assigned into the alliance structure	Actual salary including any annual increases, plus mark up for benefits	Benefit mark up: 25.4% Working hours per year: 1,827
Consultant staff assigned into the alliance structure	Actual consultant invoice cost	Invoice value
Goods and services procured by the Owner	Actual supplier invoice cost	Invoice value
Costs and expenses incurred by the Owner in effecting and maintaining insurance as required by Schedule 13	Actual premium cost, including brokerage fees and expenses	Invoice value
Costs associated with claims from third parties against the Owner or BCTFA arising out of the performance of the CCC Works by the Participants to the extent that such costs are not covered by insurance in accordance with Section 14	Actual award or settlement amount	
Other out of pocket expenses necessarily incurred by the Owner in performing or supporting the CCC Works	Actual invoice cost	Invoice value

**Table 4 – Owner Alliance Costs**

## Appendix 4 – Hypothetical outcome scenarios

### Preamble

This appendix contains the following spreadsheet extracts:

- (a) Fully detailed 'sample scenario' with notes explaining how the financial outcomes for the Owner and each of the NOPs are calculated based on sample values for the two performance variables – i.e. the actual cost underrun/overrun and OKS.
- (b) A table showing 16 scenarios that illustrate how different outcomes (for cost and OKS) impact on each Participant's financial outcome.
- (c) A set of charts that illustrate the financial outcomes for the Owner and each of the NOPs for a cost outcome ranging between 10% under to 50% over (assuming the cost performance factor is the same for all Participants). Note that 3 separate chart lines are shown for each parameter:

----- the value of the parameter if OKS = -100  
————— the value of the parameter if OKS = 0  
----- the value of the parameter if OKS = +100

All scenarios and charts are based on the assumption that there are no Adjustment Events – i.e. the final TOC is the same as the Initial TOC (as shown in the build-up in Appendix 1 above).

**Detailed sample scenario with explanatory notes:**

	A	C	D	E	F	G	H	I	J	M	N	O	P	R	S	Y	Z	AA	
							MOTI	Western Highways	C-NOPs Total	McElhanney Eng.	Associated Eng.	D-NOPs Total	All NOPs Total	All Participants Total					
31	<b>Target Outturn Cost (TOC)</b>																		
32	<u>Cost Components</u>																		
33	OAC + NOP Limb 1 Costs						\$'000												
34	Limb 2 Fee Mark-Up (Blended)						%												
35	Limb 2 Fee						\$'000												
36	<b>TOC (OAC + NOP Limb 1 Costs + Limb 2 Fee)</b>						\$'000												
37																			
38																			
44	<b>Scenario Results</b>																		
45	<u>Actual Outturn Cost (AOC)</u>																		
46	Cost Performance Factor (AOC/TOC)						Multiplier												
47	Actual OAC + NOP Limb 1 Costs						\$'000												
48	Actual Limb 2 Fee						\$'000												
49	<b>AOC (Actual OAC + NOP Limb 1 Costs + Limb 2 Fee)</b>						\$'000												
50																			
51	AOC (Overrun) / Underrun						\$'000												
52	Participant % Share						%												
53	<b>Participant Share of AOC (Overrun) / Underrun</b>						\$'000												
54																			
55	<u>Key Result Areas (KRA)</u>																		
56	Overall KRA Score (OKS)						#												
57	OKS Seed						\$'000												
58	OKS (Pain) / Gain Share						\$'000												
59	NOP % Share						%												
60	<b>NOP Share of OKS (Pain) /Gain</b>						\$'000												
61																			
62																			
63	<u>Total (Pain) / Gain Share</u>																		
64	Participant Share of AOC (Overrun) / Underrun						\$'000												
65	NOP Share of OKS (Pain) /Gain						\$'000												
66	<b>Total Limb 3 Payments (Before Cap)</b>						\$'000												
67																			
68	NOP Pain Share Cap						\$'000												
69	<b>Total Limb 3 Payments (After Cap)</b>						\$'000												
70																			
71																			
72	Limb 3 Pain Share Cap Headroom						\$'000												

	A	C	D	E	F	G	H	I	J	M	N	O	P	R	S	Y	Z	AA	
	Unit						MOTI	Western Highways	C-NOPs Total	McElhanney Eng.	Associated Eng.	D-NOPs Total	All NOPs Total	All Participants Total					
73	<b>Summary</b>																		
74	<u>Target Outturn Cost (TOC)</u>																		
75	OAC + NOP Limb 1 Costs						\$'000												
76	Limb 2 Fee						\$'000												
77	<b>TOC (OAC + NOP Limb 1 Costs + Limb 2 Fee)</b>						\$'000												
78	Effective Limb 2 Fee Mark-Up						%												
79																			
80	<u>Actual Outturn Cost (AOC)</u>																		
81	OAC + NOP Limb 1 Costs						\$'000												
82	Limb 2 Fee						\$'000												
83	<b>AOC (OAC + NOP Limb 1 Costs + Limb 2 Fee)</b>						\$'000												
84	Limb 3 (Pain) / Gain Share						\$'000												
85	<b>Total Revenue</b>						\$'000												
86	NOP Gross Mark-Up (Limb 2 + Limb 3)						\$'000												
87																			
88	<u>Returns</u>																		
89	Actual Gross Mark-Up as a % of TOC RCs						%												
90	Actual Gross Mark-Up as a % of AOC RCs						%												
91	Actual Gross Margin as a % of Total Revenue						%												
92																			
93	Owner Spend Factor						#												
94																			
95																			



**Table of scenarios:**

The sample scenario detailed above is scenario number 2 in the table below.





**SCHEDULE 6  
 PROGRESS PAYMENT SCHEDULE**

**Part 1**

*(to be completed by Alliance Project Manager)*

- The amount claimed by the Non-Owner Participants is as follows:

To period ending:

		<b>NOP1</b> (Western Highways and Infrastructur e Inc.)	<b>NOP2</b> (McElhanney Engineering Services Ltd.)	<b>NOP3</b> (Associated Engineering (B.C.) Ltd.)	<b>Total</b>
Limb 1 Reimbursable Costs to date (L1 <sub>TD</sub> )	Internal Limb 1 Reimbursable Costs	\$	\$	\$	\$
	Third party Limb 1 Reimbursable Costs	\$	\$	\$	\$
	<b>Total Limb 1 Reimbursable Costs</b>	\$	\$	\$	\$
Limb 2 to date (L2 <sub>TD</sub> )		\$	\$	\$	\$
<b>Gross Entitlement to date</b> [A] = (L1 <sub>TD</sub> + L2 <sub>TD</sub> )		\$	\$	\$	\$
Less previous Gross Entitlement amount paid (excluding GST) [B]		\$	\$	\$	\$
<b>Net Entitlement (excluding GST)</b> [C] = ([A] - [B])		\$	\$	\$	\$
GST applicable to Net Entitlement [D]		\$	\$	\$	\$
<b>Amount Due under this Progress Payment Schedule</b> [C] + [D]		\$	\$	\$	\$

- I attach a report from each Non-Owner Participant setting out the amount which has been calculated in accordance with Schedule 5 to this Agreement.
- All backup information requested by the Financial Auditor has been provided to the Financial Auditor.

4. Substantiation information (in addition to the NOP invoices) as requested by Owner and/or the Financial Auditor is attached.

Signed by Alliance  
Project Manager:

Name (Printed): \_\_\_\_\_

Date: \_\_\_\_\_

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**Part 2**

*(to be completed by the Financial Auditor)*

1. As at the date of this Progress Payment Certificate I confirm to the Participants that I have not yet carried out a detailed audit of the Non-Owner Participants' Records substantiating the basis of the amounts set out in this Progress Payment Certificate. Notwithstanding this, I am satisfied, based on preliminary analysis and investigations of alliance cost recording and reporting systems and other information and documentation available to me, that the amounts claimed by each Non-Owner Participant and as stated in this Progress Payment Certificate, which matches the attached invoice from the Non-Owner Participants are, subject to confirmation in accordance with the Financial Audit Plan, a reasonable reflection of the Non-Owner Participants entitlement under Schedule 5 to this Agreement.
2. On receipt of this Progress Payment Schedule signed by the Financial Auditor, the Owner must pay the stated amount to the Non-Owner Participants in accordance with Section 8.5 of the Collaborative Construction Contract.

Signed:

Name (Printed): \_\_\_\_\_

Date:

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**Part 3 – Subject to Section 8.3.4**

*(to be completed by the SLT Representatives)*

1. As the SLT, we are satisfied that the Alliance has sufficient records, systems and procedures in place to track, manage and record the Non-Owner Participants entitlements to payment under this Agreement and that these records, systems and procedures are available to be, and are in a format suitable to be, subject to review and audit in accordance with this Agreement.
2. On receipt of this Progress Payment Schedule signed by the SLT Representatives, the Owner must pay the stated amount to the Non-Owner Participants in accordance with Section 8.5 of the Collaborative Construction Contract.

Signed:

Name (Printed): \_\_\_\_\_

Date:

## **SCHEDULE 7 MANAGEMENT SYSTEM**

### **Development of Management System**

#### **Develop MS**

S7.1 The Participants will develop the Management System (**MS**) to manage and govern and to provide the necessary level of assurance of the performance of the CCC Works.

#### **Purpose of the MS**

S7.2 The purpose of the MS is to:

- (a) establish the policies, procedures, protocols and management plans to guide and manage the PMT's and WPT's performance of the CCC Works;
- (b) provide the APM with the management framework to manage the overall performance of the CCC Works;
- (c) provide the SLT with the governance and oversight framework to enable the SLT to assure the Participants that the CCC Works will satisfy the requirements of the Agreement; and
- (d) enable the Participants to assure themselves that the CCC Works will be performed in accordance with the Agreement to satisfy the Project Objectives.

#### **Requirements of the MS**

S7.3 The MS:

- (a) where, and to the extent applicable, will be informed by and/or make reference to the Participants' existing or recommended management system policies, plans and procedures that would otherwise apply to the CCC Works;
- (b) will cover, as a minimum, the matters outlined in this Schedule 7 and as otherwise required in accordance with this Agreement;
- (c) will be developed to reflect cultural safety and humility policies of the Participants, which must be taken into account in preparing, and the finalisation of, the management plans;
- (d) will set out all key policies, procedures, protocols and management plans relating to the performance of all key aspects of the CCC Works; and

- (e) will specify the delegated limits of accountabilities and responsibilities and the protocols for review and change of those delegated limits, including which aspects of the MS (if any) can be amended by the APM and which aspects can only be amended by the SLT.

S7.4 The Participants must do all things reasonably required to develop and agree the MS:

- (a) initially in accordance with this Schedule 7 and as otherwise required under this Agreement; and
- (b) subsequently to amend or replace elements of the MS as may be required under Section S7.2(d) of this Schedule 7 and as otherwise required under this Agreement.

#### **Structure of MS**

- S7.5 The structure and components of the MS indicated in this Schedule 7 will not constrain the SLT in determining the final or optimal structure of the MS, including the number of Management Plans and the coverage of each Management Plan, provided that, except as otherwise determined by the SLT, the MS covers the matters listed in this Schedule 7.
- S7.6 The APM will submit a detailed proposal for the completion of the MS and each Management Plan to the SLT for approval at the first SLT meeting following the Commencement Date. This proposal should address any Management Plans that were developed for the Early Works.
- S7.7 The APM will then manage the development of the MS by the Participants for submission to and approval by the SLT in accordance with the approved timeframe.
- S7.8 Except as directed by the SLT and in respect of Early Works, no substantial CCC Work will be performed under this Agreement until such review and endorsement has taken place.
- S7.9 The SLT may require periodic review and update of any part of the MS where it considers such review and update is required to better achieve the Project Objectives.

## Management Plan Requirements

S7.10 The MS must cover the following matters in relation to the performance of all aspects of the CCC Works.

	Management Plan	Management Plan Requirements	Indicative Time of Delivery from the Commencement Date
1	<b>MS Structure</b>	Development of a structured approach to plan, manage and provide oversight to the management of the delivery of all aspects of the CCC Works necessary to satisfy the Project Objectives, including structure and hierarchy of documents (e.g. Policies, Plans, procedures, work instructions, records/forms).	To be finalized pursuant to the DPA
2	<b>Project Reporting</b>	<p>Development of a structured approach outlining the scope, frequency, and depth of reporting required to develop detailed and summary level reports (as the case may be) by the APM (with the support of the PMT) to report to, and brief, the SLT and each Participant on all key or material aspects of the performance of the CCC Works, including:</p> <ul style="list-style-type: none"> <li>• CCC Work status report (including key technical and non-technical issues) against relevant milestones on the progress of the key elements of the CCC Works;</li> <li>• recommendations, and the status of progress against previous recommendations, on key technical and non-technical issues;</li> <li>• financial reporting including: <ul style="list-style-type: none"> <li>○ a reconciliation, as at the date of the report, of the AOC of performing the CCC Works against the TOC;</li> <li>○ forecast AOC on a monthly basis, covering the period to Substantial Completion; <ul style="list-style-type: none"> <li>▪ in each case showing Limb 1, Limb 2 and Owner Alliance Costs and consistent with GAAP;</li> </ul> </li> </ul> </li> <li>• details of any material errors or mistakes which have been made in the</li> </ul>	To be finalized pursuant to the DPA

		<p>development of the TOC and identified by the Participants;</p> <ul style="list-style-type: none"> <li>• an updated risk and opportunity register identifying any innovations or breakthroughs which have been made or opportunities which have been realized by the Participants in performing the CCC Works and any innovations or breakthroughs or opportunities which are forecast to be made or realized by the Participants;</li> <li>• the status of the Participants' performance in each KRA and KPI against the objectives of and requirements for each KRA and KPI;</li> <li>• reporting (including all applicable statistical analysis) of the Participants' performance in respect of workplace health and safety and applicable OHS Legislation;</li> <li>• reporting (including all applicable statistical analysis) of the Participants' performance against major elements specified in the various management plans;</li> <li>• reporting on employment status which addresses numbers of employees, construction labour, apprentices and priority hiring, including local residents, equity groups, Indigenous peoples, women and other visible minority groups traditionally underrepresented in the trades;</li> <li>• proposed form and content of “dashboard reports” for reporting to meet the SLT’s and each Participant’s reasonable requirements;</li> <li>• an outline of how the APM will deal with and manage any adverse trends or projections in relation to schedule, cost, or other matters which are central to achievement of the Project Objectives; and</li> <li>• any other information required by the SLT or a Participant necessary to validate compliance with this Agreement.</li> </ul>	
3	<b>Financial Management</b>	<p>Development of a plan for the management, control and reporting of all financial dealings and transactions incurred or entered into by the Participants for the performance of the CCC Works, which includes the following:</p> <ul style="list-style-type: none"> <li>• ensuring that reporting and invoicing are compliant with federal funding</li> </ul>	To be finalized pursuant to the DPA

		<p>agreements;</p> <ul style="list-style-type: none"> <li>• cost control plan – outlines the approach to establishing, implementing and maintaining a robust secure cost control system (necessarily aligned to the work breakdown structure forming the basis of the work package structures of the TOC), sufficient to record, track, manage, analyse and report all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs consistent with GAAP and the CCC;</li> <li>• financial audit plan - outlines the approach to establishing, implementing and maintaining an accurate, robust and secure series of audit activities consistent with GAAP to be undertaken by the Financial Auditor (with the assistance of the PMT), including at a minimum:       <ul style="list-style-type: none"> <li>○ an independent audit by the Financial Auditor of the implementation of the cost control system and financial reporting regime within 60 Business Days of the Commencement Date of the CCC Works;</li> <li>○ regular ongoing financial audits (at intervals to be agreed by SLT within 60 days of the Commencement Date) that all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs are consistent with the Compensation Framework in the CCC;</li> <li>○ the process for the Financial Auditor to review and make recommendations to address (including prepare a summary report for the SLT) any anomalies or inconsistencies identified through audit activities;</li> <li>○ confirm the roles and responsibilities of the NOPs, Owner, SLT and Financial Auditor for the ongoing series of audit activities.</li> </ul> </li> <li>• Substantial Completion and Final Completion Audits - outlines the approach to establishing and implementing a detailed audit of:       <ul style="list-style-type: none"> <li>○ all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs incurred by the Participants in the performance of the CCC Works; and</li> <li>○ determination of Limb 3 gainshare or painshare amounts (if any),</li> </ul> </li> </ul>	
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		within 60 Business days of the Substantial Completion Date and the Final Completion Date to ensure compliance with the Agreement.	
4	<b>Design Management</b>	<p>Development of a structured approach to the management and performance of all activities relating to the design management, design, value assurance, documentation, peer review, verification and validation of the CCC Works (including Temporary Works necessary for the performance of the CCC Works) including:</p> <ul style="list-style-type: none"> <li>• a detailed workflow plan (including resource allocation) fully outlining how design development, submittals, submittal timing and review procedures will occur;</li> <li>• a design approval framework incorporating, safety in design, whole of life cycle consideration and analysis, all requirements of Law and a stakeholder management and compliance matrix;</li> <li>• documentation requirements for design and work package documentation;</li> <li>• use of virtual or augmented reality technologies;</li> <li>• site instructions;</li> <li>• as-built management;</li> <li>• OHS (WorkSafe BC) Legislative Compliance Plan;</li> <li>• CPTED; and</li> <li>• risk assessments.</li> </ul>	To be finalized pursuant to the DPA
5	<b>Construction Management</b>	<p>Development of a structured approach to the management of the performance of all construction activities forming part of the CCC Works outlining the roles, responsibilities, means and methods and techniques, for matters including:</p> <ul style="list-style-type: none"> <li>• site logistics for construction related activities access, security, offices and amenities, laydown, parking, hours of operations, temp services, waste management, etc.;</li> </ul>	To be finalized pursuant to the DPA

		<ul style="list-style-type: none"> <li>• construction schedule – including critical path modelling, resource histograms detailing trade and job classification requirements and cashflow modelling of anticipated AOC;</li> <li>• permitting schedule;</li> <li>• dust, noise, settlement, vibration, noxious odours, erosion control measures;</li> <li>• habitat management planning;</li> <li>• environmental incident response plan;</li> <li>• waste management;</li> <li>• traffic control and site access management protocols and processes;</li> <li>• coordination with the traffic management plan for the wider highway corridor;</li> <li>• temporary site services, including relocation, augmentation and removal at completion; and</li> <li>• excavation and disposal plan.</li> </ul>	
6	<b>Environmental Management Plan</b>	<p>Development of a structured approach to managing the impact of the performance of the CCC Works on the environment, including:</p> <ul style="list-style-type: none"> <li>• outlining a system and way of working that minimize environmental impact;</li> <li>• assuring the environment is not exposed to risks of unlawful damage or pollution;</li> <li>• developing and complying with procedures for avoiding and responding to environmental hazards or emergencies; and</li> <li>• developing procedures for engaging with any Authority regarding the environment and heritage protection.</li> </ul>	To be finalized pursuant to the DPA

7	<b>Quality Assurance Management</b>	<p>Development of a structured approach to the quality of the performance of the CCC Works including the development of a quality assurance system for the performance of the CCC Works addressing:</p> <ul style="list-style-type: none"> <li>• a fully integrated QA management plan;</li> <li>• a description of key roles and responsibilities, including: <ul style="list-style-type: none"> <li>○ specific QA management plans;</li> <li>○ design QA, such as systematic checking, peer reviews and coordination;</li> <li>○ construction QA, such as testing and problem avoidance;</li> <li>○ ensure QA/QC reports include QA deficiency lists and quality incident reports;</li> <li>○ design performance;</li> </ul> </li> <li>• inspection, testing, verification and validation requirements;</li> <li>• quality assurance records management, including the requirements of Law; and</li> <li>• the reporting of compliance with the implemented quality assurance system, including non-conformance reporting, corrective and preventative actions and opportunities for improvements.</li> </ul>	To be finalized pursuant to the DPA
8	<b>Respectful Workplace, Health and Safety Management Plan</b>	<p>A Respectful Workplace policy and procedure(s) that outlines specific responsibilities and process to address issues, promoting a safe and respectful work place for all members and an on-site culture fostering an environment free of discrimination, including:</p> <ul style="list-style-type: none"> <li>• each Participant's health and safety legal obligations including Employer responsibilities;</li> <li>• the Owner and Prime Contractor's legal obligations under the OHS Legislation;</li> <li>• stakeholder, site and facility orientation;</li> </ul>	To be finalized pursuant to the DPA

		<ul style="list-style-type: none"> <li>• emergency responder engagement (e.g. fire and police) and related training;</li> <li>• site safety, security, and emergency planning;</li> <li>• providing an integrated approach that will support a culturally safe and respectful workplace culture at all levels of the Alliance that is free of discrimination and Indigenous-specific racism and which references the TRC Calls to Action, UNDRIP, DRIPA, and Human Rights legislation;</li> <li>• culture safety and Indigenous cultural competency training and equity training for all persons performing CCC Works;</li> <li>• ensuring all trade workers take part in Indigenous cultural competency training;</li> <li>• developing a safe system for racism disclosure and develop policies and procedures to address racism complaints;</li> <li>• a health and safety program, reflective of the requirements of WorkSafeBC, and safety-related policy and procedures that achieve or exceed all occupational health and safety requirements and results in full accountability for safety obligations;</li> <li>• safety qualification, training and onboarding requirements for all persons performing CCC Works;</li> <li>• prime contractor site safety orientation and training; and</li> <li>• construction-related foundational and supervisor safety training.</li> </ul>	
9	<b>Procurement and Contracting Management</b>	<p>Development of a structured approach setting out the requirements and processes for subcontracting, including:</p> <ul style="list-style-type: none"> <li>• a requirement that any procurement by a Participant for the purposes of performing CCC Works will be procured on a Best for Project basis;</li> <li>• the requirements and processes for procuring materials and services, and subcontracting elements of the CCC Works;</li> </ul>	To be finalized pursuant to the DPA

		<ul style="list-style-type: none"> <li>• the structure of the multi criteria analysis (consistent with best practice, fairness and transparency principles) that the Participants will apply in determining the most appropriate Best for Project procurement methodology for procuring goods and services for the performance of the CCC Works;</li> <li>• an authorization and approvals process for the entering into of Subcontracts;</li> <li>• identification of the key people involved in coordinating, controlling and or managing procurement and subcontracting activities, and their roles and responsibilities;</li> <li>• a requirement that any proposed transaction with an Affiliate shall be on market tested commercially reasonable arm's length terms and only negotiated and entered into upon the prior agreement of the SLT;</li> <li>• that any standard template for a Subcontract is developed for the SLT's consideration and approval which shall not be substantially deviated from without the SLT's approval, which must include: <ul style="list-style-type: none"> <li>○ terms which ensure that unencumbered title to unfixed materials will pass to Owner upon payment and are protected and insured to Owner's reasonable satisfaction; and</li> <li>○ require that third parties enter into a direct agreement with the Owner, so that the Owner may exercise all rights under the Subcontract on and from Substantial Completion; or</li> <li>○ that the benefit of the Subcontract is assigned, or otherwise transferred, to the Owner, so that the Owner may exercise all rights under the contractual arrangement or agreement on and from Substantial Completion.</li> </ul> </li> </ul>	
10	<b>KRA Performance Management Plan</b>	<p>Development of a structured approach as to how performance will be measured in the Key Result Areas (KRAs) including:</p> <ul style="list-style-type: none"> <li>• description of the Key Performance Indicators (KPIs) used to measure performance in each KRA;</li> <li>• where more than one KPI is used for a KRA, details of the method by which a KPI performance score will translate into a KRA score, such as weighting</li> </ul>	To be finalized pursuant to the DPA

reasonably reflective of the relative importance of that KPI to the Project Objectives in relation to that KRA;

- for each KPI:
  - description of what the KPI will measure;
  - numerical performance values relevant to the measurement methodology, including as a minimum the performance required to achieve the following KPI scores (**Performance Nodes**):

KPI score	Gainshare / Painshare in relation to that KPI
Minus 100%	Maximum painshare
Zero	Nil (Performance Target)
Plus 100%	Maximum gainshare

- measurement methodology detailing how actual performance will be measured and converted to a KPI score between minus 100% and plus 100% reflecting alliance performance in relation to that KPI;
- the KPI Measurement Framework must be consistent with the following principles:
  - KPIs should address aspects of the Project Objectives which are significantly impacted by the Alliance and for which performance has significant direct or indirect value to the Owner;
  - KPI performance should be measurable by reasonably objective and repeatable methods;
  - the numerical performance value at each Performance Node should reflect the rate at which value to the Owner increases or decreases when actual performance is above or below the Performance Target, and the realistic range of potential Alliance outcomes; and
  - at the time of their establishment, performance values for each

		<p>Performance Node must be set in accordance with the following guidelines:</p> <table border="1" data-bbox="577 316 1522 1071"> <thead> <tr> <th data-bbox="577 316 756 381">KPI score</th> <th data-bbox="756 316 1522 381">Characteristics</th> </tr> </thead> <tbody> <tr> <td data-bbox="577 381 756 479">Minus 100%</td> <td data-bbox="756 381 1522 479"> <ul style="list-style-type: none"> <li>Level of performance that is materially detrimental to the Project Objectives</li> </ul> </td> </tr> <tr> <td data-bbox="577 479 756 852">Zero</td> <td data-bbox="756 479 1522 852"> <ul style="list-style-type: none"> <li>Level of performance expected from a high quality, experienced, competent, and fully integrated Owner-NOP team working in accordance with the CCC Principles</li> <li>Significantly better than what would normally be achieved by the individual Participants working in a traditional limited collaboration contracting environment</li> <li>Set at a P50 level such that there is equal (50%) probability of under-achievement or over-achievement within the TOC</li> </ul> </td> </tr> <tr> <td data-bbox="577 852 756 1071">Plus 100%</td> <td data-bbox="756 852 1522 1071"> <ul style="list-style-type: none"> <li>Level of performance that will add material value to achievement of the Project Objectives over and above the Performance Targets</li> <li>Genuine breakthrough performance through new ways of thinking.</li> </ul> </td> </tr> </tbody> </table>	KPI score	Characteristics	Minus 100%	<ul style="list-style-type: none"> <li>Level of performance that is materially detrimental to the Project Objectives</li> </ul>	Zero	<ul style="list-style-type: none"> <li>Level of performance expected from a high quality, experienced, competent, and fully integrated Owner-NOP team working in accordance with the CCC Principles</li> <li>Significantly better than what would normally be achieved by the individual Participants working in a traditional limited collaboration contracting environment</li> <li>Set at a P50 level such that there is equal (50%) probability of under-achievement or over-achievement within the TOC</li> </ul>	Plus 100%	<ul style="list-style-type: none"> <li>Level of performance that will add material value to achievement of the Project Objectives over and above the Performance Targets</li> <li>Genuine breakthrough performance through new ways of thinking.</li> </ul>	
KPI score	Characteristics										
Minus 100%	<ul style="list-style-type: none"> <li>Level of performance that is materially detrimental to the Project Objectives</li> </ul>										
Zero	<ul style="list-style-type: none"> <li>Level of performance expected from a high quality, experienced, competent, and fully integrated Owner-NOP team working in accordance with the CCC Principles</li> <li>Significantly better than what would normally be achieved by the individual Participants working in a traditional limited collaboration contracting environment</li> <li>Set at a P50 level such that there is equal (50%) probability of under-achievement or over-achievement within the TOC</li> </ul>										
Plus 100%	<ul style="list-style-type: none"> <li>Level of performance that will add material value to achievement of the Project Objectives over and above the Performance Targets</li> <li>Genuine breakthrough performance through new ways of thinking.</li> </ul>										
11	<p><b>Records Management Plan</b></p>	<p>Development of a structured approach to document control and records management detailing compliance, storage, maintenance, retention, access, transfer, format, structure, security and privacy aspects of all documentation and Records prepared by us for the purposes of performing the CCC Works, including:</p> <ul style="list-style-type: none"> <li>a file structure plan, detailing formats and structures of documents satisfying the Owner's requirements;</li> <li>incorporating well-established collaboration platform;</li> </ul>	<p>To be finalized pursuant to the DPA</p>								

		<ul style="list-style-type: none"> <li>• defect and compliance management platform;</li> <li>• photographic record platform;</li> <li>• access permission and point of contacts;</li> <li>• data, database and document management system (server must be Canadian-based);</li> <li>• intellectual property rights; and</li> <li>• compliance with FIPPA and Provincial records and information management requirements, including a documentation retention, storage and transfer plan to enable the transfer of records to the Owner following Substantial Completion.</li> </ul>	
12	<b>Delegations Matrix</b>	Development of a structured approach to the delegation of accountabilities and responsibility within our Alliance setting out the extent of delegations of operational (technical, commercial and financial) including which matters are delegated or capable of being delegated, and to whom, and the limits which apply at each level of delegation between the Owner, SLT, APM, PMT and WPT.	To be finalized pursuant to the DPA
13	<b>People and Culture Plan</b>	<p>Development of a structured approach to assist the management of our people, including:</p> <ul style="list-style-type: none"> <li>• the approach to developing and maintaining a high-performance cross-functional and cross-Participant team including: <ul style="list-style-type: none"> <li>○ means to overcome traditional client-contractor barriers that limit full collaboration and process optimisation;</li> <li>○ methods and approaches to enable those engaged in performing work under this Agreement to take full advantage of the potential for high performance which is created by a collaborative contracting environment;</li> <li>○ leadership and high-performance culture development approaches including mentoring, coaching, feedback, periodic health-checks and the like;</li> </ul> </li> </ul>	To be finalized pursuant to the DPA



		<ul style="list-style-type: none"> <li>• requirements for good human resources management in the Alliance environment including personnel management, retention, development, apprenticeships, training, and other matters required to build and develop an engaged and productive workforce, in a manner to satisfy all Participants' requirements, including: <ul style="list-style-type: none"> <li>○ developing an objective and transparent process outlining the selection of members to participate in the Alliance;</li> <li>○ developing clear documentation outlining details of the employment relationship (including employment status and reporting relationships) for members of the Alliance; and</li> <li>○ developing a recruitment plan for roles and build a succession plan to ensure continuity should members leave the Alliance.</li> </ul> </li> </ul>	
14	<b>Commissioning Manual</b>	Development of a structured approach to identify the manner in which the commissioning and completion of the CCC Works will be staged, how the CCC Works will be handed over to the Owner, and a defects response schedule prepared and defects closed out. To include closeout activities (e.g. lessons learned, final reports, archive and transfer of documents).	To be finalized pursuant to the DPA
15	<b>Communication and Engagement Plan</b>	<p>Development of a structured approach to share responsibilities (Owner, Prime Contractor and Alliance) regarding project and, community and stakeholder communications and engagement, including:</p> <ul style="list-style-type: none"> <li>• lead or supporting roles for communications;</li> <li>• emergency and issues management communications;</li> <li>• planning, community engagement;</li> <li>• media relations and media queries;</li> <li>• government relations and communications;</li> <li>• stakeholder consultation – including engagement with local indigenous communities consistent with Owner's Indigenous engagement framework;</li> </ul>	To be finalized pursuant to the DPA

		<ul style="list-style-type: none"> <li>• event planning and productions;</li> <li>• production and management of communications artefacts and tools;</li> <li>• communications and escalation paths and decision points;</li> <li>• roles, authority and level of participation of participants in external communications;</li> <li>• regular project status communications for stakeholders and user groups; and</li> <li>• alignment with Owner’s priorities, goals and objectives and apprise BC Government Communications and Public Engagement of external communications activities.</li> </ul>	
16	<b>Risk and Opportunity Register and Management Plan</b>	<p>Development of a structured approach describing how risks and opportunities will be managed and measured during the performance of the CCC Works, addressing the treatment, mitigation and management of risks, including:</p> <ul style="list-style-type: none"> <li>• risk and opportunity schedules;</li> <li>• measurement of potential costs or savings related to risks and opportunities, using probabilistic modelling;</li> <li>• risk and opportunity workshop updates;</li> <li>• risk mitigation and opportunity exploitation strategies; and</li> <li>• risk and opportunity platform and reporting.</li> </ul>	To be finalized pursuant to the DPA
17	<b>Emergency Response and Incident Management Plan</b>	<p>Development of a structured approach to emergency response and incident management identifying how the Participants will respond to, and deal with, an incident, which involves, or may involve, a breach of Law (such as the OHS Legislation or environmental laws) and/or the imposition of a fine or other sanction on any or all of us. The plan will consider the role and responsibilities of the Prime Contractor. Once an Emergency Response and Incident Management Plan has been developed, it will be implemented, on the basis of the following principles:</p>	To be submitted to the SLT within 14 days after the Commencement Date.

		<ul style="list-style-type: none"><li>• maintain transparency, and open lines of communication amongst all Participants (without sacrificing our right to legal professional privilege); and</li><li>• continue to make decisions collectively and for the best interests of the Project.</li></ul>	
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**SCHEDULE 8  
KEY INDIVIDUALS**

<b>Role of Key Individual</b>	<b>Name of Key Individual</b>	<b>Commencement of Key Individual</b>	<b>Commitment of Key Individual</b>
<b>SLT Representative (Owner)</b>	Mike Lorimer	Commencement Date	As required to perform the role of an SLT Representative under the Agreement
<b>SLT Representative (Owner)</b>	Jennifer Fraser	Commencement Date	As required to perform the role of an SLT Representative under the Agreement
<b>SLT Representative (McElhanney Engineering Services Ltd.)</b>	Allan Russell	Commencement Date	As required to perform the role of an SLT Representative under the Agreement
<b>SLT Representative (Associated Engineering (B.C.) Ltd.)</b>	Leslie Mihalik	Commencement Date	As required to perform the role of an SLT Representative under the Agreement
<b>SLT Representative (Western Highways and Infrastructure Inc.)</b>	Rick Berg	Commencement Date	As required to perform the role of an SLT Representative under the Agreement
<b>SLT Representative (IBC)</b>	David Hubner	Commencement Date	As required to perform the role of an SLT Representative under the Agreement
<b>Alliance Project Manager (Project Director)</b>	Erhard Behrens	Commencement Date	Full time
<b>Construction Manager</b>	Andrew Kelly	Commencement Date	Full time
<b>Design Manager</b>	Dave Dulay	Commencement Date	Full time through Design IFC Issuance, and Part time as

			required to perform the role of a Design Manager after IFC Issuance until the end of Construction
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**SCHEDULE 9  
SLT ACCOUNTABILITIES AND RESPONSIBILITIES MATRIX**

<b>Senior Leadership Team</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
1. Development and deployment of the strategic framework for the Alliance	<ul style="list-style-type: none"> <li>Creation of a strategic framework</li> </ul>	1.1 Create a vision and purpose for the Alliance	No
		1.2 Align on the CCC Principles	No
		1.3 Align on the Owner's KRAs, Objectives and MCOS	No
		1.4 Deploy and implement CCC Principles, Project Objectives and working together commitments	No
		1.5 Develop strategy to deploy Strategic Framework throughout the Alliance	Yes
2. Development and deployment of a transparent governance framework across the Alliance	<ul style="list-style-type: none"> <li>Creation of a governance framework</li> </ul>	2.1 Endorsement of Alliance organisational structures	No
		2.2 Preparation of job description of APM	No
		2.3 Appointment of APM	No
		2.4 Performance management of APM	No
		2.5 Endorsement of job descriptions of PMT members	No
		2.6 Endorse succession plans for key functions	Yes
		2.7 Establish SLT modus operandi (including meeting, management and leadership protocols)	No
		2.8 Approve limits of delegation and authority for APM and PMT	No
		2.9 Endorse Alliance issue escalation and decision making processes	No

<b>Senior Leadership Team</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
		2.10 Structure, resource and deploy the Management System necessary for the Alliance to achieve MCOS in the Owner's KRAs and Objectives	Yes
		2.11 Endorse management system	No
		2.12 Approve, review and amend the Management Plans	No
		2.13 Initiate internal and Third Party Management System audits, review reports and act on findings	Yes
3. Delivery and performance of obligations under this Agreement	<ul style="list-style-type: none"> <li>Audit against checklist</li> </ul>	3.1 Prepare checklist of obligations arising under this Agreement obligations	Yes
		3.2 Monitor Alliance performance against checklist and take corrective action	Yes
		3.3 Issue directions, approvals and decisions under the Agreement	No
		3.4 Implement the Owner's directions under this Agreement	Yes
4. The Alliance achieving MCOS or better in the Owner's KRAs and Objectives	<ul style="list-style-type: none"> <li>Performance against KPIs</li> </ul>	4.1 Establish and endorse KPIs, performance spectrum and measurement methodology	No
		4.2 Establish KPIs, performance spectrum and measurement methodology	Yes
		4.3 Set challenging targets in KRAs	No
		4.4 Maintain team focus on KRAs	Yes
5. Ensuring that reporting to all	<ul style="list-style-type: none"> <li>Audit against reporting</li> </ul>	5.1 Review and adopt the Owner's reporting requirements	No

<b>Senior Leadership Team</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
Participants is timely, accurate and comprehensive	<ul style="list-style-type: none"> <li>Feedback from the Province Representative</li> </ul>	5.2 Ensure Alliance reporting meets the Owner's reporting requirements	Yes
		5.3 Monitor the Owner's satisfaction with reporting and respond to assure satisfaction	Yes
6. Structuring and resourcing the Alliance so as to be able to achieve MCOS in the Owner's KRA and Objectives	<ul style="list-style-type: none"> <li>Organisation charts</li> <li>People in position</li> <li>Job Descriptions</li> </ul>	6.1 Endorse organisational structure for key delivery phases	No
		6.2 Endorse organisational structures changes across the Project lifecycle	No
		6.3 Develop principles of selection, succession and access to people	No
		6.4 Ensure 'Best for Project' resources are provided to meet the demands of the staffing plan and curve	Yes
7. Providing and maintaining corporate support of the Alliance	<ul style="list-style-type: none"> <li>APM and PMT feedback</li> <li>Audit of minutes of SLT meetings</li> </ul>	7.1 Document expectations of corporate support in the strategic framework and/or Management Plans	No
		7.2 Act on corporate support requests	Yes
8. Ensuring all SLT decision making is unanimous	<ul style="list-style-type: none"> <li>Audit of minutes of SLT meetings</li> </ul>	8.1 Develop and document SLT decision making process (as part of modus operandi document)	No
		8.2 Endorse which issues require resolution/decision by SLT	No
		8.3 Document outcomes of SLT issues resolution and decision making	Yes
		8.4 Ensure all actions, decisions and behaviours are consistent with CCC Principles	Yes
9. Creating and sustaining a culture	<ul style="list-style-type: none"> <li>Alliance People and Culture Development</li> </ul>	9.1 Establish culture development and sustainment plan	Yes



<b>Senior Leadership Team</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
necessary to achieve exceptional Performance in all KRAs and Objectives	Plan <ul style="list-style-type: none"> <li>Alliance on-going health checks and surveys</li> </ul>	9.2 Monitor health of Alliance and act on any health issues	Yes
10. Providing the leadership necessary for the Alliance to achieve the Owner's MCOS in all KRAs	<ul style="list-style-type: none"> <li>Performance against KPIs</li> <li>APM and PMT feedback</li> </ul>	10.1 Establish a project team charter ( <b>Project Team Charter</b> ) that defines Alliance vision, values, and behaviours	No
		10.2 Develop and model leadership behaviours consistent with the Project Team Charter	No
		10.3 Obtain feedback from APM and PMT on SLT leadership performance	No

**SCHEDULE 10  
APM ACCOUNTABILITIES AND RESPONSIBILITIES MATRIX**

<b>Alliance Project Manager</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
1. Deployment of the strategic framework of governing CCC Principles, Project Objectives and Alliance Purpose throughout the Alliance, such that Alliance team members at all levels of the Alliance (including sub-contractors) understand the elements of the strategic framework and their part in its delivery.	<ul style="list-style-type: none"> <li>• Display of strategic framework across the Site</li> <li>• Feedback from Alliance team members</li> </ul>	1.1 Display prominently elements of strategic framework at all Alliance worksites	Yes
		1.2 Inclusion of strategic framework in inductions	Yes
		1.3 Integrate strategic framework in job descriptions	Yes
		1.4 Monitoring performance of the Alliance against strategic framework	Yes
2. Development, endorsement and implementation of the organisational structure for performance of the CCC Works	<ul style="list-style-type: none"> <li>• Organizational structure</li> </ul>	2.1 Develop/refine organisation structure for TOC, delivery and update to reflect phase changes	Yes
		2.2 Develop resource plans in accordance with organisational structures and schedule	Yes
		2.3 Resource the team according to the resource plan	Yes
3. Development and deployment of PMT and PMT member job descriptions	<ul style="list-style-type: none"> <li>• Job descriptions</li> </ul>	3.1 Develop job descriptions for PMT	No
		3.2 Performance management of PMT members	No
4. Development and deployment of a performance management process for the WPT	<ul style="list-style-type: none"> <li>• Performance management process</li> </ul>	4.1 Develop performance management process	Yes
		4.2 Ensure performance management process is deployed	No
5. Establishing succession plans for Key Individuals	<ul style="list-style-type: none"> <li>• Succession plan</li> </ul>	5.1 Develop succession plans for Key Individuals	Yes

<b>Alliance Project Manager</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
of the PMT and WPT		5.2 Develop succession plans for critical discipline leads and supervisors	Yes
		5.3 Endorse succession plans	No
6. Development and effective deployment of Alliance issue escalation and decision making processes	<ul style="list-style-type: none"> <li>Issue resolution and escalation protocol</li> <li>Audit of issue resolution</li> </ul>	6.1 Develop issue escalation and decision making protocol	Yes
		6.2 Endorse issue escalation and decision making protocol	No
		6.3 Deploy issue escalation protocol (e.g. include in inductions etc.)	Yes
7. Deployment of Management System appropriate to the delivery of outstanding outcomes in all KRAs across the Alliance	<ul style="list-style-type: none"> <li>System implementation</li> <li>System audit</li> </ul>	7.1 Implement the Management System	Yes
		7.2 Ensure the Management System is capable of integration with Participants' systems	Yes
		7.3 Deploy the Management System across the Site	Yes
		7.4 Train Alliance team members in Management System use	Yes
		7.5 Monitor system compliance	Yes
8. Development and deployment of management plans appropriate to the delivery of MCOS outcomes in all KRAs	<ul style="list-style-type: none"> <li>Management plans</li> <li>Audit of plans</li> </ul>	8.1 Development of management plans	Yes
		8.2 Deploy plans	Yes
		8.3 Monitor plan compliance and implement corrective actions where required	Yes
9. Development and deployment of a reporting regime to meet SLT and the Owner's needs	<ul style="list-style-type: none"> <li>Alliance (monthly) report</li> </ul>	9.1 Ensure reports meet SLT needs	No
		9.2 Develop reports for SLT meetings	Yes
		9.3 Present reports at SLT meetings	No
		9.4 Amend reports based on SLT feedback	Yes

<b>Alliance Project Manager</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
10. Development of a checklist of SLT, APM and PMT obligations under this Agreement, and ensuring that those relevant to the APM and PMT are delivered	<ul style="list-style-type: none"> <li>Obligations checklist</li> <li>Compliance with Agreement</li> </ul>	10.1 Develop checklist of obligations under this Agreement	Yes
		10.2 Deliver APM obligations	No
		10.3 Monitor and report on delivery of APM and PMT obligations	No
11. Establishment, deployment and reporting of KPIs, performance spectrum and measurement methodologies for Alliance performance in KRAs	<ul style="list-style-type: none"> <li>KPI reports</li> </ul>	11.1 Define KPIs in each KRA	Yes
		11.2 Complete performance spectrum	Yes
		11.3 Define measurement methodology	Yes
		11.4 Collate and analyse and display and report performance data	Yes
		11.5 Act on performance data	No
12. The Alliance team maintaining its focus on achieving targets in all KRAs endorsed by the SLT, over the life of the project	<ul style="list-style-type: none"> <li>Performance in KRAs</li> </ul>	12.1 Ensure Alliance team understands how they contribute to achieving KRAs	Yes
		12.2 Obtain personal commitments to contribute to KRA delivery (think global – act local)	Yes
		12.3 Publish and share KRA performance across all levels of Alliance	Yes
13. Development and deployment of a 'culture development and maintenance plan' that supports the delivery of the Project across the Alliance	<ul style="list-style-type: none"> <li>Culture development and maintenance plan</li> </ul>	13.1 Develop People and Culture Development plan	Yes
		13.2 Deploy People and Culture Plan	Yes
		13.3 Monitor compliance with plan and act accordingly	Yes
14. The PMT and WPT being led in a manner consistent with CCC Principles and	<ul style="list-style-type: none"> <li>Feedback from SLT, PMT and WPT</li> </ul>	14.1 Develop and model leadership behaviours consistent with the Team Charter	No

<b>Alliance Project Manager</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
Team Charter to achieve all aspects of Project Objectives	<ul style="list-style-type: none"> <li>Performance against KRAs</li> </ul>	14.2 Coach and mentor and monitor PMT leadership behaviours	No
15. Timely communication of information relevant to the performance of the project to all project personnel	<ul style="list-style-type: none"> <li>Feedback from project personnel</li> <li>Alliance health checks</li> </ul>	15.1 Dissemination of relevant information from SLT to PMT and the WPT	Yes
		15.2 Development of internal communications strategy and plan for the Alliance	Yes
		15.3 Deployment of the internal communications strategy and plan	Yes
		15.4 Monitor feedback from team and act accordingly	Yes

## SCHEDULE 11 INTELLECTUAL PROPERTY

### Owner Documentation

- S11.1 Any Owner documentation or information supplied to the Alliance for the purposes of performing the CCC Works will:
- (a) not be used, copied or reproduced by a NOP for any other purpose; and
  - (b) remain the property of the Owner and be returned to it upon request.

### Existing Intellectual Property Rights

- S11.2 All IPR owned or held by the Owner at the Commencement Date, or developed by the Owner independently of the CCC Works after the Commencement Date, **(the Owner's Existing Intellectual Property Rights)** will remain the property of the Owner. The Participants acknowledge and agree that any IPR vested upon creation in the Owner will be deemed to be part of the Owner's Existing Intellectual Property Rights for the purposes of this Section S11.2.
- S11.3 All IPR owned or held by a NOP at the Commencement Date, or developed by a NOP independently of the CCC Works after the Commencement Date, **(NOP's Existing Intellectual Property Rights)** will remain the property of that NOP.

### Licence of Existing Intellectual Property Rights

- S11.4 The Owner grants to the NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free licence, fully-paid to use, copy, modify, enhance, alter or decompile **(Use)** the Owner's Existing Intellectual Property Rights which are required by us for the performance of the CCC Works.
- S11.5 Each NOP grants to the Owner and BCTFA a non-exclusive, irrevocable, perpetual, sub-licensable, assignable, royalty free, fully-paid licence to Use the NOP's Existing Intellectual Property Rights which are required by the Owner or BCTFA for the:
- (a) performance of the CCC Works;
  - (b) use, operation, support, maintenance, repair, renovation, and enjoyment of the CCC Works and the Project; or
  - (c) carrying out statutory or public powers, authorities, discretions, duties or functions, including the development of transportation standards, policies and procedures.
- S11.6 Each NOP grants to the other NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free, fully paid licence to Use the NOP's Existing Intellectual Property Rights which are required by the Alliance for the performance of the CCC Works.

### Third Party Intellectual Property Rights

- S11.7 If any third party's IPR forms part of the CCC Works or is necessary for the proper functioning or operation of the CCC Works or the Project **(Third Party Intellectual Property Rights)**, we will ensure

that the Owner and BCTFA are granted a licence to the Third Party Intellectual Property Rights for the use, operation, support, maintenance, repair, renovation, and enjoyment of the CCC Works and the Project on the best available commercial terms.

### **Enhancements to Existing Intellectual Property Rights**

- S11.8 Any enhancement, improvement, adaptation, change, modification or development (**Enhancements**) of the Owner's Existing Intellectual Property Rights will be the property of the Owner.
- S11.9 Any Enhancements of a NOP's Existing Intellectual Property Rights will be the property of the NOP.
- S11.10 The Owner grants to the NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free, fully paid licence to Use any Enhancements to the Owner's Existing Intellectual Property Rights which are required by us for the performance of our obligations or the CCC Works.
- S11.11 Each NOP grants to the Owner and BCTFA a non-exclusive, irrevocable, perpetual, sub-licensable, assignable, royalty free, fully-paid licence to Use any Enhancements to the NOP's Existing Intellectual Property Rights for the:
- (a) performance of the CCC Works;
  - (b) use, operation, support, maintenance, repair, renovation, and enjoyment of the CCC Works and the Project; or
  - (c) carrying out statutory or public powers, authorities, discretions, duties or functions, including the development of transportation standards, policies and procedures.
- S11.12 Each NOP grants to the other NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free, fully paid licence to Use any Enhancements to the NOPs Existing Intellectual Property Rights for the performance of the CCC Works.

### **New Intellectual Property Rights**

- S11.13 All New Intellectual Property Rights created by a Participant vest immediately in that Participant.
- S11.14 Each NOP grants to the Owner and BCTFA a non-exclusive, irrevocable, perpetual, sub-licensable, assignable, royalty free, fully-paid licence to Use the NOP's New Intellectual Property Rights for the:
- (a) performance of the CCC Works;
  - (b) use, operation, support, maintenance, repair, renovation, and enjoyment of the CCC Works and the Project; or
  - (c) carrying out statutory or public powers, authorities, discretions, duties or functions, including the development of transportation standards, policies and procedures.
- S11.15 The Owner grants to the NOPs a non-exclusive, personal, non-transferable, royalty free, fully paid licence to Use the Owner's New Intellectual Property Rights for the performance of the CCC Works.

S11.16 Each NOP grants to the other NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free, fully paid licence to Use the NOP's New Intellectual Property Rights for the performance of the CCC Works.

**Third party use of Intellectual Property Rights**

S11.17 Each NOP acknowledges that notwithstanding Sections 15,16 or 17 of this Agreement the rights granted under Sections S11.5 and S11.11 include the right of the Owner or BCTFA, or a third party on behalf of the Owner or BCTFA, to Use each NOP's Existing Intellectual Property Rights, Enhancements to each NOP's Existing Intellectual Property Rights, and each NOP's New Intellectual Property Rights to do (directly or by engaging a third party or any one or more NOP to do) any of the following matters including:

- (a) perform all or any part of the CCC Works;
- (b) use, operate, support, maintain, repair, renovate, and enjoy the CCC Works;
- (c) complete the CCC Works if this Agreement is suspended or terminated; or
- (d) remedy defects or omissions in the CCC Works whenever occurring.



**SCHEDULE 12  
CONFLICT OF INTEREST DECLARATION**

**Name** .....

**Position**

SLT - Role .....

PMT - Role .....

WPT - Role .....

**Employer** .....

**Declaration** I faithfully declare that:

- 1 I have no personal interest in any matter, circumstance or thing or any relationship, arrangement or understanding; and
- 2 I am not aware, after having made the extent of reasonable enquiries available to me in my organisation, of my employer having any interest in any matter, circumstance or thing or any relationship, arrangement or understanding,

that prevents me from performing my role on a Best for Project basis, except for the disclosures, facts, circumstances, relationships, arrangements, understanding or things set out below:

.....  
.....  
.....  
.....

**Continuing Disclosure** I acknowledge that I will, until Final Completion, continue to disclose all facts or circumstances that I am aware of, or if I am an SLT representative should reasonably be aware of, that are different from or alter my declaration

Acknowledge

**Signed**..... **Date**.....

## SCHEDULE 13 INSURANCE CONDITIONS

### Third Party Liability Insurance

- S13.1 The Construction NOP will provide, maintain and pay for from and including the Commencement Date and through to and including the Substantial Completion Date, "Wrap-Up" Commercial General Liability insurance with inclusive limits of not less than \_\_\_\_\_, for bodily injury, death, and property damage arising from any one accident or occurrence and in the project aggregate. The insurance policy will pay on behalf of the named insureds and the additional named insureds under the policy for any sum or sums which the insureds may become liable to pay or shall pay for bodily injury, death or property damage or for loss of use thereof, arising out of or resulting from the work or operations of the Participants or any Subcontractors of any tier, and including all persons, firms, corporations or partnerships who perform any of the CCC Works contemplated by this Agreement, anywhere within Canada and the USA. In addition to the above limits, such liability insurance will also pay all costs, charges, and expenses in connection with any claims that may require to be contested by the insureds anywhere within Canada and the USA.
- S13.2 The liability insurance referred to in Section S13.1 will cover liability assumed by the Participants in connection with and applicable to this Agreement and will include the following coverage extensions applicable to the following liability policies:
- (a) Coverage Extensions Applicable to the "Wrap-Up" Commercial General Liability Policy
    - (i) Canada and USA coverage territory
    - (ii) Products/Completed Operations
    - (iii) Occurrence Property Damage
    - (iv) Broad Form Property Damage
    - (v) Broad Form Completed Operations
    - (vi) Contingent Employers Liability
    - (vii) Medical Payments
    - (viii) Incidental Medical Malpractice
    - (ix) Blanket Written Contractual
    - (x) Cross Liability
    - (xi) Attached Machinery
    - (xii) Non Owned Automobile
    - (xiii) Legal Liability for damage to hired automobiles
    - (xiv) Hazardous Operations (XCU)
    - (xv) \_\_\_\_\_ Products and Completed Operations (or such longer period as the SLT decides) (as more fully outlined under Section S13.7)

- (xvi) Sudden and Accidental Pollution Coverage with a limit not less than \_\_\_\_\_ in accordance with the Insurance Bureau of Canada's sudden and accidental pollution coverage endorsement, subject to
  - (xvii) 60 days' notice of Cancellation or Limitation of cover (as more fully outlined under Section S13.20)
  - (xviii) Blanket Additional Insureds
- (b) Coverage Extensions Applicable to the Marine and Aviation Policies
- (i) Canada and USA coverage territory
  - (ii) 60 days' notice of Cancellation or Limitation of cover (as more fully outlined under Section S13.20)

S13.3 The following inclusions/exclusions are not permitted for any insurance referred to in Section S13.1:

- (a) Hazardous operations, including excavation, pile driving, shoring, blasting, under-pinning or demolition work or any other operation or work to be performed as part of or in the course of the CCC Work will not be excluded from insurance coverage.
- (b) Claims arising out of the legal liability imposed upon the insured at common law and/or by statute for bodily injury or death to employees of the insured will not be excluded. However, exclusions applicable to liability imposed upon or assumed by the insured under Health and Safety Laws or for assessment by any Workers Compensation Board will be permitted.
- (c) Liability assumed by the insureds under contract with railroad companies for the use and operation of railway sidings or crossings will not be excluded.
- (d) Liability arising out of all products where a Participant supplies the material will not be excluded.
- (e) Tort liability assumed by a Participant under this Agreement will not be excluded.
- (f) Exclusions for design/build, design/build/finance, design/build/finance/operate, or joint venture projects will not be permitted.
- (g) Other types of services not listed above, to be performed by or on behalf of the Participants under this Agreement will not be excluded.

S13.4 A maximum deductible on the primary insurance policy will be allowed for any one accident or per occurrence of up to

S13.5 This insurance will include as named insureds the Owner and the NOPs and anyone employed by them to perform a part or parts of the CCC Works (includes both construction and design services, but excludes all professional services, under this Agreement) but excluding suppliers whose only function is to supply and/or transport products to the project sites or security protection persons or organizations providing site protection on or at the insured project. The insurance does not extend to any activities, works, jobs or undertakings of the insureds other than those directly related to the CCC Works.

S13.6 The insurance will preclude subrogation claims by the insurer against anyone insured hereunder, subject to the professional services exclusion in Section S13.5.

S13.7 This insurance will be maintained continuously from commencement of the CCC Works until Substantial Completion of the Project, plus cover completed operations for a further period of no less than 24 months.

### **Professional Liability Insurance**

S13.8 The Owner will provide, maintain and pay for a project specific project professional liability insurance policy with an insurer, and on terms, acceptable to the Owner after consultation with the Participants:

- (a) providing a professional errors and omissions liability insurance policy on a claims made basis during the period of cover;
- (b) protecting all Participants as named insureds, together with any other parties (e.g. design consultants or subcontractors) to be named insureds as may be agreed by the Participants;
- (c) with a limit of \_\_\_\_\_ dollars per claim and with a limit of \_\_\_\_\_ dollars in the aggregate, such limits to be dedicated specifically to the Project;
- (d) this insurance will be maintained continuously from commencement of the CCC Works until two years after Substantial Completion of the Project; and
- (e) with a maximum self-insured retention of \_\_\_\_\_.

### **Automobile Insurance**

S13.9 From and including the Commencement Date and through to and including the Substantial Completion Date, the NOPs will take out and maintain Automobile Liability coverage with inclusive limits of not less than \_\_\_\_\_ providing third party liability and accident benefits insurance coverage must be provided for all vehicles required by law to be licensed that are owned, leased or rented by a Participant and are used in the performance of the CCC Work.

### **Property Insurance**

S13.10 The Construction NOP will provide and maintain from and including the Commencement Date and through to and including the Substantial Completion Date, Builders' Risk Property Insurance insuring against all risks (including but not limited to structural collapse and transit risks by any conveyance to and/or from the site, while there, awaiting and/or during erection, installation and testing, occurring anywhere within Canada and the United States, but, unless approved and required by the SLT specifically not including earthquake or flood) of direct physical loss of or damage to (including full resultant loss or damage) all materials, property, structures and equipment purchased for, entering into, or forming part of the CCC Works, including the value of any material and/or structure and/or property destined for or entering into or forming part of the CCC Works, whether belonging to a NOP, and/or any of the Subcontractors, and/or the Owner, and/or otherwise and including automatically any changes in design or method of construction occurring during the term of the policy, such insurance to specify a policy limit of not less than the full value of the structure(s) to be built and include the value of any material and/or structure and/or property destined for or entering into or forming part of the work whether belonging to the Participants, and/or any Subcontractors, and/or otherwise and including automatically any changes in design or method of construction occurring during the term of the policy (including full resultant loss or damage (LEG 3 or equivalent, if available) but excluding any extra expense, delay in start up, business interruption, loss of income and loss of profits insurance). If flood and/or earthquake coverage is obtained, the policy may be subject to a sub-limit of \_\_\_\_\_ for flood and \_\_\_\_\_ for earthquake.

S13.11 The Construction NOP will provide and maintain from and including the Commencement Date and through to and including the Substantial Completion Date, "All Risks" Equipment Insurance, including flood and waterborne coverages, satisfactory to the SLT covering all construction plant, including

construction plant owned, rented or leased by a Participant or any Subcontractor and used in the performance of any CCC Work or for which a Participant may be responsible.

#### S13.12 Deductibles

- (a) Subject to Sections S13.12(b), S13.12(c) and S13.12(d), all losses under the Builders' Risk Property Insurance or the Equipment Insurance shall be subject to a deductible up to maximum per occurrence.
- (b) For LEG 3/96 the deductible will be
- (c) If flood coverage is obtained, for flood the deductible will be
- (d) If earthquake coverage is obtained, for earthquakes, a nominal 'deductible' of \_\_\_\_\_ will be allocated by the Owner to the Actual Outturn Cost as an Owner Alliance Cost, with the Owner to pay any other deductible amount payable to insurers in the event of earthquake causing direct physical loss or damage to the CCC Works outside of the Compensation Framework.

S13.13 The insurance will preclude subrogation claims by the insurer against anyone insured hereunder other than architects or engineers who are not employees of the Owner or a NOP (or otherwise an insured under the policy of insurance) for their liability in the event of loss caused by or resulting from any error in design or any other professional error or omission pertaining to the subject of such insurance.

S13.14 The coverage will include as named insureds, the Owner, each of the NOPS and anyone employed by them to perform a part or parts of the CCC Works on the Project.

#### General

S13.15 The description of the Owner arranged insurance described herein is provided on a summary basis only and is not a statement of the actual policy terms and conditions. The Owner does not represent or warrant that the Owner arranged insurance contains insurance for any and all losses. It is each NOP's responsibility to ascertain the exact nature and extent of coverage provided by the Owner arranged insurance, to review all policies pertaining thereto and to obtain any other insurance that it may be prudent for the NOPS to obtain.

S13.16 The NOPS will also provide and maintain any other insurance that the NOPS are required by law to carry, or which they consider necessary.

S13.17 Unless specified otherwise, the duration of each coverage and insurance policy will be from the date of commencement of the CCC Works until the Final Completion Date.

S13.18 The Owner will, upon request, provide the NOPS with proof of insurance of those coverages and insurances required to be provided by the Owner prior to commencement of the CCC Works and subsequent certified copy of policies within a reasonable time period thereafter.

S13.19 The NOPS will provide the Owner with proof of insurance for those insurances required to be provided by the NOPS prior to the commencement of the CCC Works in the form of a completed Certificate of Insurance and will also provide a certified copy of any required policies upon request.

S13.20 The insurance coverages referred to in this Schedule (except owned automobile insurance and professional liability insurance) shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days' notice in writing by registered mail to the Province's Representative with a copy by registered mail to "The Corporate Insurance and Bonds Manager" at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN PROV GOVT, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Province may from time to time by notice to the Design-Builder

advise), except in the case of non-payment of premiums, in which case the minimum statutory notice requirements shall apply. In the case of Marine and Aviation Policies the Participants shall use all reasonable efforts to fulfil the 60 days' notice requirement, but if, after using all reasonable efforts, the Participants cannot fulfil the 60 days' notice requirement, the notice requirement in this subsection for Marine and Aviation Policies may be reduced to not less than 30 days.

S13.21 The insurance coverages referred to in this Schedule shall not be lapsed without at least 30 days' notice in writing by registered mail to the Province's Representative with a copy by registered mail to "The Corporate Insurance and Bonds Manager" at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN PROV GOVT, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Province may from time to time by notice to the Participants advise).

**SCHEDULE 14  
PARENT COMPANY GUARANTEE**

**THIS GUARANTEE** is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**

**His Majesty The King In Right Of The Province Of British Columbia, As Represented By  
The Minister Of Transportation And Infrastructure,**

(the “**Owner**”)

**AND**

[♦] a corporation incorporated under the laws of [British Columbia]

(the “**Guarantor**”)

**WHEREAS:**

- A. The Owner, [Name of relevant NOP] (“**Subsidiary**”) and [Names of other NOPS] have entered into a collaborative construction contract dated as of [date] (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Collaborative Construction Contract**”).
- B. As an inducement to the Owner to enter the Collaborative Construction Contract with Subsidiary, the Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to the Owner, as a direct obligation, the full and prompt performance and observance by Subsidiary of each and every covenant, agreement, undertaking and obligation of Subsidiary contained in the Collaborative Construction Contract, and in furtherance thereof has agreed to enter into this Guarantee.

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

- (a) Unless otherwise defined in this Guarantee, all capitalized terms will have the meanings ascribed to them in the Collaborative Construction Contract.
- (b) Unless otherwise expressly provided in this Guarantee, this Guarantee shall be interpreted in accordance with Schedule 1 [Definitions and Interpretation] to the Collaborative Construction Contract.

- (c) For the purpose of this Guarantee, the term “**Guaranteed Obligations**” has the meaning given in Section 2.1(a).

## 1.2 Survival

This Guarantee shall survive the termination or other expiry of the Collaborative Construction Contract.

## 2. GUARANTEE

### 2.1 Guarantee does

- (a) The Guarantor absolutely, unconditionally and irrevocably guarantees to the Owner, as a direct obligation, the full and prompt performance and observance by Subsidiary of each and every covenant, agreement, undertaking and obligation of Subsidiary contained in the Collaborative Construction Contract (collectively, the “**Guaranteed Obligations**”).
- (b) Notwithstanding any other provision of this Guarantee the Guarantor’s undertakings and obligations are derivative of and not in excess of the Subsidiary’s obligations under the Collaborative Construction Contract and the Guarantor retains all rights and limitations of liability possessed by the Subsidiary under the terms of the Collaborative Construction Contract or arising from the parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to the Subsidiary.

### 2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by the Subsidiary shall give rise to a separate claim and cause of action under this Guarantee, and separate claims or suits may be made and brought, as the case may be, under this Guarantee as each such default occurs.
- (b) The Guarantee in this Agreement shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations has been fully and satisfactorily discharged in accordance with the terms and provisions of the Collaborative Construction Contract and the Guarantor has fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of the Guarantor under this Guarantee shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to the Guarantor shall be required in respect of):
- (i) the terms of the Collaborative Construction Contract;
  - (ii) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
  - (iii) any amalgamation, merger or consolidation of Subsidiary or the Guarantor or any sale, lease or transfer of any of the assets of Subsidiary or the Guarantor;
  - (iv) any Change in Control of Subsidiary or the Guarantor;
  - (v) the termination or other expiry of the Collaborative Construction Contract;
  - (vi) any Adjustment Event;



- (vii) any change in the financial condition of Subsidiary or the Guarantor;
  - (viii) any Act of Insolvency relating to the Subsidiary, or any resulting release, stay or discharge of any Guaranteed Obligation;
  - (ix) any lack or limitation of power, incapacity or disability on the part of Subsidiary or any other irregularity, defect or informality on the part of Subsidiary with respect to the Guaranteed Obligations;
  - (x) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, the Guarantor in respect of the Guaranteed Obligations or this Guarantee;
  - (xi) the assignment by the Owner in accordance with the provisions of Section 20.3 of the Collaborative Construction Contract; or
  - (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against the Guarantor.
- (d) The obligations and liabilities of the Guarantor under this Guarantee shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Subsidiary or the Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) The Owner shall not be bound to exhaust its recourse against Subsidiary or others or any securities or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Guarantor and the Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose of this Guarantee that the Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, the Guarantor waives notice of acceptance of this Guarantee and of the non-performance by Subsidiary, diligence, presentment, protest, dishonour, demand for performance from the Owner and notice of non-performance or failure to perform on the part of the Subsidiary and all other notices whatsoever. This Guarantee is a guarantee of performance and compliance. In order to hold the Guarantor liable under this Guarantee there shall be no obligation on the part of the Owner at any time to demand or resort for performance to the Subsidiary, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that the Subsidiary be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and the Owner shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against the Subsidiary are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, the Subsidiary shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery under this Guarantee for or in respect of any such default, this Guarantee shall remain in full force and effect unamended and shall apply to each and every subsequent default.

- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of the Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to the Guarantor, the Owner may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Subsidiary and/or the Guarantor or others, including any other guarantor, as the Owner may see fit and the Owner may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as the Owner may see fit.
- (h) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. The Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of the Guarantor to the Owner do not merge with or end the Guarantor's obligations under this Guarantee.
- (i) The liability of the Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on the Guarantor.
- (j) The Guarantor agrees to pay to the Owner any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights under this Guarantee.

### **3. REPRESENTATIONS AND WARRANTIES**

#### **3.1 Guarantor Representations and Warranties**

- (a) The Guarantor represents and warrants to the Owner that as of the date of this Guarantee:
  - (i) the Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the *[Insert appropriate governmental authority]* with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and to perform its obligations hereunder and thereunder;
  - (ii) the Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee to be done, executed, delivered or performed;
  - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee and such documents and agreements are in full force and effect as of the date hereof;
  - (iv) this Guarantee (when executed and delivered), have been duly authorized, executed, and delivered by the Guarantor and constitutes legal, valid, and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their respective terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent

preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery and performance by the Guarantor of this Guarantee do not violate or conflict with, or constitute a default under:
  - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on the Guarantor;
  - (B) any applicable Laws; or
  - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) the Subsidiary is [an indirect wholly owned subsidiary] of the Guarantor; **[NTD: to be updated to reflect Subsidiary structure]**
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against the Guarantor, at law or in equity, before any Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Guarantor or in any impairment of its ability to perform its obligations under this Guarantee, and the Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (viii) the Guarantor is able to meet its obligations as they generally become due.

## 4. NOTICES

### 4.1 Notices

Any notice or communication required or permitted to be given under this Guarantee will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to the Owner:



Attention: ▼

E-mail: ▼

if to the Guarantor:



Attention: ▼

E-mail: ▼

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 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
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 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:
  - (i) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
  - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

## **5. GENERAL**

### **5.1 Amendments**

This Guarantee may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Guarantee.

### **5.2 Waiver**

- (a) No waiver made or given by a party under or in connection with this Guarantee shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **5.3 Entire Agreement**

Except where provided otherwise in this Guarantee, this Guarantee, together with the Collaborative Construction Contract and the documents ancillary to the Collaborative Construction Contract, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee.

#### **5.4 Severability**

Each provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Guarantee is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Guarantee. If any such provision of this Guarantee is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Guarantee as near as possible to its original intent and effect.

#### **5.5 Enurement**

This Guarantee shall enure to the benefit of, and be binding on, the Owner and the Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the Guarantor.

#### **5.6 Governing Law and Jurisdiction**

- (a) This Guarantee shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a British Columbia contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of British Columbia and all courts competent to hear appeals therefrom.

#### **5.7 Cumulative Remedies**

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Guarantee or the Collaborative Construction Contract or documents ancillary to the Collaborative Construction Contract.

#### **5.8 Further Assurance**

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

#### **5.9 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

#### **5.10 Proof of Authority**

The Owner and the Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to the Owner or the Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind the Owner or the Guarantor, as applicable.

#### **5.11 Counterparts**

This Guarantee may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the parties have executed this Guarantee as of the date first above written.

**His Majesty The King In Right Of The Province Of British Columbia, As Represented By The Minister Of Transportation And Infrastructure**

\_\_\_\_\_

Per:

Name:  
Title:

**[GUARANTOR]**

Per:

Name: Title

**SCHEDULE 15**  
**[Not Used]**

**SCHEDULE 16  
FORM OF LETTER OF CREDIT**

**[Name and address of Issuing Bank in Vancouver, BC]**

**[Date of issue]**

**His Majesty The King In Right Of The Province Of British Columbia, As Represented By The Minister Of  
Transportation And Infrastructure  
[insert appropriate address]**

**[Attention]**

(together the "**Beneficiary**")

Re: Collaborative Construction Contract dated [◆] between the Beneficiary, **[Names of the other NOPs]**, and **[Name of NOP]** (the "**Applicant**") in respect of the Tank Hill Project.

By order of our client, the Applicant, we hereby issue our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this "**Standby Letter of Credit**") in an amount not to exceed in the aggregate CAN\$[◆] to the Beneficiary, effective immediately and expiring on **[Fixed and determinable date]** (the "**Expiry Date**").

We, **[Name of Issuing Bank]** (the "**Issuing Bank**"), at our offices shown above in Vancouver, British Columbia, Canada (the "**Offices**"), shall immediately pay to you under this Standby Letter of Credit any amount or amounts claimed, not to exceed in the aggregate CAN\$[◆], upon presentation of a sight draft, appropriately completed, in the form of Annex 1 hereto (the "**Sight Draft**") being made upon us at our counter during normal business hours accompanied by the original of this Standby Letter of Credit and any amendments hereto.

Partial and multiple drawings are permitted.

If the Holder's Sight Draft, appropriately completed and the original of this Standby Letter of Credit and any amendments hereto are received by us at the Offices on or before the Expiry Date, we shall honour without enquiring whether you have a legitimate claim between yourself and the Applicant.

After the Expiry Date has elapsed, no draw shall be honoured by us save to any Sight Draft presented by the Holder according to the requirements of this Standby Letter of Credit prior to the Expiry Date.

All banking charges are for the account of the Applicant.

It is a condition of this Standby Letter of Credit that it shall be deemed automatically extended from year to year for successive one year periods from the Expiry Date (each anniversary of the Expiry Date thus becoming the new "**Expiry Date**"), but not beyond \_\_\_\_\_, unless we notify the Holder in writing at least 60 days prior to the then applicable Expiry Date that we irrevocably elect not to consider this Standby Letter of Credit renewed for such further period. Such notice must be sent by registered mail or courier, each with proof of delivery, to the Holder at the address set forth above or such other address designated by the Holder from time to time.



IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT IS TRANSFERABLE AND MAY BE TRANSFERRED IN ITS ENTIRETY, BUT NOT IN PART, AND MAY BE SUCCESSIVELY TRANSFERRED BY THE THEN CURRENT HOLDER TO A TRANSFEREE. TRANSFER OF THIS STANDBY LETTER OF CREDIT TO SUCH TRANSFEREE SHALL BE EFFECTED UPON PRESENTATION TO US AT THE OFFICES OF THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS HERETO ACCOMPANIED BY A REQUEST DESIGNATING THE TRANSFEREE IN THE FORM ATTACHED HERETO AS ANNEX 2 APPROPRIATELY COMPLETED. All future amendments under this Standby Letter of Credit are to be advised directly to the transferee without the consent of, or notice to, any prior Holder and all future correspondence and notifications in respect of this Standby Letter of Credit are to be sent to the transferee and not to any prior Holder.

In this Standby Letter of Credit, "**Holder**" means either (i) if no transfer has occurred, the Beneficiary or (ii) if a transfer has occurred, the last transferee under the above provision.

DOCUMENTS SHALL BE PRESENTED AT OUR ADDRESS MENTIONED ABOVE OR AT THE [NAME AND ADDRESS OF ISSUING BANK] ON OR BEFORE THE EXPIRY DATE.

This Standby Letter of Credit is subject to and governed by International Standby Practices ISP 98 of International Chamber of Commerce publication no. 590.

All matters not covered by ISP 98 shall be interpreted and governed by the laws of British Columbia and the federal laws of Canada applicable therein. To the extent the terms hereof are inconsistent with the provisions of ISP 98, except where expressly stated otherwise, the terms of this Standby Letter of Credit shall govern. The parties irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia. The number of this Standby Letter of Credit must be quoted on all documents required hereby.

**[Issuing Bank's Name]**

•

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE 17  
ADJUSTMENT EVENT GUIDELINES**

Date of w'shops BCHRP Hwy 1 Category B Project - All Proponents				Aug 08-17 2022 (event #52 added later)	
		Adjustment Event?			
		Yes	No		
1	During construction an unseasonable weather event causes damage to some partially-constructed footings, causing rework that adds two days to the critical path and costs \$30,000 in materials and labour.		1	No AE, we will 'price in' contingency for this type of risk, and expect to manage and mitigate the impacts of this type of risk together	
2	During construction an unseasonable weather event causes significant damage to partially-constructed bridge footings, causing rework that adds five weeks to the critical path and costs \$4m in materials and labour.		1	No AE, we intend to mitigate such risks to a high standard (physical, insurance, etc.). If an event of this type occurs whose impact is clearly beyond maximum risk provisions in the TOC (min / most likely / max value recorded in the risk register) or requiring 'rework' significantly beyond the original design, the SLT could determine an AE	
3	Subsequent to site investigations, upon demolition of current infrastructure, it is discovered that more (or less) than the anticipated level of work is required, costing (or saving) \$200k compared to TOC.		1	No AE. We intend to conduct DPA-phase investigations to minimize uncertainty, and provide TOC contingency to reflect residual risks. Expected re-use of existing infrastructure is not extensive, therefore minimal risk of latent conditions.	
4	During detailed design, site investigations reveal that geotechnical conditions are considerably better (stability, groundwater, rock horizon) than those indicated during CCC Proposal development. The Project Management Team (PMT) is able to reduce the number of piles and/or size of pads, saving two weeks on the construction schedule, with the revised solution \$2m less expensive to construct.		1	We intend to conduct DPA-phase investigations to minimize uncertainty, and provide TOC contingency to reflect residual risks.	
5	During detailed design, site investigations reveal that geotechnical conditions are considerably poorer (stability, groundwater, rock horizon) than those indicated during CCC Proposal development. The PMT is required to redesign the footings, causing a two week delay, with the revised solution \$2m more expensive to construct.		1	We intend to conduct DPA-phase investigations to minimize uncertainty, and provide TOC contingency to reflect residual risks.	
6	During the Proposal development it is anticipated the construction crew would be accommodated near the site. During mobilisation it is discovered that limited accommodation is available near site and the majority of the construction crew is required to travel 2 additional hours per day resulting in loss of productivity. The overall estimated schedule impact is one month delay.		1	No AE as we expect to share and manage this risk together, which may include the Owner helping to coordinate accommodation across all three projects. (This would only be an AE if the Province 'takes it away' from our shared control and 'directs' a particular solution - which proves inadequate)	
7	Shortly after the Proposal is accepted, the Province decides that footings and columns for the proposed bridge should be upgraded to cater for potential bridge-widening in future years. The \$400,000 marginal cost is seen as good value in future-proofing against long-term traffic projections.	1		Owner directed scope change	

8	During the Proposal development First Nations and under-represented group employment targets are set through consultation, but during mobilization the mix of candidates does not achieve the target profile, so the PMT decides to extend the recruitment process to achieve targets. This puts the team three weeks behind schedule.	1	Not an AE since KPI targets are agreed by the joint alliance team, and we share risk/opportunity of performance being harder/easier than envisaged.
9	During initial construction activities, indigenous artefacts are unearthed in areas designated for new structures. Investigation and consultation processes cause a six-week delay, eventually resolved by a design change to avoid further disturbing the relevant site.	1	This would not be an AE unless the significance and consequence of the find are large relative to the maximum cost risk allowance recorded in the risk register.
10	Reaching agreement with the railway companies on the Crossing Agreement for the project (including permanent and temporary / construction access to land) takes 3-weeks longer than expected in the agreed programme and TOC.	1	No AE on the basis that SLT / PMT is fully involved in and effectively responsible for accommodating reasonable requirements of, and reaching agreement with the railway companies (even though the agreement is between the Province and the railway companies). Some rail interface delays are likely and the TOC should make reasonable provision. Scenario 11 provides a limit to this shared risk.
11	Reaching agreement with the railway companies on the Crossing Agreement for the project (including permanent and temporary / construction access to land) reaches a "stalemate" and the project is required to take the dispute to the Canadian Transportation Agency for resolution.	1	This would be an AE if the project is unable to proceed because the railway company is being truly unreasonable on critical issues - e.g. permanent tenure aspects or failure to agree highway alignment - provided the CCC project team has done all it reasonably should do to accommodate the railway company's scope of expected behaviour
12	The design, order and sequence of our highway reinstatement works is collaboratively agreed with the railway company to match their own bridge rebuilding works. During delivery the railway company changes their design and accelerates their works resulting in re-design required for our highway reinstatement works and delay due to reduced and postponed access to site.	1	No AE unless the railway company acts egregiously (regardless of the Province-Railway Company Agreement) and the impact is well outside of what was allowed for in our risk register, e.g. requiring major design changes or similar. We expect to work cooperatively with the railway company (as with any critical stakeholder) and our plans and targets should provide for their expected behaviour. The alliance team will be 'at the table' negotiating practicalities. We expect to substantially settle the Crossing Agreement (or similar) before executing the CCC but some uncertainties may remain. Noting that in the event of any inflow from the railway company under the Province-Railway Co Agreement that inflow will reduce our AOC (in accordance with the CCC) hence no AE would be required to reflect any relief obtained from the railway company.
13	During the initial construction stages of our highway reinstatement works, it is discovered that the proposed grade separated crossing can not be constructed before the onset of winter. This introduces an unplanned 4-month delay to the project.	1	Not an AE on the basis that this was in the normal course of works not covered by other AEs.
14	An interface agreement is developed with the railway companies which includes a detailed design review process. During delivery a railway company fails to provide comments in line with agreed timeframes, resulting in a three-week delay to the project.	1	Not an AE as we expect the project team to manage through collaborative relationships. In the event that the behaviour of the rail company is egregious, this could be an AE. (See scenario 12 re expected involvement of the alliance team in developing interface arrangements).

15	During the DPA, agreement is reached on circumstances requiring flagging (which will be organised by the applicable rail authority and billed to the Project), which is incorporated into the target cost. In delivery the railway company requires additional flagging and the unit rate charged for flagging increases due to limited resource availability, causing an unexpected cost increase of \$80,000.	1	No AE on the basis that the alliance is responsible for agreeing these arrangements with the railway company (not the Province acting alone) and we should anticipate and allow for their likely behaviours
16	During the DPA, the railway companies agree to a nominal schedule of two 15 minute Track Windows each day, 7 days a week with 24 hours notice and four hour confirmation of timing to carry out construction and blasting that could impact the railway. As the project progresses, we experience a high degree of short notice changes and cancellations resulting in a lower than expected productivity, leading to a 4-week delay and \$250,000 unplanned costs.	1	No AE as this is likely expected behaviour of the railway company
17	During the DPA, blasting conditions are agreed with the rail companies. In delivery, the rail company provides formal notice that allege that blasting conditions have been breached and that blasting must be restricted until additional protection measures are introduced including reduced volume per blast, more extensive vibration monitoring, and additional clean up crews. This delays the project by three weeks and incurs an extra \$200,000.	1	No AE. Project team to work together with the railway company and comply with any requirements of any agreements.
18	An event unrelated to our project impacts one of the other Highway 1 projects and impedes availability of labour, machinery and materials for our project. This results in a 2-week delay.	1	No AE as this is just one of the external risks and circumstances that the alliance should plan for and manage
19	In order for one of the other Highway 1 projects to recover some lost time and avoid painshare on their schedule KPI, it pursues a recovery plan that inhibits our project from being able to receive a heavy machinery delivery for a week despite their interface obligations. Our project suffers a critical 3-day delay and additional 'stand down' costs of \$150,000 not anticipated in the TOC.	1	No AE on the basis that we expect to negotiate with adjacent projects and solve interface issues on a common-sense basis without Owner intervention via Reserved Power (use of Owner Reserved Powers requiring the team to do something which is contrary to best-for-project, will generally lead to AEs)
20	One of the other Highway 1 projects is running considerably late impacting the ability for our project to receive delivery of heavy materials and machinery as per schedule which will result in a 2-week delay to our project. Our SLT diverts some of our labour to assist the other project, this results in a 1-weekdelay to our project.	1	No AE because the SLT is bound to act on best-for-project basis (hence this action does not involve Province direction or similar)
21	During construction, the conflict in Ukraine is resolved and the price of oil-related supplies and transport drops dramatically, leading to a savings to the Project of \$1.2M.	1	Escalation (or forex, etc.) risk is shared
22	The CCC Proposal is based on an innovative bridge design concept, expected to speed up construction and reduce on-site labour requirements. Following acceptance of the TOC, MOTI technical approval authorities decline to approve designs based on that concept. Redesign work causes a delay of four weeks and the more traditional solution will take three additional weeks to build.	1	No AE on the basis that if we are proposing an innovative design we should: (i) engage strongly with the relevant stakeholders / approvers during DPA in order to seek indicative approval and de-risk this as far as possible; (ii) provide for any residual risk in the TOC (noting that TOC acceptance does not ensure final technical approval). Could be an AE if the team did all the right things, received indicative support for the conceptual design during DPA and then full approval was declined unreasonably.

23	Following acceptance of the CCC Proposal, MOTI's technical authority increases the "1 in 200" design requirements for roads and bridges to withstand flood waters 2m higher than the previous standards. Redesign work extends the critical path by two weeks and the revised solution increases construction costs by \$750,000.	1	AE provided that the change in standards was unexpected and surprising (reasonable consultation with the relevant stakeholders & SMEs did not identify this possibility)
24	During the fall it becomes clear that deteriorating weather is likely to delay construction significantly unless more intrusive traffic restrictions can be imposed in the final months of the project. The CCC team prepares a proposal and MOTI approves the revised conditions, improving forecast completion date by eight weeks.	1	Provision can be made within the TOC for this situation
25	During construction there is a serious road traffic accident close to a work site. Initial investigations suggest that traffic management arrangements may have been a contributory factor, even though they are in accordance with required standards. The PMT decides to adjust traffic management to improve road safety and reduce traffic disruptions. The changes decrease productivity, extending construction by two weeks.	1	Project team 'best-for-project' decision hence no AE
26	During construction there is a serious road traffic accident close to a work site. Initial investigations suggest that traffic management arrangements may have been a contributory factor, even though they are in accordance with required standards. The Owner directs an adjustment to traffic management to improve road safety and reduce traffic disruptions. The changes decrease productivity, extending construction by two weeks.	1	An AE provided that the PMT / SLT have considered potential improvements to traffic safety and concluded that these are not required, and the Province has directed the change for broader reasons than cannot be explained as best-for-project. ("Owner directs" means Province exercises its Reserved Powers, not Owner influence through the SLT.)
27	During consultations a key stakeholder group strongly opposes bridge designs that can withstand the required flood levels, on grounds of excessive environmental impact. However, they see great value if the new bridge has an extra cantilever deck for pedestrian traffic and recreational fishing. The extra \$1m cost is preferable to the likely delay from continued opposition, so the PMT proposes (and SLT approves) to add the deck.	1	Not an AE on the basis that this is best-for-project in the circumstances (i.e. it maximises net Limb 3). We intend to conduct DPA-phase investigations to minimize uncertainty, and provide TOC contingency to reflect residual risks.
28	A PMT or SLT member leaves the team resulting in additional resources being required to support the project to identify replacement team resources, and time to onboard the new team members. Resulting unplanned cost is \$25,000.	1	Changes to the Alliance Team should be a shared responsibility, not the owner.
29	During construction, a critical First Nations site monitor fails to attend site as per agreed program and/or identifies issues with the environmental mitigation measures and asks that work be halted until rectified, causing a 2 day delay in work.	1	Everyone involved in AEG workshops agreed this should be a shared risk
30	During construction it emerges that water quality standards are being breached, due to a combination of abnormally high summer flows and ongoing impact of recent landslides upstream of the work sites. Additional protection measures are required, costing \$150k more than allowed in the TOC.	1	This risk can and should be planned for and mitigated as a team
31	During construction, one of the permitting agencies audits in stream works that results in a fine being issued, and delays in stream work for 2 weeks.	1	No AE, fines are not a cause for an AE. Alliance team to manage and mitigate.

32	Available aggregate sources do not meet requirements (quality/quantity) which results in the need to identify new sources that haven't been developed (arch, environmental, First Nations Consultation). The necessary process to secure new sources delays the project by one month.	1	We expect to mitigate this risk during planning (regardless of how much material is available from established sources)
33	The Province fails to obtain consent of the local First Nations groups to proceed with the reconstruction due to concerns related to construction impacts. This delays the critical path by six weeks.	1	We expect to settle accommodation agreements at least to Term Sheet level during the DPA phase. This would be an AE if (i) the Province is unable to proceed as could be reasonably expected from the Term Sheet (e.g. a new circumstance arises which is not covered by the Term Sheet); and (ii) the alliance team does all that it should in upholding reasonable First Nations expectations arising from the Term Sheet, and helping convert the Term Sheet into a full accommodation agreement (e.g. reducing construction impact as far as reasonable).
34	In-water permits for the approved design take 6 weeks longer than planned, delaying the start of critical foundation work.	1	Alliance team is responsible for securing the permits, therefore delay is a shared risk
35	There is a forest fire during construction resulting in the highway being closed for firefighting efforts, and working hours reduced due to Province directives relating to extreme heat. The overall result is a 10-day delay to critical path activities	1	No AE as we should provide some contingency - this is not "low probability high consequence"
36	A new variant of COVID becomes prominent, leading to an outbreak and subsequent crew quarantine at the work camp. This results in a 2 week delay to the schedule.	1	Business-as-usual (BAU) risk allowed for in the TOC
37	A new variant of COVID becomes prominent, leading to new/updated Provincial Health Officer orders. These include 2m physical distancing of crew in outdoor settings, which reduces productivity resulting in significant additional costs and an overall delay estimated to be six weeks.	1	An AE provided the orders are considerably outside what should be considered 'covid-normal' level of pandemic provisions.
38	As a result of expanded public works capital programs across Canada, rates for key construction materials increase by 15% more than allowed for in the TOC. While some material suppliers are honouring their quoted rates, most are passing the costs on to the Project, resulting in an overall cost increase of \$4M.	1	Shared risk (no AE) as this drives best response in terms of quantification and mitigation where possible
39	A concerned stakeholder group stages a protest, blockading access to a bridge site. This delays start of foundation works and pushes out the schedule by 3 weeks while an injunction is sought to remove the protestors.	1	Not an AE, unless the protest is unrelated to the project or flat-out rejection of any construction (i.e. not able to be mitigated via construction approach, design details, etc.). During the DPA phase we intend to identify project-specific stakeholders, understand their perspective, minimize uncertainty, and provide TOC/schedule contingency to reflect residual risks.
40	Critical imported material or machinery is delayed getting into the country due to sudden introduction of Federal government border restrictions. To mitigate the impact, a locally sourced alternative is procured, but this increases costs by \$300k.	1	This could be an AE if the event is truly unforeseeable and the impact is significant relative to risk provisions within the TOC (i.e. 'low probability / high consequence'). General supply chain disruption and cost escalation should be mitigated by the alliance team and would not constitute an AE (as per scenarios 21 and 51).

41	An event unrelated to the project impacts one of the utilities running adjacent to the highway requiring urgent works to be undertaken by the utility owner. The utility works impact access and/or resources required for the CCC project. The PMT in consultation with the SLT and Owner agrees that it is essential to give priority to utility reinstatement but this results in a 2-week delay to the project and \$100,000 'stand-down' costs not anticipated in the TOC.	1	No AE on the basis that PMT / SLT / Owner all agree this is (in effect) 'best-for-project'. This scenario does not indicate any exercise of Owner (Province) Reserved Power
42	During construction a previously unidentified at-risk [species / vegetation] is discovered on the construction site. The permitting agency requires works in the vicinity to stop pending further investigations, and subsequently requests the CCC team to relocate the endangered species out of the construction impact area. This results in a 3 week delay and \$100,000 unbudgeted cost.	1	Everyone involved in AEG workshops agreed this should be a shared risk
43	During construction the Provincial government imposes legislation that requires employers to provide all employees with 10 days paid sick leave resulting in increased costs to the project.	1	This would be an AE if the event is truly unforeseeable and the impact is significant relative to risk provisions within the TOC (i.e. 'low probability / high consequence').
44	The project team is aware that the underlying collective agreements that feed into the Project Labour Agreement (PLA) are due to expire during the course of the project works. To allow a risk contingency in the TOC, it is assumed that wages will increase 5% for the new agreements. During negotiations, to ensure agreement is reached without delay to the project, a 10% increase in wages is negotiated. The new agreements have a \$2m net additional impact on the project cost beyond expectations.	1	Shared risk (no AE) on basis of quasi-shared control (PLA sets 'base' (floor) wage but CLR group (as employers of project labor) conducts the collective agreement negotiation (subject to Province agreement); NOPs have discretion to pay above-base. We will have some indication of this escalation and should make provision within the TOC
45	After the CCC is executed, the Province imposes the CBA rather than the PLA. Labour costs increase by 20% for a portion of the scope, with a net cost impact of \$150,000.	1	Province-only (outside of alliance) decision with material impact
46	Water contamination is discovered on site, and the various agencies require extensive additional investigations and contaminated material removal resulting in \$4M additional direct costs and delaying the project 3 months.	1	No AE on the basis that DPA-phase work will be directed to de-risking the issue of pre-existing contamination. Contamination caused by the project would be a shared risk.
47	During construction unexpected utilities (unknown / abandoned / mislocated) is located requiring removing, relocating or adjustment of the design impacting on the program and cost of the works.	1	Everyone involved in AEG workshops agreed this should be a shared risk
48	After extensive discussions with the insurance market during the Development Phase, indicative quotes and policy wording for a suitable policy are obtained. The TOC is based on expectations on the cover, deductible, etc. that can be procured on the insurance market. After the CCC is underway the insurer withdraws the offer leaving the Participants exposed to significantly higher uninsured risks than expected.	1	This would be an AE on the basis that 'self-insurance' provisions within the TOC have been agreed in light of anticipated 3rd-party insurance; if that insurance is no longer available then (i) residual risk for the CCC Participants is higher i.e. self-insurance should increase; and (ii) external insurance premium allowed for in the TOC will not be incurred
49	Owner Suspension pursuant to Section 15.4 of the CCC	1	Assuming there is no 'cause' and this is genuine suspension for convenience (Owner Reserved Power), it would be an AE.

50	Project gets impacted by a labor strike, either legal or illegal, at project level or subcontract / supplier level, the strike delays the project. Reason for the strike is not related to the project site conditions.	1	No AE on the basis that this risk is significantly reduced via the PLA which includes 'no strike' clause covering pretty much all craft labor on site (including crane drivers / piling operators etc.) Strikes could still impact upstream suppliers or utilities with whom we interface - but that's a supply chain-type risk (no real case for such to be Owner only risks)
51	Material escalation.	1	No AE as we should seek to understand / foresee / mitigate to the extent sensible during TOC development
52	Low Probability/High Consequence Scenario. For example: During construction, if another major flood event or earthquake were to occur, ancestral remains are discovered in a critical location, or a catastrophic rail event, in each case resulting in significant costs and causing irrecoverable critical path delay.	1	SLT has authority to evaluate as Adjustment Events low probability, high impact events that fall outside that which was contemplated in the TOC risk/contingency evaluation.



## SCHEDULE 18 DFAA INVOICE CHECKLIST

### **Non-Owner Participant (NOP) – invoice check list**

This guideline outlines the federal Disaster Financial Assistance Arrangement requirements. All financial documentation submitted for payment shall follow the general guideline below:

#### **1. General**

- All math is correct.
- PST and GST shown separately
- Summary sheet of costs
- Final or In-progress noted
- All photocopies are legible
- Dates for work performed by the NOP within the date range and within Recovery date range if it's for a DFAA event (or other emergency event)
- Project number such as DFAA project number is referenced (MOTI will provide site numbers)

#### **2. Labour**

- Summary sheet - Union classification, wage, hours worked (straight, 1.5x or 2.0x), mark up
- Timecards – Clear and legible, date, hours worked (straight, 1.5x, 2.0x), site/location, duties performed

#### **3. Equipment**

- Summary sheet – Hours worked (straight, 1.5x, 2.0x), rates, type of equipment, fuel adjustment,
- Time cards – Clear and legible, includes duties performed and location by site number

#### **4. Material**

- Description and quantity purchased
- Truck fares, if applicable, are clear and legible
- Approved and signed off by a project supervisor
- For material from a MOTI pit - include name of pit, type of material, number of loads, cubic meter or tonnage, transporter, date, final placement location
- Purchased material: invoices from the supplier that include the item description, quantity, unit cost and total cost

#### **5. Sub-Contractor**

- Includes contract or agreement of services provided, including quote and rates
- Invoice(s) to include rates, hours, duties performed and dates of service
- Traffic Control – Timecards, clear and legible, copy of the rates, date(s) of service, location; timecards are approved and signed by the Project Supervisor

- If costs are split between multiple projects, clear breakdown of costs
- Invoices approved and signed by a project supervisor/manager
- Third party backup to include:
  - Traffic Control – Copy of invoice, time cards, clear and legible, rates, dates of service, location
  - Material – Invoice including quantity, rates and tares if available
  - Other/Misc – Invoice and lump sum contract (if applicable)
  - Accommodation – include the hotel receipt

**6. Photographs**

- Photographs of the construction work showing achievement of key milestones

## Execution

### **His Majesty The King In Right Of The Province Of British Columbia, As Represented By The Minister Of Transportation And Infrastructure**

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Signature of duly authorised signatory

Kevin Richter  
Full name of duly authorised signatory

### **McElhanney Engineering Services Ltd.**

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Signature of duly authorised signatory

Jennifer Price  
Full name of duly authorised signatory

### **Associated Engineering (B.C.) Ltd.**

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Signature of duly authorised signatory

Full name of duly authorised signatory

**Western Highways and Infrastructure Inc.**

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Signature of duly authorised signatory

Full name of duly authorised signatory